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Many Dangers of Public-Private Partnerships (P3s) in Newfoundland and Labrador

Christine Saulnier

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DEDICATION

This report is dedicated to the memory of John Loxley, whose forthright, in-depth, economic analysis will continue to be indispensable, whether it comes to our analysis of P3s, social impact bonds, community economic development or government budgets.

ABOUT THE AUTHOR

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Summary

THE PROMISE OF a quick fix for long-sought after infrastructure is a strong lure for both residents in communities with urgent health and long-term care needs, as well as governments with the responsibility of providing those services. This is especially attractive for Newfoundland and Labrador (NL) given the fiscal pressures it is under. NL's situation urgently demands that decisions about public infrastructure be made transparently and with a healthy and reasoned public debate. It is critical that these decisions protect public services, local democracy and the public interest.

Unfortunately, NL has a poor track record when it comes to ensuring that broad public interests in infrastructure development are not trumped by private commercial interests. The mishandling of the Muskrat Falls project that has forced the province to the verge of bankruptcy is but one example. A first-time use Public Private Partnerships (P3s) to deliver infrastructure when a jurisdiction has poorly developed mechanisms of accountability and oversight is a strategy fraught with risks.

Locking into 30-year contracts with a declining population, and unknown needs in the future, plus an economic and FIscal crisis, would be especially unwise for NL.

Key Findings

On the surface, while P3s might look like the best option to build badly-needed infrastructure, this report identifies many hidden dangers that will be locked-in for 30-years. Should the NL government proceed with its current plan to use a P3 model for five current and upcoming projects, including hospitals and long-term care facilities and a prison, it will have solved some immediate infrastructure needs at the price of a long-term costlier headache.

The province has jumped into the P3 world with $1.5 billion in planned 30-year contracts. Yet the public has been provided with very little concrete information or insight into the decision-making process. Even the signed project agreements have not been released. Much of this information is kept secret on the basis that to release it would unduly harm the competitive interests of the private companies involved. But what about the interests of the residents? Newfoundlanders and Labradorians should be concerned by this lack of transparency regarding how taxpayer dollars will be spent for decades.

To assess whether these projects should be P3s, the NL government spent $5.1 million in public dollars on studies, none of which has been released in full to the public; 88% of all payments went to a single consultant, Ernst and Young. This consultant was awarded an initial contract without a competitive process, the conclusions of which led to it being awarded other contracts to support the P3 projects that they recommended. A consultant that both assesses and promotes P3s is a perversion of good decision-making.

Based on responses to access to information requests, and publicly available information, this report dispels the claim that there is any financial or other discernible advantages in regard to the design, build or maintenance of these infrastructure projects using a P3 approach. Although government doesn't have to pay for construction before the facility is completed, the P3 deal will lock the province into a 30-year contract that includes capital costs and costs for maintenance. No matter who provides the financing, both the capital investment and maintenance costs are paid by residents of the province. The sole advantage to using P3s is political — a smaller amount of the capital costs added to the debt in the current government's balance sheet.

Accepting the helping hand of private financiers and P3 consultants comes with significant risks and strings attached. Ceding community control over public institutions to private for-profit enterprises is a significant long-term string.

The entire process for evaluating the P3 model is inherently flawed with a seemingly foregone conclusion. P3s and the traditional public sector method of building infrastructure have similar base costs. The consultant concluded that the P3 model offered a cost-savings of between 7–12% depending on the project. The claims about the P3 advantage and cost-savings come largely from assumptions about risk-transfer to the private sector.

The one project where some of the details about risk assessment were released reveals that the consultant allocated additional risks onto the price of a government Design-Build method that inflated the construction costs by 80%. Put another way, the government would have to oversee the construction of a medium-sized Long-Term Care facility of modest complexity and have the project go 80% over budget for this estimate to make any sense and for the P3 to achieve Value for Money.

Contrary to the government's claim that these five P3 projects will save money, we conclude that these P3 projects will likely cost more than publicly-financed facilities of similar scale and quality. How much more is hard to discern without more information on the costing methodology, but *that* they will cost more is undoubtedly the case. Even by not applying the provincial bond borrowing rate as the discount rate, it means the government pays at least $294 million more for a P3.

The result will be fewer hospitals and long-term care staff and beds than the province could have had if it had taken a public route to providing this infrastructure.

The Value for Money assessment process rests on a subjective risk quantification process that was then run through the consultant's proprietary statistical software program, which no outside party can verify. From the analysis that was released on how to weigh risks, it is clear that many P3 risks are downplayed, such as the loss of long-term flexibility around the use of the facility, labour considerations, maximizing competition, and opportunities to boost local economic activity. The NL government's turn to P3 projects is not about ensuring good jobs at home and will only serve to hurt small and medium-sized local construction companies.

The public is not served when democratic oversight and community control are sidelined by calculations of risk done to ensure private profit. Newfoundland and Labrador is going down a dangerous path: one that introduces and entrenches private, for-profit forces into essential health infrastructure. This is especially risky during an ongoing pandemic and for NL specifically given its fiscal situation. Ultimately, the government is responsible for providing public services and ensuring that their citizens' needs are met. A private company can simply walk away.

Complex P3 deals compromise the public interest. These much-needed infrastructure projects could be done in a straightforward manner using a conventional public method with a federal loan guarantee.

Policy Recommendations

1. The NL government should immediately implement a 3 month freeze on the P3 process for the Penitentiary contract to allow time to submit a request to the Federal Government for a Federal Loan Guarantee — like the one signed in November 2012 for Muskrat Falls and the Maritime Link — for the approximate $200 million overall cost of the prison replacement.

2. The recently released Muskrat Falls Inquiry Commissioners' Report makes recommendations for openness and transparency in procurement that should be heeded:

a. *Access to Information and Personal Privacy Act* be changed so that commercially sensitive information can be accessed by the Information Commissioner and released to the public.

b. For projects larger than $50 million, the NL government should a) engage independent experts to provide a **robust review**, assessment, and analysis of the project, and b) provide well-defined oversight based on best practices in other jurisdictions.[1]

c. Ensure prompt and full proactive disclosure of all procurement records, including preliminary analyses, business case documents, successful and unsuccessful bids, evaluations of bids, and contracts.

These documents should be released as they are received or distributed to procurement partners.

3. The NL government must halt the process of sole source consultants' contracts. No consultant who is also a member of the P3 lobby group should qualify as an independent expert on procurement.

4. To ensure more infrastructure projects are accessible to small and medium sized construction companies the NL government must end the process of bundling small projects into a bigger project. No infrastructure project under $100 million should be a P3, and bundling to surpass this limit should not be permitted. In addition, unless a P3 can save more than 10% of the costs of a project, the project should be built using public procurement.

5. Public procurement in NL should be strengthened to include Community Benefit Agreements[2], which would result in more local, good quality, jobs, through enabling legislation that ensures procurement opportunities for local suppliers, offers preferential consideration to living wage suppliers and supply chains, includes training and job opportunities to underemployed groups, and ties projects to specific policy objectives such as greater energy efficiency, reduced poverty, and inclusive growth.

Introduction

THE COVID-19 PANDEMIC is the most serious threat to our collective health in generations. It has unprecedented social and economic consequences. The role of governments is to support citizens to heed public health guidelines, and to mitigate the negative implications of doing so. In Canada, provincial governments do not have the fiscal capacity that the federal government has to undertake additional, unplanned expenditures, while facing a decline in revenue. The provincial responses have been, not surprisingly, quite varied, both in the kinds of support programs offered (business loans or grants, funding to non-profits, individual income transfers) and the level of support offered.[3]

Newfoundland and Labrador (NL) is also dealing with a very severe downturn in revenue because of the collapse of oil prices (again), plus the ballooning cost of Muskrat Falls, and the impact of COVID-19 mitigation strategies on tourism, fishery, forestry and the entire economy. Amidst this storm the province has committed to continuing with Public Private Partnerships (P3s) for public infrastructure. At a time when a worldwide pandemic has put such a spotlight on the depth of the insecurity faced by so many individuals, institutions, businesses and even governments, mitigating risks should be top of mind for any government.

Newfoundlanders and Labradorians urgently need new infrastructure to provide health care and other public services. But, evidence from across Canada and around the world indicates that P3 projects carry more risk than they're worth. We must ask: are P3s the best choice for NL? How was the decision made to use P3s in NL? And, what are the known risks of pursuing this strategy?

Report Structure and Methodology

This report answers these questions in four main sections. The first section provides a brief explanation of what a P3 is and how it compares to conventional public procurement. Next, it provides an overview of the record of P3s in other Canadian provinces. The remainder of the report considers whether the lessons learned in Canada have been incorporated into the decision-making process for choosing to use P3s or whether the same problems that arose in other jurisdictions can be found in NL's experience. The final section of the report proposes how the province should address its infrastructure needs and makes policy recommendations.

In addition to basing the analysis of the P3 projects on publicly-available government documents, the researchers also used formal requests for information through the *Access to Information and Protection of Privacy Act, 2015 (ATIPP)* as well as informal requests for documents from the NL Department of Transportation (Table A includes a summary of key documents, including unsigned project agreements, and summary Value for Money reports). Emails and internal documents related to the contracted work for the NL government are beyond the reach of the legislation government ATIPP requests. We were able to obtain a bit more information on the Corner Brook LTC facility because it was the first P3 project completed in the province (Spring 2020) and allowed us to piece together a glimpse of the NL government decision making about infrastructure projects. We are able to draw conclusions about what this could mean for the future of the P3 projects currently underway as well as those proposed.

What are Private Public Partnerships (P3s)?

P3S ARE OFTEN used to build expensive infrastructure projects, such as hospitals, prisons, and schools. In a traditional government procurement model for infrastructure, the government is responsible for all aspects of the project development, including design, construction, finance, build, maintain, and provision of services. Each of these aspects is separate and either contracted to a company to fulfill a particular part of the project or it is provided in-house, but the project as a whole is overseen and controlled by the government. The two most common conventional approaches are the Design-Bid-Build (DBB) and the Design-Build (DB) approaches. In a DBB project, the government arranges the design of a project, seeks bids based on detailed specifications and blueprints, and awards the contract to a private sector bidder for the project. Once construction is complete, the government is responsible for its maintenance, operation and all associated services. Governments sometimes use the DB method, in which the government only develops a conceptual plan for a project, seeks bids for the design and construction of the project under a single contract. While the private sector is involved in traditional public methods, with the P3 method the private sector takes over aspects previously done by the public sector, most commonly the financing and operations of the project.

Every P3 contract details what the private consortium is responsible for, the risks and responsibilities that are transferred from the government to the private sector, payments, and consequences for not fulfilling duties. The amount of private involvement in the project runs on a continuum, from Service-Operate-Maintain (low) to Design-Build-Own-Operate (high)[4]. In the Design-Build-Finance-Operate-Maintain (DBFOM) model, the operation of the facility is also privatized and included in the P3 contract. For instance, under this model, in a long-term care facility or hospital, the nursing and care team staff, cleaners and cooks, dieticians, and other service providers are employees of the private consortium, rather than public sector employees.

The Design-Build-Finance-Maintain (DBFM) model was used for the five NL P3 contracts examined in this report. In the DBFM model a private consortium is responsible for the construction as well as the long-term maintenance of the infrastructure including keeping the facility in good repair, and landscaping.

In essence, a P3 is "a public sector infrastructure project that is fully or partially financed by the private sector on a long-term basis and in which the private sector takes a long-term operation and/or maintenance role."[5] In contrast to the conventional method, as with all P3 projects, consortiums of companies bid on these complex contracts to finance and build infrastructure projects as well as to operate some of the services associated with them.[6] One reason a government justifies using P3 is to access financing for the projects. In this arrangement, the consortium privately raises the capital funds and the government pays a fee to the consortium over the course of the contract (most commonly 25 or 30 years compared to the few years that would be typical for a conventional build). In addition, the government, as in the case of all five current NL projects, agrees to only pay for construction once the facility is finished, and the remainder of the capital costs along with maintenance are combined into regular (monthly or annual) payments.

In contrast to publicly administered facilities, P3 contracts are usually kept secret from the public and even in some cases from the province's Auditor General.[7] Many of the ATIPP requests submitted in preparation for this report were refused on the grounds that disclosure of the information in P3 contracts sought by the authors was considered "harmful to business interests of a third party."[8]

P3s in Canada: Historical Context and Lessons Learned

Public Private Partnerships in the United Kingdom, the United States, and at the federal and provincial level in Canada, are increasingly used for infrastructure projects. Provincial governments initiated a wave of P3 projects in the 1990s, including the Confederation Bridge between New Brunswick and PEI in 1992, followed by highways in New Brunswick and Nova Scotia in the mid-90s as well as schools. Provincial governments in British Columbia, Saskatchewan, and Ontario have relied heavily on the P3 model for their infrastructure needs. Ontario led the way in Canada in terms of the number of P3 projects: 50% of all P3 projects in Canada between 1991 and 2015 were in Ontario, with BC, Alberta, and Quebec making up 37% of the rest.[9] Most of these projects have been in health care, but they have included projects in the transportation and environmental sectors as well.[10] The Atlantic provinces have also implemented P3 projects, with twelve currently in New Brunswick and six in Nova Scotia.[11]

Siemiatycki[12] describes two waves of P3s in Canada. The first wave spanned the 1990s to the early 2000s. The goal was essentially to build infrastructure without increasing government debt. Thus, projects often incorporated user fees (like tolls), which would contribute to project funding—that is, projects would actually raise money, incorporating project funding into the structure of the deal (vs. just financing a project). During this first wave, governments sought to transfer as much financial risk to the private sector as possible; at the time, the private sector was thought to be better equipped to deal with it. Problems with P3 infrastructure projects done during the first wave included a lack of transparency, reduced government control over projects, and negative public response to user fees.[13]

The second wave of P3s in Canada was informed by the first wave and the problems experienced during this time. This second wave was heralded by the federal government's creation of PPP Canada in 2008 to facilitate the use of P3s for infrastructure development in Canada.[14] The 2011 federal budget even created the requirement that new federal or federal/provincial projects over $100 million that will last for more than 20 years must go through a P3 scan to determine if using a P3 would cost less. While PPP Canada officially shut down in 2018, the federal Liberal government set up a P3 infrastructure bank which serves the same purpose and comes with funding to enhance the incentive to use private financing for infrastructure builds.[15]

In addition, provincial P3 organizations have also been established (including in BC, Ontario, Saskatchewan, and Alberta) to oversee the increasing number of P3 projects initiated at this level. Part of the role of these organizations has been to establish methodologies and policies for P3 projects and contracts, which includes establishing the conditions for considering P3s—in both Ontario and BC projects that are $100 million or more are mandated to be screened for consideration as a P3 project. As Whiteside points out, mandatory screening for P3s in capital planning frameworks and additional institutional support, "increasingly normalize P3 use".[16]

During the second wave, justification for using P3s shifted from trying to generate new money to pay for the project (funding projects) to getting value for money.[17] Thus, rather than incorporating tools like user fees to fund projects, the cost of private financing is built into second-wave P3 contracts. Under second-wave contracts, repayment of financing becomes part of the regular payments that governments make to private consortium.

Compared to the first-wave, governments consider this new approach to be far less risky. User fees are not completely predictable and could (depending on the contract signed) leave the government responsible for paying more than initially planned to cover lack of income from fees. Additionally, under many first-wave contracts, private consortiums could insist on renegotiating contracts if they were not making as much revenue as originally planned.

In summary, the reasons governments claim they used P3s because[18]:

1. The overall costs of a P3 infrastructure project would be lower because:
    a. The public sector would bear less risk (for construction delays, environmental problems or costly errors)
    b. The contracts would attract increased competition for projects and thus lower costs
    c. The contracts would give more "value for money" (more efficient, reliable, innovative)
2. Governments can construct infrastructure without having to add the entire cost to the debt up-front.

Who doesn't want value for money? As we show in the next section, Canadians found out the hard way that many of these claims were misleading at best, and outright fabrications at worst.

P3s in Canada: Hard Won Lessons

SUCCESSIVE AUDITOR GENERAL reports[19] from provinces including Ontario, British Columbia, New Brunswick, Nova Scotia, as well as other studies of P3s in Canada and elsewhere, have all raised very serious concerns about these 'partnerships'.[20] Governments considering P3s must protect public services, local democracy and the public interest. To do so, governments must ensure that learnings are incorporated into screening contracts. The 10 key lessons can be summarized as follows:

1. **Evaluators are biased toward P3s:** private consultants are rarely truly independent: most are members of the Canadian Council for Public-Private Partnerships, and stand to gain from projects delivered as P3s (directly or indirectly).

2. **Limited competition squeezes out local businesses:** small and medium-sized businesses are often not able to bid on these projects, and the complexity and high costs of these contracts often mean there are few competitors (and increasing costs).

3. **Lack of transparency**:

   a. Even elected officials are not fully informed or/and can't speak freely about the evidence used to choose the P3 approach because commercial confidentiality is protected — at the expense of public transparency.

b. Full, detailed information and calculations are not made public.

4. **Evaluation methods are biased toward P3s:** the public sector comparator's costs and risks are inflated to show savings associated with using the P3 approach, in the following ways:

a. The full, lifetime costs of a project are rarely compared to a public sector project at the same level and quality of service.

b. Promised risk transfer to the private sector is not based on verifiable, replicable accounting methods. Risk is often transferred in theory only.

c. Risks are overestimated for the public sector comparator, which is assumed to be inherently less efficient and innovative.

d. It is assumed that the government will pay the construction costs upfront without borrowing, and thus no financing costs are factored in and no discount is applied (see text box explaining this concept).

5. **Private sector risks underestimated**: privatizing infrastructure can result in the loss of public sector jobs and expertise, and introduce risks of ownership-flipping, sub-contracting problems, and make these projects more vulnerable to financial market volatility.

6. **Less community input and control:** these contracts often lack full public consultation about the project, including whether it should be a P3, and the government often caters to the bidder over the public interest.

7. **Rigid, lengthy contracts lack needed flexibility**: P3 contracts often prohibit future changes in service delivery or public policy, and high termination costs make it near-impossible to ensure contracts continue to best serve community needs. Governments agree to take on a series of monthly and yearly liabilities with no flexibility for 30 years.

8. **Profit-maximizing behaviour concerns:** contracts introduce market-based incentives to slash costs, and increase profit/revenue, often at the expense of quality.

9. **P3s cost more:** base costs, transaction costs, and financing costs are all lower in a conventional method compared to a P3. P3 assessments often inflate the risks associated with a conventional build, generating the P3 advantage. When assessed for real gains, P3 projects show no cost savings, but rather form the basis for significant profit for the consortium guaranteed

Who gets a discount? For what?

According to Canadian P3 expert John Loxley, the discount rate is calculated by assuming that "future sums are worth less than sums today because time is money. The higher the discount rate and the further into the future the cost or benefit appears, the lower its present value."[21] Further Loxley notes, "Because it is assumed that public projects pay for construction up front without borrowing, there is little discounting of this money. Yet, it is assumed that a private partner borrows the money and pays it back over the long-term, meaning that over 30 years the value of their costs are discounted deeply."[22]

As Loxley points out, there is no agreed upon discount rate in Canada and it varies from a low (equivalent to the long-term borrowing rate of a specific government such as Alberta, Saskatchewan and Ontario), or closer to private sector capital costs (BC), or a pegged discount rate (e.g. 6.5% in Quebec).[23] Discount rates are not usually released and when they are available, they are considered "generally too high relative to what theory suggests the rate should be", creating a bias in favour of choosing the P3 option.[24] In his assessment of 17 P3 projects in BC, Reynolds found an average discount rate of 6.71%, "more than 50 per cent higher than the cost of government borrowing."[25] A higher discount rate that includes a risk premium as in BC is particularly perverse because "the riskier the project, using the Partnerships BC methodology, the cheaper it looks."[26]

a high rate of return for a multi-decade contract. If the consortium makes gains from refinancing, these savings are not shared with the public, and there is no option for the government to pay down the debt owed because lower costs for government mean lower profits for the consortium.

10. **Lack of oversight capacity:** P3 contracts are lengthy, large-scale, and complex, and have been undertaken by governments without the capacity or resources to properly evaluate, administer or monitor these contracts. Oversight is critical to ensure risk-shifting, and cost-reductions actually materialize.

Newfoundland and Labrador: the decision-making process

THE TRACK RECORD of P3s in Canada is particularly relevant to Newfoundland and Labrador (NL) because the government is in the process of signing the last contract for five P3 projects. While the P3 experiment in other provinces picked up speed through the 2000s and 2010s, Newfoundland and Labrador continued using traditional public infrastructure contracts. This section considers whether any lessons learned were incorporated into the decision-making process to use P3s in NL.

Until 2014, there was little publicly stated interest in P3s by any of the political parties or the NL government. The Progressive Conservative government in power at the time initiated the move toward the P3 model to build infrastructure. In April 2015, under Premier Paul Davis, the Province announced its intention to use P3s to meet some of the province's infrastructure needs to expand long-term care.[27] The government engaged Partnerships BC to advise them on how arrange P3s deals. [28] Labour unions and the NDP criticized the government's move towards P3 long term care facilities, which would see in-services such as nursing and physiotherapy provided privately rather than by public sector employees.[29] In June, 2015, the government released a request for proposals for private companies to build and operate long-term care facilities in western, central, and eastern NL (for a total of 360 beds).[30]

The government eventually signed a Master Service Agreement with Ernst and Young on September 28, 2015 for Consulting Services. [31]

When the Liberal government came to power in December 2015, it cancelled the RFP in order to reassess the best method for providing needed infrastructure and services. In January 2016, the government released the Government Renewal Initiative (GRI), the point of which was to increase revenues and reduce expenditures, partly by exploring "innovative approaches to deliver more effective and efficient public services".[32] In 2016, the Liberal Government reached the same conclusion as the previous PC government — to pursue P3s for infrastructure projects, including long-term care facilities an hospitals. However, the Liberal's P3 contracts would not include the operation of the new nursing home facilities, preventing the privatization of services like physical therapy and nursing. In justifying his decision to use a P3 model, Premier Ball argued, citing Muskrat Falls as an example, that governments don't do a good job with getting projects done on time or on budget.[33] It was in this context that the Canadian Council for Public PrivatePartnerships (CCPPP) and the St. John's Board of Trade organized their May 16, 2016 conference "P3s: Building Rock-Solid Partnerships."[34] The Minister of Transportation and Works Al Hawkins delivered the keynote address, signalling the Government's new orientation toward P3s.[35]

The NL government proceeded to sign a sole-source $432,792 contract[36] with Ernst and Young (EY) to provide "Infrastructure Procurement Options for the Waterford Hospital, Corner Brook Hospital, and Long-term Care Projects" and to determine if a P3 method was the best option. The EY's Value for Money reports were released between 2016 and 2018, for three projects[37], all recommending the Design Build Finance Maintain P3 model.

Red Flag: Biased Consultant

Between 2016 and 2018, Premier Dwight Ball's government paid out-of-province consulting firms $5,093,716 to craft his government's P3 strategy and justification.[38] 88% of those payments went to EY. EY certainly benefited from the awarding of one-sole source contract which led to awarding them another sole-source contract for the P3 project work EY recommended! None of this information would have seen the light of day without the ATIPP requests filed in 2019.

The leader of the NDP did raise the issue of the consultant's conflict of interest when Gerry Rogers asked in the NL Assembly, "EY was paid $1.7

million to evaluate the best financial model for building a P3 facility in Corner Brook. EY drew up comparison budgets and then recommended a P3 project. Then the same firm, EY, was given the procurement contract for this new project."[39] No real justification for ignoring the clear conflict of interest[40] was given. In fact, Premier Ball doubled down on the selection of EY to complete the evaluation: "when you look for the consultants that are equipped and have the resources to do this work, companies like EY in this particular case was the group that was chosen by the department and by this government."[41] In the words of CCPA Research Associate Toby Sanger, EY, like other Canadian P3 agencies and consultants "are conflicted in their objectives, with most charged with promoting *and* assessing P3 projects. This is a perversion of public policy and responsible governance."[42] Their involvement in Newfoundland and Labrador's P3 journey demonstrates this to be true.

P3 Projects in Newfoundland and Labrador: What we know

THE FOLLOWING SECTION delves into the P3 projects and how the assessment was done. The five P3 projects are: a long-term care facility in Corner Brook, and a bundle of two long-term care facilities (one for Gander, and the other for Grand Falls,) as well as a replacement for the Waterford Hospital in St. John's, a new hospital in Corner Brook, and a replacement for the provincial prison (Her Majesty's Penitentiary). See Appendix A for an overview of what we know about each of these current projects and *Table 1* for a summary.

How the decision about whether to use a P3 model for infrastructure procurement is made varies from place to place. Some governments, including Ontario, Saskatchewan, British Columbia, and Alberta have detailed public guidelines or methodologies for determining if P3 is an appropriate procurement method, including when a P3 approach should be considered, how costs and benefits will be assessed, and the kinds of assumptions that will be used in these calculations.[43] Newfoundland and Labrador has yet to develop any framework for vetting these projects.

TABLE 1 Newfoundland and Labrador P3 Projects Overview

Project	Project Proponent	Contract Type/Term	Project Type	Project Cost	Project Details	Documents Released	Financial Close	Completion Date
Corner Brook Hospital	Corner Brook Health Partnership (Plenary Group/PCL Investments/ Marco Group/Cahill Group & Plan Group/ Johnson Controls)	51 month Construction 30 year Operations	DBFM	$750 million (NPV)	7 story/600k sq/ft/164 beds and expanded cancer care and radiation services	VfM Assessment Summary; RFQ; Corner Brook Partnership Details	Aug-19	Nov-23
Corner Brook Long Term Care	CB Care Partnership (Plenary Group/Marco Group/G.J. Cahill & Company)	32 years: 26 month design and construction 30 year Operational Term	DBFM	$120 Million (NPV)	120 LTC Beds, 15 Palliative Care Beds, 10 Rehabilitative Care Beds	VfM Assessment Summary; VfM Report; RFQ; Respondant list; Multi-Criteria Analysis Report	Dec-17	Mar-20
Waterford Hospital Replacement	Avalon Healthcare Partnership (Plenary Group/Marco Group/G.J. Cahill & Company)	30 years	DBFM	$330 million	"102 beds – Mental Health and Addictions Facility; Attached to Health Sciences Centre includes parking garage with 1000 parking spaces"	VfM Assessment Summary; shortlist team compositions	Project Group Selected	
Her Majesty's Prison Replacement	Not yet Selected and no announcement of bidders.		DBFM	$200 million	21,000 sq/metre correctional facility	VfM Assessment Summary		Construction to start in 2022
Central Region LTC (Gander)	NL Healthcare Partners: Fengate Capital/SEC Pomerleau/Fengate Services is Service Provider through Seasons Retirement owned by Fengate	25 to 30 years	DBFM	$60 million	60-bed LTC home in Gander	VfM Assessment SUmmary; RFQ; Team Composition	June 15 2019	
Central Region LTC (Grand Falls-Windsor)	NL Healthcare Partners: Fengate Capital/SEC Pomerleau/Fengate Services is Service Provider through Seasons Retirement owned by Fengate	25 to 30 years	DBFM	$60 million	60-bed LTC home in Grand Falls-Windsor	VfM Assessment Summary	June 15 2019	

Red Flag: Procurement assessment process lacking

In NL, one of the P3 projects is a bundled deal for two LTC facilities in Central Newfoundland, each of which was estimated to be a $60 million project. When the NL Government engaged EY to consider whether to proceed with a P3, their small size was an explicit question for discussion. While the issue was raised by public sector entities, it was brushed off by industry specialists.[44] They decided that the question should be put to potential private sector partners during 'market sounding' in October 2016. Participants were asked: "Would these projects be more attractive to investors under a

DBFM procurement: a. If procured individually; b. If procured together?" As the two were ultimately bundled, it appears that the industry specialists and consultants thought that the projects were too small on their own. One reason for this is that the transaction or ancillary costs associated with P3s are quite high. These costs include legal costs that are not ultimately worth it if the project is relatively small. These costs have been proven to be higher in P3s (average 3.5%) than the conventional method (average 1.7%).[45]

Reviews of Infrastructure Ontario and Partnerships BC, by the Auditor General in Ontario, and by the BC Ministry of Finance, respectively, raised concerns about the significant resources required to participate in the P3 procurement process, making them not viable for smaller projects.[46] Both Ontario and BC increased their thresholds for P3 model screening from $50 million to $100 million. Both reviews also highlighted how thresholds might be sidestepped by bundling smaller projects together. The BC review recommends "government strongly restrict the use of bundling and provide clear guidance on what is considered acceptable bundling."[47]

P3s can also cost more because the size and complexity of P3 projects limits the number of bidders. The 2014 Ontario Auditor General report noted that only five general contractors were awarded over 80% of the 56 Alternative Financing and Procurement (P3) projects it examined.[48]

The NL government's turn to P3 projects will hurt small and medium-sized local construction companies. Many medium-sized construction companies were taken out of the competitive bidding process when the NL government determined—on advice received from business representatives of the largest companies at the market-sounding workshop—to bundle the 60-bed LTC facilities in Gander and Grand Falls-Windsor. If a medium-sized construction company wanted to bid, it would need to find an equity firm to finance the construction, along with maintenance companies willing to sign a contract for 30 years. Considering the limited amount of P3 expertise in province, this would be a nearly impossible task.

Without a clear and public framework, the province cedes control to estimate the costs of public financing to contractor(s) who may have an interest in promoting the P3 model. An ATIPP submitted in 2019[49] that generated a "no responsive records" reply from the NL government confirms that they did not have any records resembling a P3 methodology document like those developed in Ontario, Saskatchewan, or British Columbia.[50]

Red Flag: Lack of Transparency

It was difficult to do a full and complete assessment of the NL P3 projects because information is not publicly available. Government news releases provide a brief overview of the timeline of projects, estimated costs, savings, and benefits. More detail than this, including justification for the government's decision to use P3s, is not yet available. As in other jurisdictions, under the guise of business confidentiality, it is likely that some details will never become available. Manitoba repealed its legislation aimed at ensuring P3 transparency in 2016.[51] The NL government spent $5.1 million in public dollars on studies and reports in support of their P3 program, but these studies and reports are not available to the public.[52] While the limited and redacted information that has been released provides some insights, it is not enough to fully assess the NL government's rationale for pursuing a P3 model (See Table A for list of key documents received).

Although the information sources discussed here provide enough to piece together the basics of each project, it is nowhere near adequate for assessing the P3 model and its effectiveness compared to the conventional public procurement method. In other words, because the decision-making process is not transparent, NL residents are being asked to simply trust that the government has made the best financial decision for the province.

Getting your money's worth? Assessing Value for Money

When the NL government embarked on these P3 experiments, it promised P3s would help address the province's financial and fiscal situation.[53] Government claimed that the province did not have the fiscal capacity to pay for needed infrastructure, and with this model, they don't need to invest all the money up front, adding immediately to the provincial debt. Moreover, they argue that P3s will save the province money overall, and be a cost-effective way of providing needed infrastructure.

As the lessons elsewhere show, at the end of the day (or of the 30-year-lifespan of a P3 contract), because of a flawed evaluation process, taxpayers will pay more than necessary, resulting in a higher debt load for generations to come. While the higher financing costs alone are concerning enough, because the private sector holds the debt it means that the government is prevented from refinancing it.

P3 promoters claim that it is possible to shift upfront construction costs off the public debt ledger to the private partner's debt ledger. Using P3s to sidestep another large formal debt obligation would be especially attractive for the NL government. However, promoters' claim that bringing private capital for financing to the table helps a government's debt situation needs to be critically examined. The contractual monthly payments for which the province will be responsible will be considered as an obligation that reduces debt-carrying capacity by bond markets and lenders. In reality, the only differences between a P3 and a traditional build is that a P3 often stipulates that the government doesn't have to pay for construction before the facility is completed and a portion of the capital costs are also added to the 30-year agreement. No matter who provides the financing or over how many years the debt is spread, the debt must be paid off eventually. Pushing the construction payments down the road has long term consequences. Thus, in the assessment of the procurement options, balance sheet treatment and impact on credit rating were scored the same for the conventional build models (DB and DBB), as to the two most common P3 options (DBFM and DBFOM).[54] If P3s were such an advantage for government when it comes to their fiscal situation, why weren't they rated higher? The real "advantage" to using P3s is a political one that sees a smaller amount of the capital costs go on the debt in the current government's balance sheet.

The NL government, under Ball, is resolute in its belief in P3s. Ball said, in 2018, "this really comes down to value for money for Newfoundlanders and Labradorians and the cases that we looked at, in all those cases, the value for money Newfoundland and Labrador would be the beneficiaries of that."[55] Meanwhile, in May 2017 the leader of the NL NDP expressed concerns about using the Value for Money assessment, and warned that P3s would not result in cost-savings, but the government refused to listen. The leader at the time, Lorraine Michaels also repeatedly called for a release of the assessment saying, "if they really had the evidence to show that the P3 agreement is the best agreement, then show us the evidence so that we can also see the evidence that they're using.[56]

The VfM assessment methodology compares P3s to traditional government procurement to determine the best and most cost-effective approach to infrastructure procurement. Since these are long range costs and changeable, the process should take these factors into consideration. For example, the Province of Saskatchewan's procurement methodology requires the VfM to be updated at a number of points in the project development process, up to and including the financial close. This allows the VfM to incorporate changes, such as to project costs or the government's borrowing rates, that could impact the final costs/savings to government.[57] Without a procurement framework, this kind of responsiveness does not appear to be built in to the NL P3 projects.

As outlined above, other jurisdictions concluded that the Value for Money assessment often inflates the public sector comparator's costs and risks to show a savings from using the P3 approach. Our consideration of the assessments done on the NL projects examined how risk was calculated, what assumptions were embedded in the risks, and looked for other known biases, including unsupported assumptions about the financing of conventional builds that inflate projected costs.

The Value for Money (VfM) reports publicly released by the NL Department of Transportation for all current proposed P3 projects are only a very limited summary of the VfM process used.[58] Although all of the NL government's VfM reports conclude that P3 projects compare favourably to conventional builds in terms of value for money, these reports are low on detail, and the summaries include provide little information. The reports review the criteria for undergoing a VfM assessment and final numbers to compare the costs between a P3 and a public procurement model, but details about how conclusions were reached are limited.

Red Flag: Evaluation Methods biased toward P3s

The consultant's evaluation methods of P3 vs conventional procurement methods leave much to be desired when it comes to realistic and evidence-based decision-making. Both the multi-criteria analysis and the more detailed Value for Money report we reviewed reveal serious biases toward P3s. The initial assessment was to weigh each model based on 18 criteria to determine which ones score highest and should proceed to a VfM assessment (see Summary of Scoring).

Each criterion was given a score out of 5 (1 being low, 5 being high). For factors such as fairness, transparency, and integrity, the analysis did not provide any details as to how these criteria were evaluated or measured, and each model received the same score (4 out of 5).[59] The multi-criteria analysis also included scores for cost-certainty, timeliness, innovation, efficiency, "labour considerations", maximizing competition, and long-term flexibility. The absence of any formal definition of what it would mean for a model to meet stated criteria makes it difficult to understand how scores were calculated and assigned, and raises doubts as to whether such an analysis was at all rigorous.

TABLE 2 Summary of scoring

Criterion	Weighting of criterion	DBB	DB	DBFM	DBFOM	Lease	Outsource
Timeliness	3	1.0	2.0	4.0	4.0	4.0	4.0
Long term planning flexibility	1	3.0	3.0	2.0	2.0	2.0	1.0
Long term asset quality	3	2.0	2.0	4.0	4.0	4.0	4.0
Environmental sustainability	2	3.0	3.0	4.0	4.0	4.0	4.0
Parking	1	3.0	3.0	3.0	3.0	3.0	3.0
Care driven design	3	3.0	3.0	3.0	3.0	3.0	4.0
Maximise availability of facilities	3	3.0	3.0	4.0	4.0	4.0	4.0
Innovation and efficiency	2	1.0	2.0	3.0	3.0	3.0	3.0
Partnerships with local community	1	3.0	3.0	3.0	3.0	3.0	3.0
Province directly delivers patient care	3	3.0	3.0	3.0	3.0	3.0 -	
Maximize competition	2	5.0	5.0	3.0	3.0	3.0	3.0
Fairness, transparency and integrity	2	4.0	4.0	4.0	4.0	4.0	4.0
Cost certainty	3	2.0	3.0	4.0	4.0	4.0	4.0
Risk transfer	3	1.0	3.0	4.0	4.0	4.0	5.0
Labor considerations	3	5.0	5.0	3.0	2.0	2.0	1.0
Payment Stream	2	2.0	2.0	3.0	3.0	3.0	3.0
Ownership	1	3.0	3.0	3.0	3.0	1.0	1.0
Balance sheet treatment and impact on credit rating	3	3.0	3.0	3.0	3.0	3.0	5.0
Overall Score prior to importance weighting		50.0	55.0	60.0	59.0	57.0	56.0
Overall Score post importance weighting		111.0	125.0	141.0	138.0	136.0	135.0

Source Ernst and Young, September 29, 2016, *Long Term Care Project: Report on Short-Listing of Procurement Options.*

The conclusions of the multi-criteria analysis are troubling for several reasons. First, when it comes to transparency and fairness, there are no guarantees about public accountability when the management of a massive infrastructure procurement project is turned over to private hands. In theory, when P3 projects are completed contractors can allow documents to be released. However, whether that happens is a matter of chance. Even the limited information in VfM reports is not available until after financial close. Conventional procurement is scrutinized at various government committees, and while cabinet secrecy can be invoked, increased transparency allows for more democratic oversight. P3s are, by their nature, less transparent than conventional procurement models, yet the analysis guiding government decisions about these multi-million-dollar investments rank P3s as equivalent to their conventional counterparts when it comes to transparency.

Second, the scores reveal that the criteria scoring and the weighting of the score makes problematic assumptions both about conventional procurement and P3s. For example, the rating given for cost certainty are DBB (2), and DB (3) and a 4 for all P3 methods, which leads one to conclude that the assumption is that the risk of being over budget is high for conventional methods and low for P3s. The scores are even starker for timeliness, with DBB (1), and DB (2) and a 4 for all P3 methods and the same for the criteria called innovation and efficiency. Assuming that public procurement cannot include a fixed cost contract or substantial fees for project delays have been flagged as problematic by Auditor Generals. They have also flagged the problematic assumption that P3s are always more innovative and efficient. The only criteria where the conventional DB model gets a 5 is for labour considerations and for maximizing competition. The lowest score for the DBFM model is a 2 for long-term flexibility. These criteria are not weighted as being very important, however. One of the most important criterion is risk transfer, which is rated as a 1 for DBB, 3 for DB and 4 for the main P3 methods.

The multi-criteria analysis for comparing procurement options concluded it was worth it to study two options in more detail in a VfM assessment. In particular, the DBFM model had the highest score of 141, compared to a score of 125 for the DB model (the most common conventional method). These two options were then analyzed using quantitative analysis. This required making financial and economic assumptions, as well as assumptions about risk assessment and project costs.

The one VfM assessment report released (for the Corner Brook LTC facility) includes slightly more detail about the VfM process and outcome.[60] Although this document provides a broad description of the approach taken to assess VfM and provides additional detail on some assumptions used by the government, it is too opaque, which makes any evaluation and analysis problematic and constrains a proper public accounting. It provides no comparison of relative interest rates, and no detailed breakdown of cost differences between the models. As is laid out in the Corner Brook LTC VfM, the “cost savings were achieved through 1. construction and design innovations, 2. lifecycle optimization, 3. risks transferred from the public to the private sector, and a 4. defined price agreement for the Project”. However, no actual costing numbers are provided. They indeed assumed that the contract for the public procurement model cannot include innovations (point 1) and a defined price (point 4). What are the assumptions about lifecycle optimization (point 3)?

It could mean either that maintenance will be underfunded or/and that to deliver on this promise and keep their profit margin, it will be very difficult to make any changes to the use of the building over the 30 years without paying hefty fees, which makes the savings illusory! As for point 3 and the risks added to the design build, there is no costing information given, but since this is so important, we delve into this issue a bit deeper.

Understanding Risks

It is a common claim that traditional government infrastructure projects are often over-budget and late, while P3s are almost guaranteed to be on-time, and on-budget. The theory is that varying amounts of risk, depending on the P3 model used, are transferred away from government and toward the private sector. For instance, if construction costs exceed those agreed in the contract, the public would not be responsible for covering them.

Understanding the risks involved in projects and the various ways they can be avoided is an important part of the Value for Money assessment tool. In fact, it is almost entirely through the use of this narrow valuation of risk that the scale is tipped in favour of P3 projects. According to the Ontario Auditor General's[61]analysis of Infrastructure Ontario's VfM assessments, although the base costs for public sector projects and P3 projects are essentially the same, P3s are more expensive when financing is factored in. This is because the government typically has access to better and cheaper financing options than the private sector. The costs of these risks are only estimated when VfM assessments are first conducted and thus are typically calculated by using professional judgement, and, as the Ontario Auditor General found, there is not always agreement about them.[62] Not surprisingly, even if the numbers are made available (usually after contracts are signed), they often lack sources, references, or justification for how they arrived at the specific numbers.

If risk calculations and assumptions are not made public, the public does not see how the government came to its decisions. Keeping information about these risks confidential is problematic for other reasons as well. The Ontario Auditor General's 2014 report found that while VfM assessments included the transfer of particular risks in its calculation, in some cases these risks were never actually transferred in the project agreement.[63] This is why it is important for these assessment processes to be transparent, so that the consortium can be held to account and monitored throughout the life of the contract.

P3 NL Risk Assessment Flawed

To arrive at a risk assessment, a risk workshop was held with members of the government of NL, Western Health, and other stakeholders from September 20–22, 2016. At those meetings a list of risks were identified and probability assigned.[64]

Through an ATIPP request shared with us, we received a copy of a five-page power-point of the meetings that provided an overview of the Risk Assessment Methodology and the Risk Quantification.[65] There were five Risk Matrix spreadsheets created and populated with risks, for each LTC project (3), and for the Corner Brook and Waterford Hospitals. To determine whether the risks were properly identified, quantified and allocated, we need the lists. However, although these files were part of the request for information, they were not released under the ATIPP act, determined by ATIPP officers to be in contravention of Section 35 (1) (f) of the Act that lays out "Disclosure harmful to the financial or economic interests of a public body." Therefore, we are not able to fully assess the risks and whether they are sensible. Other files were redacted or suppressed because of Section 39, "disclosure harmful to business interests of a third party."

In the 20 page "Corner Brook Long-term Care Project — Value for Money Report" dated December 2017, we do get insight into some of the risks. Risks allocated to government include: government project approval; interest base rate changes prior to financial close; scope and construction delays that are government-initiated. The risks allocated to the project consortium mostly have to do with construction: labour shortage; design errors; weather-related construction delays, etc. In the current context, where we have just experienced a totally unforeseen risk, it is important to note that something like the risks of pandemic are a *Force Majeure* (unforeseeable risk), and are "shared."[66] If such an event were to occur and last more than 180 days, the agreement could be terminated, but compensation would be required. Ultimately, governments are responsible for the public health and well-being of their populace, and the barrier of a 30-year locked-in contract poses a risk to ensuring they can meet this responsibility.

On top of this lack of transparency that makes it impossible to assess the sensibility of the project, consultants EY build another layer of obfuscation. A dollar value of the risks ascribed to either government or the project consortium are quantified based on 3-point *estimates* (best case, worst case and most likely scenario). These estimates relied on the experience of those in the room, not a scientific assessment.[67] Moreover, EY ran the data through a proprietary statistical software program (aptly named @RISK) to which only its employees have access.[68]

In summary, the process of calculating a Value for Money assessment rested on a subjective risk quantification process that was then wrung through a secret statistical modelling function that no outside party can verify.

In its comparison of the DBFM P3 model to the public sector for each project, the VfM assessment concludes that a P3 DBFM model is the best VfM and would save the government a percentage, from 7% to a high of 12.3%. The reports have similar explanations: "Cost savings were achieved through construction and design innovations, lifecycle optimization, risks transferred from the public to the private sector, and a defined price agreement for the Project."[69] We are not, however, given information about how these were calculated. The summary report provides the costs to the government for each of the compared models. The VfM assessment talks about a process for determining the costs and probabilities of identified risks, but these are not shared. The one more detailed report for the Corner Brook Long-Term Care facility, for example, states that under a traditional procurement model, the cost of construction (including risks) for the government would be $84.2 million, but that if a DBFM model is used, much of the risk is transferred and retained risks would only expose the government to $3.3 million in possible risks.[70]

The P3 risk valuation process turns theoretical risks into real accounting cost estimates. The Corner Brook LTC centre is now complete, but as far as we are aware the government did not have to pay an actual dime of that retained risk. The reason is quite simple: the risk never actually existed except in the Value for Money process run by EY. The DB option needed to be saddled with extra costs in the Risk Quantification Process, and so the risks that had been created for government to bear under a DB model had to show up in a more limited form in the DBFM model. The brilliance of the P3 model is that it succeeds in making the real costs of construction and maintenance irrelevant. The P3 is really a financial hedging operation disguised as a construction project.

Do P3s really offer value for money for NLers? From the numbers we have, we know that they use a 3.6% discount rate. Inflated discount rates have been flagged by Auditor Generals who pointed out that these rates should not be higher than the public sector borrowing rate. The average interest rate for 30-year bonds issued by the NL government in July 2020 was 2.65%.[71] The discount rate is 100 basis points higher. A higher discount rate makes P3s look great as most of their payments are in the future and therefore are heavily discounted. If this discount rate were applied to all projects, the higher discount rate means paying at least $294 million more. What if instead we discount the discount rate (from 3.6% to 2.65%), and add the higher ancillary fees, which average 1.8% higher for P3s?[72] [73] That P3 advantage shrinks from 7%-12% to 4%-8%. The remainder of this 'cost-savings' is a theoretical risk transfer, is it worth the risk?

Red Flag: Private Sector Risks Underestimated

Although building infrastructure using a P3 model may look promising — cheaper in the short term and with fewer risks — in most cases, the overall long-term cost of the project to the public treasury is higher. As the Ontario Auditor General Report (2014) states, many of these risks (unexpected costs) can be avoided by incorporating them into contracts, for instance through fixed price contracts, and managing projects effectively.[74] Governments do not need to go through the extremely complicated process of setting up a P3 contract to achieve cost certainty on construction. Nor is there anything intrinsic in the P3 models to achieve these outcomes or preventing the conventional model from achieving them. What is more, "value for money assessments embed the presumption, without empirical substantiation, that public procurement does not or cannot optimally manage risk, and they ignore risks and uncertainties created by privatization."[75] The bottom-line is nicely summed up by Whiteside: "Risk transfer through a P3 amounts to three things: privileging certain risks, ignoring others, and creating new risks along the way."[76] Risk is only considered in terms of profit and not in terms of the public interest or broader notions of risk, such as comes with lack of transparency, and a decrease in democratic oversight and community control. It is dangerous to assume that "the interests of the public and purpose of public services can be harmonized with the interests and purpose of capital."[77]

Red Flag: Lack of community input

EY coordinated a market sounding exercise with business interests to ascertain what they would like to see in the final contracts. The NL government should establish a formal consultation with residents about P3 projects, not just business interests. When public spending is being channeled through sole-source contracts to a P3 consultant to hold private meetings with businesses to get their input on how to better serve the interests of the private businesses, something has gone off the rails with openness and transparency in our procurement system.

Red Flag: Locked-in, Complex, Lengthy Contracts

The length and complexity of P3 agreements in comparison to traditional procurement agreements forced the NL government to contract with BC's P3 agency "Partnerships BC" in 2015 for assistance in drafting the Request for Qualifications and Request for Proposals for the Corner Brook LTC facility. The project agreement for the facility runs thousands of pages with upwards of twenty appendices and attachments. The Corner Brook Acute Care Hospital project agreement is even longer.

When problems arise 10, 20 years later, the principal actors are long gone into political retirement or onto corporate boards. The Inquiry into Muskrat Falls explicitly criticizes such long-term agreements and warns that, "Using a long time frame in forecasting and planning has a major disadvantage––it relies on assumptions about the distant future. Some of these assumptions are used as explicit forecasts of critical parameters, such as load forecasts, construction costs and fuel prices. Others are implicit assumptions about society and technology.[78]"

When facilities have their maintenance and operations governed by service agreements with private contractors, users of the facilities have found that they lack control of these spaces, needing permission and often having to pay additional fees. Here is one example in the case of the P3 schools in Nova Scotia: a public school had flooded and needed to move its students to a P3 school, but the P3 owner of the 'public' school would not allow it without additional fees paid for every hour with the additional students. The P3 contractor also charged extra if the province chose to place a portable on-site at any P3 schools, and carried less liability insurance than the province thought necessary.[79] In a recent report on P3s in Saskatchewan, workers shared their frustrations working in facilities where there is constant negotiation about who is responsible for what. One worker gave the example of being told to clean the inside of the door, and to leave the outside of the door to be cleaned by the P3 contractor (or subcontractor). They also talked about having contractors without sector specialists working in facilities and making serious misjudgements like leaving a power tool plugged in in the hallway of an elementary school.[80] These kinds of issues would not arise in publicly-owned and operated buildings.

P3 proponents argue that maintenance contracts are a good thing for governments to enter into. The clear timelines and payment schedule forces governments to keep up the infrastructure, and the contracts make sure the contractors hold up their side of the bargain. The result, say P3 proponents, is that buildings are transitioned to government control after the 30-year contracts are expired in 'like new' condition. This is another problematic claim by P3 proponents.

In the project agreement for the LTC facility many components are listed as requiring only 5 to 10 years of lifecycle left at handover to government. If you bought a car that had 5 years of life left in it, what would it look like? Certainly not like it was 'brand new'. Even the most basic structural components of the facility — the walls, roof and foundation — are required to have only 30 years of life left in them on hand-back to the NL government.[81] The NL government will receive these buildings on the downward curve of their life expectancy with predictable maintenance and upkeep challenges.

It is both disturbing and impressive that parts of the Waterford Hospital were in operation 160 plus years after its construction. What is to be said about a procurement process that specifically tells contractors that the facility must only be built for 60 years of service? (30 year contract plus 30 year lifespan on hand-back.)

Another problem with signing 30-year contracts which require regular payment — there is no option of paying it down quicker when times are good. The Nova Scotia Government found this out the hard way when it tried an early pay down of high interest debt related to the Cobequid Pass P3 Highway. Even though the highway had higher traffic volumes than predicted and thus had a surplus of toll revenue, it could neither lower tolls nor pay off the debt quicker without the contractor's agreement. On lowering the tolls, the contractor agreed for a price — $90,000 for reopening the contract to change a few lines related to the toll schedule.[82] But it would not agree to the Province paying off the remaining $41 million in debt early. Such a course of action would cut into the profits from the Province's paying 10.13%, repayable over a 30-year period,[83]when bonds were paying around 2.5%. As a result, the money sits in an account waiting for a date in 2026, thirty years after the contract signing date in 1995.[84]

In times of economic or financial crisis the P3 contracts will require that payments are made to maintain the P3 facilities to the detriment of perhaps more pressing maintenance concerns of fully owned and operated public facilities. Therefore, well-maintained P3 facilities and poorly maintained public facilities become a self-fulfilling prophecy. In Nova Scotia, the contractual requirements of the P3 schools resulted in worse levels of maintenance in existing public buildings as scarce resources were funnelled to relatively new P3 school buildings.[85] Locking into these 30-year contracts now with a declining population, and unknown needs in the future, plus an economic and fiscal crisis, would be unwise for NL. As the Commissioners who studied Muskrat Falls stated: "analysis that is extended so far into the future becomes a mix of reliable estimates in the early years and nothing more than guesswork in later years."[86]

Red-Flag: Profit maximizing behaviour

Introducing profit-maximizing behaviour into operating public infrastructure can have a detrimental impact, when nickel and diming becomes thousands if not millions of dollars. When the additional financing costs are added to the operating costs maximized for profit, Nova Scotia's experience with P3 schools and P3 highways resulted in hundreds of millions in overpayments — taxpayer money that could have gone into more custodians, educators, and road service, went into the pockets of for-profit companies.[87]

In addition to contractor payments for all costs except energy being pegged to the NL CPI for the 30 years,[88] the project agreements for the Corner Brook LTC facility and the Corner Brook Acute Care Hospital include a 2% guaranteed payment escalator to the contractors for energy costs[89] No one can say for sure that Newfoundlanders and Labradorians will not benefit over the long run from fixed energy prices, but the opposite is also possible. It is a gamble, one that could end up paying millions more for energy than the Health Authority would in a publicly maintained facility. It is also clear that in the new low energy environment, the province is already overpaying for energy at the completed LTC facility.

Red Flag: P3s cost more

According to the Auditor General of Ontario, "The risks of having projects not delivered on time and on budget by the public sector were estimated to be about five times higher than having the private sector deliver these projects." This kind of inflation is not warranted. Their discussions with sponsors of P3 projects "felt that there was a lack of transparency in allocating the costs associated with risks to the two procurement approaches and an over-reliance on consultants in developing the allocations."[90]

The same process appears to be repeated in Newfoundland and Labrador, with a 20-year delay. In September 22, 2016 the Department of Transportation and Works' estimate for the construction of a 120 bed LTC was a cost of $46.8 million if built in 2018.[91] Yet, when the EY Value for Money report was finished allocating additional risks onto the price of a public Design-Build project, the number jumped to $84.2 million for the Net Present Value of construction, a staggering 80% or $37.4 million more.[92] Put another way, the government would have to oversee the construction of a medium sized LTC facility of modest complexity — similar to one of dozens constructed across the country in recent years — and have the project go 80% over budget for this estimate to make any sense. The consultant's evaluation methods of P3 versus conventional procurement methods appear neither realistic nor evidence-based.

Both the multi-criteria analysis and the more detailed Value for Money report had serious evaluation biases toward P3s. It is likely that just a more careful and evidence-based assessment of the risks related to construction would be enough to erase the $14.6 million-dollar difference between the DB model and the DBFM models. If the NL government adopted a standard requirement of more than 10% savings before pursuing a P3 contract, the cost overrun on a $47 million-dollar building could still be $30 million and the DB option would be preferable.[93]

The Auditor General of Ontario concluded that a key factor in the overpayment of P3s is the higher private-sector financing costs, stating that "The private sector initially finances the construction of AFP projects, but ultimately the province pays for these projects under the terms of their contracts with the private sector, some of which are up to 30 years."[94] Reports from British Columbia come to a similar conclusion in regards to higher financing. The BC Auditor General found in 2014 that the government's general weighted average cost of borrowing was approximately 4%, but for $2.3 billion that it borrowed through public private partnerships it paid 7.5% interest.[95] A recent 2018 report by the Columbia Institute confirmed the higher costs of P3s, finding that the cost of 17 P3 projects completed between 2003 and 2016 cost a staggering $3.7 billion more than if the projects had been carried out through more traditional forms of procurement.[96]

Red Flag: Lack of State Capacity for Planning and Oversight

Our examination of the five P3 projects reveals the extent of the NL government's contracting out of planning and decision-making capacity. Due to the complexity of P3 contracts, Transportation and Works needed to fly in Partnership BC experts to lead them through the process. The extent of the outsourcing of planning capacity of Transportation and Works is evident in the $5.1 million in consultants to develop the criteria and deliver the value for money reports. P3 accounting and risk quantification is a specific skill that cannot be accomplished by regular TW department employees. The BC and Ontario governments have set up crown agencies which they have staffed with P3 accounting skills. That approach is not realistic in a province the size of NL, so the NL government continues to pay $400/hour to EY consultants, and funds business class flights from Vancouver to bring in the necessary expertise. The professional culture of thrift and penny-counting that exists within a civil service under strong public oversight, does not exist with private contractors. EY consultants receive reimbursement for flights, meals, and rental cars that tally tens of thousands of dollars.[97]

Length and complexity raise questions about proper oversight as well. Partnerships BC recommended a process in which the NL government hires a "Fairness Advisor" to oversee the procurement process and selection of a successful proponent for each project, but the report of the consultant "RFP Solutions Inc." is not publicly available. It's not transparent if the only actor seeing the information has a vested interest in having more P3s projects built in NL. If there is oversight, but no access to the oversight documents for the public to assess the work, does oversight truly exist?

The drastic change to the Province's economic context that has accompanied the COVID-19 pandemic has to be taken into account. Even before the impacts of the pandemic, the economic downturn and Muskrat Falls cost overruns presented significant challenges. The effect on the Province's credit rating and ability to raise more debt through the issuance of provincial debt is challenging. Private borrowing for P3 projects at even higher rates than public federally-guaranteed borrowing rates is going to make things worse, while ceding community control over public institutions to private for-profit enterprises.

Conclusion: Mitigating Risk is in the Public Interest

WHAT WILL THE WORLD be like on May 31st, 2053? No one knows what the next 30 plus years will bring. Yet the year 2053 is when the $750 million Corner Brook Acute Care Hospital agreement is scheduled to expire. That is a very long time to be locked into a project.

Arguably the two largest infrastructure stumbles in the Province's history are due to the lack of transparency and excessively long-term contracts. The NL government is rolling the worst of the mistakes of Churchill and Muskrat Falls into five new packages. The reason the Hydro-Quebec- Churchill Falls contract was skewed towards Quebec in the first place was a tradeoff: Hydro-Quebec had negotiated the extension of the contract with its automatic renewals in exchange for "tak[ing] on some of the risks associated with construction cost overruns as potential financing difficulties".[98] Thanks to that desire to shift risks of the project to another party, the province will continue to pay for the costs until 2041.

At least an attempt to hedge against risks and cost overruns for projects the size of the hydro-electric ones on the Churchill River makes some sense. It would have been excellent to find a private sector partner who would have taken on the risks of cost overruns for Muskrat Falls. Unsurprisingly, a private partner is never to be found on a high-risk project providing low-cost insurance. Curiously, on a 60-bed long-term care there are many private partners documenting every one of a 1000 potential risks that will cost a government a significant risk premium to cover.

If there was a scenario where hedging against unforeseen risks would pay, it would also be when a pandemic upends the world and causes delays and complications for construction. And yet, a pandemic is considered a “Force Majure” — unforeseeable circumstances that prevent a party from fulfilling a contract. The contracts list Force Majure as a ‘shared’ risk, but it is clear that the NL government is left as the final backstop for additional costs.

That the government must play the role of final backstop for long-term care homes and hospitals in times of crises, bankruptcies, or pandemics is now clear. The 2018 bankruptcy of Carillion plc left dozens of P3 hospitals in jurisdictions from Yukon, Alberta, and Ontario, to Ireland, and a few US states, in crisis without an operator, nor anyone to pay employees.[99] In the end, governments were forced to step in to ensure that the facilities continued to run. As is the case in long-term care homes in Ontario and Quebec where the army has been called to rescue private facilities in breach of their contracts, there is a limit to how far governments can offload their responsibilities for risk.

Lessons Learned for Conventional Design-Build?

The NL government may be effectively overseeing the P3 projects it is managing. Residents simply have no way to know. It is critical that people know the specifics of what is going on and what costs and risks exist before the point of no return is passed. In the case of P3s, that is before the agreement is signed.

The Province should break the cycle of bad decisions. The lost revenues from Churchill Falls was a significant factor and motivator to develop Muskrat Falls. However, the mistakes of Muskrat Falls leave the Province in a fragile fiscal position. Accepting the helping hand of private financiers and P3 consultants comes with significant risks and strings attached. Monthly payments will need to be made for the next 30 years on the Corner Brook LTC facility regardless of the province’s finances. And, for every month for the next 30 years the contract ensures that the Partnership will be guaranteed 2% adjustment to cover its energy costs. That’s a sweet deal all Newfoundlanders would love to have as they are exposed to higher electricity costs to pay for Muskrat Falls.

NL's experience with long-term contracts and decades-long horizons in the energy sector reveal the pitfalls of these agreements. The ballooning costs of the Muskrat Falls project, for instance, is used by P3 proponents to justify fixed-price P3 contracts. A 60-bed long-term care facility, however, is no hydro-electric dam. Let's learn from the mistakes made with Muskrat Falls, instead of locking ourselves into long-term payments at a huge premium to hedge against risk on small and medium scale infrastructure projects that are relatively straight-forward to build.

Change of Course Needed

The many problems with P3s are covered in this report — the lack of transparency, the long-term and secret contracts, a slower and more complex planning process, and the risks of 'buy now, pay later'. We argue that the federal government should ensure that NL is provided with federal loan guarantees. The financial benefits of the traditional Design-Build are matched by increased flexibility in how the infrastructure is managed and used.

A better option would be to negotiate a federal loan guarantee like the one signed for Muskrat Falls and the Maritime Link. Provincial infrastructure bonds could be sold in tranches for varying terms — 10, 20, and 30 years. This approach provides two benefits, the first is that the borrowing for the project with a federal loan guarantee will nearly certainly mean lower than rates private companies can borrow at. The second benefit is that when times are better, the option exists to either reissue or pay off debt before the 30 years are up.

Policy Recommendations

1. The NL government should immediately implement a 3 month freeze on the P3 process for the Penitentiary contract and submit a request for a Federal Loan Guarantee for the $200 million overall cost of these projects.

2. The Muskrat Falls Inquiry Commissioners' Report makes recommendations for openness and transparency in procurement that should be heeded:

a. *Access to Information and Personal Privacy Act* be changed so that commercially sensitive information can be accessed by the Information Commissioner and released to the public.

b. For projects larger than $50 million, the NL government should a) engage independent experts to provide a **robust review**, assessment, and analysis of the project, and b) provide well-defined oversight based on best practices.[100]

c. Ensure prompt and full proactive disclosure of all procurement records, including preliminary analyses, business case documents, successful and unsuccessful bids, evaluations of bids, and contracts. These documents should be released as they are received or distributed to procurement partners.

3. The NL government must halt the process of sole-source consultants contracts. No consultant who is also a member of the P3 lobby group should qualify as an independent expert on procurement.

4. The NL government must end the process of bundling smaller projects into a bigger project to ensure more projects are accessible to small and medium sized construction companies. No infrastructure project under $100 million should be screened as a P3, and bundling in order to surpass this limit is not permitted. In addition, unless a P3 can save more than 10% of the costs of a project, the project should be built using public procurement.

5. Public procurement in NL should be strengthened to include Community Benefit Agreements[101], which would result in more local, good quality, jobs. Enabling legislation that ensures procurement opportunities for local suppliers, offers preferential consideration to living wage suppliers and supply chains, includes training and job opportunities to underemployed groups, and ties projects to specific policy objectives such as achieve greater energy efficiency, reduce poverty, and spur inclusive growth.

Appendix A

Description of the 5 P3 Projects in NL

THIS APPENDIX PROVIDES an overview of what we know about each of the current projects.

1. Corner Brook Long-Term Care Facility

The Corner Brook Long-term Care (LTC) facility is the only P3 project in NL for which construction has been completed and the service contract has begun.[102] Construction began in 2018 and was completed in 2020, with the service contract with Corner Brook Care Partnership beginning on February 14th and lasting for 30 years[103]. The Western Health Authority will provide the operational services, including nursing, housekeeping, and nutritional services.

The government of NL hired EY in August 2016 to help with its analysis of procurement methods for the Corner Brook LTC facility[104], including a VfM analysis. The VfM report was released in December 2017 and provided a general summary reviewing the government choice of a DBFM model for the LTC facility project rather than the traditional government procurement model. The report asserted that the government would save 10% over the course of the 30-year contract, which amounted to about $14.6 million.[105]

To help with the process of choosing a consortium to complete the project, the government hired a fairness advisor. [106]

In March, 2017[107], the government released a request for qualifications and in May, it announced the three companies that would move to the RFP stage[108]. In November 2017, the government announced that the contract was going to Corner Brook Care Partnership, a group made up of Plenary Group (Canada) Limited, Marco Group, and G.J. Cahill & Company Limited. A project agreement was signed in December 2017.

The new facility was planned for 145 beds, including 120 long-term beds, 15 palliative, and 10 rehab care beds.[109] 150 new positions were needed to staff the facility in addition to the 60 full time equivalent positions that will be moved from the Western Memorial Regional Hospital.

The consortium will design, build, finance, and maintain the facility for 30 years. The government will pay the consortium $8 million when the design and build phase is done.[110] After this phase, the government will pay "monthly service payments" for the term of the project. After this, the government will be responsible for maintenance.

2. Corner Brook Acute Care Hospital

A VfM assessment for the hospital was completed in December 2016. The NL government announced that a new hospital would be built using a P3 approach in February, 2017.[111] An RFQ was released in January 2018 and in June, two groups were selected to continue to the RFP stage. In June 2019, the Corner Brook Health Partnership was selected to design, build, finance, and maintain the project.[112] The contract is expected to cost over 700 million[113] and the consultant claims that the government will save 7% by using a DBFM model rather than the traditional approach.[114]

The Acute Care hospital will be 600,000 square feet, seven stories, and have 164 beds. Construction began in August, 2019 and the hospital is expected to open in 2023.[115] The consortium will finance, build and maintain the facility.

3. Gander and Grand-Falls Windsor LTC projects

In November 2017, the government announced that it planned to build two 60-bed LTC facilities in central NL — one in Gander and one in Grand-Falls Windsor. Its plan was to use a DBFM P3 model. A summary of the VfM assessment was released in December 2017, but included minimal details on the claimed 8.1% savings by using the DBFM model.

An RFQ was announced in January 2018 and in July Central Care Partnership, Infraworks, and Newfoundland and Labrador Healthcare Partners were chosen to move to the RFP stage.[116] The winning proponent, NL Healthcare Partners, was announced in April 2019. Construction is expected to be completed in 2021, at which point the 30 year contract will begin.[117] In June of 2019 it was also announced that in 2021, SNC Lavalin will provide the facilities operation and maintenance services, which include grounds/landscaping, help desk, pest control, plant operation and maintenance and the lifecycle management.[118]

The projects are together expected to require 140–180 public sector jobs,[119] including the facility staff. The operating and maintenance jobs would be privately provided by the consortium.[120]

4. Waterford Hospital Replacement

The Waterford hospital opened in 1855 and is said to have "outlived its usefulness."[121] In March 2018, the NL government announced it would be replaced with a new mental health and addictions facility at the same site as the Health Sciences Centre. The new facility will be smaller (102 beds), with additional community-based supports established throughout the province expected to fill in gaps in services.[122] A VfM assessment, conducted by EY and released in April 2018, claims a DBFM model would save the province 12.3 % over the 30 year course of the project.[123] An RFQ was announced in November 2018 and Atlantic Healthcare Group, Avalon Healthcare Partnership, and NL Healthcare Partnership were selected to move to the RFP stage and will submit proposals early in the year with construction expected to begin later in 2020.[124] The winning bidder was announced in July 2020 as Avalon Healthcare Partnership and is reported that it will cost $330 million. This partnership includes the same groups who were chosen for the Corner Brook LTC Facility and the Corner Brook Hospital: Plenary Group, Marco Group, and G.J. Cahill & Company.[125]

5. Her Majesty's Penitentiary Replacement

Her Majesty's Penitentiary in St. John's, built in 1859, is the most recently announced P3 project and is only in the early stages of development. In April, 2019, the government announced plans to build a new penitentiary using a P3 model, in White Hills in St. John's.[126] The decision to use a P3 approach was based on a VfM assessment completed by EY in 2018 that recommended using DBFM approach rather than the traditional design-build approach. The 2019 budget provincial budget included $600,000 for the planning stage of the replacement project.[127] This was spent in the spring of 2020, with contracts awarded to three companies to help with the initial phases of the project, including technical and fairness advisors.[128] An RFQ was announced in the spring of 2020. Construction is expected to begin in 2021 with the facility opening in 2025. The new facility will double the capacity of the current penitentiary and provide better services to the incarcerated.[129]

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