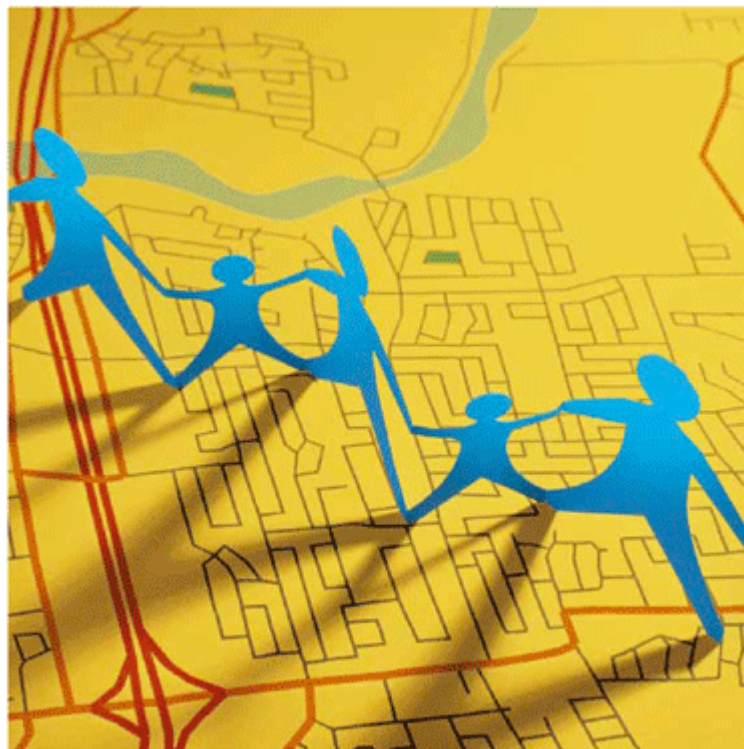


**Public-Private Partnerships
(P3s) and Municipalities:**
Beyond Principles, a Brief Overview of
Practices

Pierre J. HAMEL

URBANISATION, CULTURE ET SOCIÉTÉ

INRS



Public-Private Partnerships (P3s) and Municipalities: Beyond Principles, a Brief Overview of Practices

Pierre J. Hamel, INRS-Urbanisation, Culture et Société¹

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This report was produced at the request of the Federation of Canadian Municipalities (FCM); however, it should not be inferred that the FCM endorses it in any way in all or in part.

Many people from diverse constituencies (municipalities, businesses, governments, unions, associations, universities, semi-public or para-public organizations and others, both local and elsewhere) have contributed in a variety of ways to this project. We would mention in particular the assistance of Louis Carrier and Alain Borsi of INRS-Urbanisation, Culture et Société.

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Key Findings

If we agree to a broad definition of public-private partnerships (P3s), we quickly realize that they are neither revolutionary nor even especially novel in the world of local government. There is nothing new about contracting the management of individual projects and even ongoing service delivery to the private sector. However, the current trend in P3s differs in comparison with traditional collaborations between the public and private sectors in the increased involvement of the private partner. This is especially noticeable in the financing of capital assets and longer-term agreements between public and private sector partners.

There is no clear reason to force municipalities to “consider P3s,” as the federal Minister of Finance has declared publicly he wants to do.² This would suggest that elected officials and municipal employees are ignoring P3s and making decisions without considering all the options available to them. On the contrary, it is more reasonable to assume that municipal governments are aware of their options, which vary considerably from one case to another. Very few municipal officials seem allergic to the private sector, judging by the way that private-sector participation in municipal activities is in fact frequent and longstanding (almost always for construction work and commonplace for service management and delivery). Incidentally, we note that leaders can hardly maintain credibility if they send mixed messages, earnestly affirming that municipal governments are “partners,” while dictating to them the best way to make decisions. We

² Jim Flaherty, Advantage Canada: Building a Strong Economy for Canadians and Economic and Fiscal Update, 2006. (Document filed with [The Economic and Fiscal Update 2006](#)) Chapter 4 “Investing for Sustainable growth,” Latest update: 23/11/06, <http://www.fin.gc.ca/ec2006/plan/plc4e.html>; http://www.fin.gc.ca/budtoce/2006/ec06_e.html

must also pay special attention to how guidelines are developed for the enlightened evaluation of P3 options.

P3s are not a cure-all or miracle treatment for all situations. They do not offer municipalities a magic solution to the real problem of financing infrastructure, the primary and often only real challenge facing local governments.

The problem of financing municipal infrastructure is not related to the availability of the needed funding, access to financial markets, debt ratings, or the cost of loans taken by municipalities. To make infrastructure investments, municipal governments can easily borrow almost all the funds they need at very favourable rates. Indeed this fact is so clear, it is rarely challenged. To leave the responsibility of financing to the private partner is a poor solution to a non-existent problem, when traditional municipal financing is simple, relatively easy and, above all, much less costly than the private-sector equivalent. Nevertheless, the truth is that some people have an interest in making us think that there is a problem ... because they have solutions to sell.

In this respect, we would emphasize that in promoting P3s, one of the objectives pursued by government is to create new business opportunities for investors. More precisely, governments claim that our pension funds (which are responsible for making our savings grow) are looking elsewhere for opportunities to invest in water supply or public transit. Which brings us to another clear fact: P3s give investors a better return than municipal government bonds that are normally used to finance the same municipal projects. Is it possible to offer investors a better return while still allowing municipal governments to obtain a better price-quality ratio?

Therefore, the problem of municipal infrastructure financing has nothing to do with the availability of funds or the cost of borrowing. The issue stems mainly from the level of municipal revenue, which is often insufficient (as municipal governments have to repay their loans) to maintain and increase investment in the maintenance, rehabilitation and reconstruction of existing infrastructure. P3s do not offer any magic solution to this revenue shortfall: in fact, the funds paid out each year to a P3 partner are more or less the same amount as the annual repayments on a municipal loan taken out for a traditional project.

Here we encounter an altogether classic issue in public finance: the difficulty of convincing people that they must pay more, simply to ensure that nothing changes, which is not a very good sell. Not only is the cost of providing a service through a P3, whether in taxes or tariffs, about the same as the cost of providing the service in a more traditional way, but a P3 contributes nothing to the work, which is really political, of persuading taxpayers that they must make additional investments to secure the future of their communities.

Furthermore, it is clear that the construction of new infrastructure is more attractive than investment in the rehabilitation and maintenance of existing assets, and so it is easier to attract resources to the former than the latter. However, P3s are most often used to start new services and build new infrastructure, even though this is not where the need for investment is greatest.

The design and construction of a new facility from A to Z probably makes the involvement of the private sector easier. Conversely, resorting to P3s to rehabilitate an existing facility raises the problem of the relative ignorance about the state of the infrastructure that needs intervention. And uncertainty, like information, has its price.

One of the arguments frequently used in favour of P3s is that they permit a great deal of flexibility. But what kind of flexibility are we talking about? The preliminary discussions, prior to pricing and procurement, are longer and more arduous for a P3 project than for a traditional one. Would there then be more flexibility for P3s once operations are under way? Yes, and no: the private partner is well advised to refuse any reopening of the contract and to stick firmly to what has been negotiated, unless, of course, they can secure substantial compensation for modifying the agreement once it is underway. Flexibility, it seems, has its price. One recent example from the U.K. seems to show that, on the contrary, P3s limit flexibility in that they constrain elected officials over the long term and reduce their ability to adjust to changing circumstances.

However, the rigidity imposed by long-term undertakings constitutes, paradoxically, what is in theory one of the soundest arguments in favour of P3s. When faced with a tight municipal budget, there is sometimes a strong temptation to put off some non-urgent work and to defer the necessary investments almost indefinitely, if it does not harm operations in the short-term. Thus, municipalities can be accused, often rightly, of some negligence: they are not always consistent. In this context, P3s make it theoretically possible to ensure greater regularity, insofar as a P3 agreement firmly establishes a rate of investment. In practice, however, things are not so simple.

One thing is certain: P3s limit the accountability of elected officials, as they can no longer be held responsible for day-to-day operations. Given a 30-year P3, governed by an agreement signed in 1985 and expiring in 2015, a new municipal council elected in the fall of 2006 for a four-year term would have no flexibility at all.

A greater certainty (if I dare say), is that P3s make the management of services less transparent.

Also clear is that, by their very nature, P3s involve a substantial, long-term financial commitment on the part of the private partner. This can actually reduce the level of competition among private enterprises, which, it turns out, is not as strong as one would hope.

Even more certainly, consistently relying on P3s also displaces small and medium-sized local businesses and fosters the consolidation of enterprises.

Similarly, it is common to find in municipal P3s an imbalance between public and private partners in terms of their access to resources and information. Typically, a municipal government has, for example, only one wastewater treatment plant, and so that local government has, and will only ever have, one contract to grant for it. In contrast, that same municipal government deals with companies that generally have much greater means and that possess experience acquired from numerous similar business dealings around the world. Clearly, one of the two players has much more experience and resources than the other.

Clearly P3s are not perfect, but don't they offer certain overall benefits? Are the few inevitable drawbacks not more than outweighed by great advantages? All we can say

for sure is that the few examples so far of municipal P3s (e.g., the water system in Hamilton or the subway system in London, England) do not show any clear benefit associated with P3s, either in terms of price or quality of service. In all sincerity, I believe that the great majority of observers not directly involved with either one camp or the other would agree that we simply cannot claim that P3s are more advantageous for local governments or their citizens.

For many years, people have been predicting the imminent return of the private sector to the municipal sector, but so far no great change has been observed. The most likely trend, so long as municipal councils hold on to their decision-making autonomy, is that there will be a steady shift in both directions: towards the private sector in some cases and back to local government control in other cases. However, given the trend to longer-term agreements and partnerships, it is plausible that the private sector's share (which is still relatively weak) may tend to increase slightly, only because it will be more difficult (and more costly) to change horses in midstream after five or 10 years. Under these agreements, local governments will have to wait 20 or 25 years before they can revisit the issue, and the odds are that it will then be more difficult to return to government control. After all, the municipal employees assigned to these tasks in the past will have retired; the techniques will have evolved without in-house personnel being kept up to date; and the skills and abilities required for public sector management will have been lost.

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Introductory Remarks

This report was produced at the request of the Federation of Canadian Municipalities (FCM). However, it should not be inferred that the FCM endorses it in any way, in whole or in part. In other words, nothing found here may be held against the FCM; the author alone assumes full responsibility for his opinions.

Limitations of the Study

Ideally, the most complete report possible would have been prepared based on the experiences of public-private partnerships (P3s) in the municipal sphere, here and elsewhere. To do this, I would have had to base my assessment on a careful examination of costs and the general performance of properly completed representative P3 sample cases. As I could not do an absolute evaluation but had to proceed on the basis of comparison, I should have been able to draw on close analyses of a good collection of projects completed via other approaches (e.g., fully managed by government or delegated) all, of course, cases that have been functioning for several years. To present a complete picture, I would have also needed post-mortem analyses of many aborted projects in each category (at least P3s and government-managed). To my knowledge, no one has ever properly completed such an exercise using best practices,³ not

³ We can certainly find reports on an abundance of P3s (projected, completed or abandoned). However, the reader will be disappointed, as the P3s usually do not directly relate to the municipal sphere. Even more important, generally speaking, the case analyses are shallow, which is not surprising since the necessary information is not usually available. Even so, we must mention two impressive catalogues, the first favourable to P3s, the other not:

Aiden R. Vining and Anthony E. Boardman, *Public-Private Partnerships in Canada: Theory and Evidence*, (Vancouver: UBC P3 Project, 2006), http://csgb.ubc.ca/files/p3/2006_04_vining.pdf

Nathalie Mehra, *Flawed, Failed, Abandoned: 100 P3s, Canadian & International Evidence*, (Toronto: Ontario Health Coalition, March 2005).
<http://www.web.net/ohc/P3s/Flawed,%20Failed,%20Abandoned%20-%20Final.pdf>

I would also mention a third recent directory that I have been unable to consult: Canadian Council for Public-Private

even the British, who have a head start of several hundred P3s over several years. In fact, the only study seeking to evaluate P3s that has not been kept secret and sheltered from methodological criticism, seems to have been carried out in a way that is not entirely above reproach, as it were. According to Pollock et al. (2005), it is full of the kind of errors that attract the criticism of methodology experts.⁴

The job has not been done because the difficulties are many and virtually insurmountable. The availability of data is already an issue. In fact, the accounting data for the businesses are treated as “sensitive” data, and those that are publicly accessible are rather limited.⁵ We must emphasize the fact that this lack of public access to information is not a result of ill will or a sordid conspiracy by business to deceive their clients or the public. It is, rather, a result of rules and regulations. Everyone will agree that businesses really have no choice but to be bound by trade secrets so that their competitors cannot benefit from any revelations. Likewise, the quantity and quality of data concerning services provided directly by government are often disappointing: it is common knowledge that municipal government cost accounting and knowledge of real costs are frequently less than optimal.

Partnerships, *Canadian PPP Project Directory: Selected Public-Private Partnerships Across Canada*, (Toronto: Canadian Council for Public-Private Partnerships, 2006), http://www.pppcouncil.ca/pdf/pppdir_sample.pdf

A look at the table of contents reveals a change that should be made to the next version of the current report. Among this selective collection, containing only the finest examples of P3s, and published in November 2006, the Ottawa light rail transit project is mentioned — a project that was abandoned in December 2006, to the dismay of Siemens, the primary private partner. http://www.ottawa.ca/residents/lrt/experience/vehicles/siemens_en.html

⁴ Allyson Pollock, David Price and Stewart Player, *The Private Finance Initiative: A policy built on sand*. An examination of the Treasury's evidence base for cost and time overrun data in value for money policy and appraisal. A report produced at the request of British trade union UNISON by researchers of the Public Health Policy Unit, (London, U.K.: University College London, 2005), http://www.health.ed.ac.uk/CIPHP/publications/unison_2005_pfi_a_policy_built_on_sand_pollock.pdf Allyson M. Pollock, , David Price and Stewart Player, 'An examination of the UK Treasury's evidence base for cost and time overrun data in UK value-for-money policy and appraisal', *Public Money and Management*, Vol. 27; (2007): pp. 127-33. This research team, which essentially works on the health care system, is especially interested in the hospitals built under the Private Finance Initiative (PFI). It is now affiliated with the University of Edinburgh as the Centre for International Public Health Policy. See http://www.health.ed.ac.uk/CIPHP/Latest_research_PMM_2007.htm Latest_research_PMM_2007.htm

⁵ Pierre J. Hamel and Louis Carrier, *Les groupes européens de services urbains au Québec : une tête de pont en Presqu'Amérique* (Montréal: INRS-UCS, 2006), <http://www.ucs.inrs.ca/pdf/GroupeEuropeens.pdf>

As if these inescapable obstacles were not enough, limited means and tight timelines were such that I could have only very modest ambitions for this investigation. Therefore, I had no choice but to fall back on what I know best: the work of my immediate colleagues and my own work, which almost entirely relates to the Québec municipal scene, particularly its water systems. Of course, I did my best to expand my perspective by calling on people who could direct me to other interesting cases. Dozens of people from diverse constituencies (from the largest to the smallest municipalities, businesses, governments, unions, associations, universities, semi-public and para-public organizations and others, both here and elsewhere) have contributed in different ways to this project. Nevertheless, as you will soon notice, the ground covered by this paper is still restricted.

Unless otherwise specified, the web pages were consulted from late November 2006 to mid-February 2007. Updates are likely and, if this is the case, they will be incorporated into the online version at the INRS Web site: <http://www.ucs.inrs.ca/pdf/PPPMun.pdf>

The Author

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Working on behalf of unions, associations, businesses, municipalities or government departments, or within the framework of subsidized research, he is interested in local public finance, ranging from local public service management to local taxation.⁶ Recent publications include the following.

Hamel, Pierre J. “Les compteurs d’eau résidentiels: une mauvaise idée.” *Bulletin de la Ligue des droits et libertés*. Vol. 24, No. 1 (Spring 2006), pp. 22–23.
<http://www.ucs.inrs.ca/pdf/compteurs.pdf>

Hamel, Pierre J. and Louis Carrier. “Les groupes européens de services urbains prennent position au Québec.” *Organisations et territoires*. Vol. 15, No. 1, pp. 41–51 (Winter 2006). (A much longer version, including a detailed methodology section, is available online at <http://www.inrs-ucs.uquebec.ca/pdf/GroupeEuropeens.pdf>)

Hamel, Pierre J. “Le futur moins que parfait des très petites collectivités: recomposition territoriale dans l’arrière-pays québécois.” In Laurence Bherer, Jean-Pierre Collin, Éric Kerrouche and Jacques Palard, eds., *Jeux d’échelle et transformation de l’État: le gouvernement des territoires au Québec et en France*. Québec: Presses de l’Université Laval, 2005, xviii and 527.

Hamel, Pierre J. “Loin des yeux...Les agences unifonctionnelles et les sociétés d’économie mixte (SEM).” In Sandrine Cueille, Robert Le Duff and Jean-Jacques Rigal, eds., *Management local, de la gestion à la Gouvernance: 6^e Rencontres Ville-Management*. Paris: Dalloz, 2004, pp. 337–359.

Hamel, Pierre J., Jean-Pierre Collin and Claire Poitras, in collaboration with Julie Archambault, Dany Fougères, Marc-Antoine Guimont, Jacques Ledent and Jaël Mongeau. *Scénarios de réorganisation municipale dans la MRC de Joliette*. Montréal: Groupe de Recherche sur l’Innovation Municipale (GRIM), INRS–Urbanisation, Culture et Société, 2003.
http://www.inrs-ucs.uquebec.ca/pdf/rap2003_02.pdf

Hamel, Pierre J. “Le ‘Pacte fiscal’ entre le gouvernement du Québec et les municipalités: la raison du plus fort est toujours la meilleure.” *Organisations et territoires*. Vol. 11, No. 3 (Fall 2002), pp. 31–38. http://www.vrm.ca/documents/Hamel_PJ.pdf

⁶ Personal web page, <http://www.ucs.inrs.ca/default.asp?p=hamel>

Introduction

If public-private partnerships (P3s) were as wonderful as some say, it would be a shame not to rely on them and not to consider them wherever an appropriate opportunity came up. We would have to at least consider P3s for any significant operation. According to the promoters of P3s, municipalities should seize all such opportunities. But what if municipalities did not even consider this possibility? What if the idea did not capture the imagination of municipal decision-makers? What if they resisted modernization and change?⁷ What if they were hostile to anything that disrupted their habits, to the point of refusing the very idea of discussing as fantastic a concept as P3s? Would it not be the duty of responsible governments to persuade municipalities to consider it? In fact, that is part of the reason higher level governments have been pushing the concept of P3s, to the point of forcing municipalities to consider using them.⁸

The objective of this essay is to conduct a searching examination of arguments in favour of P3s, without any ethical or political consideration other than respect for the most widely held values: flexibility desirable to municipal decision-makers, accountability in elected officials, transparency, and so on. At the end of the process, we must endeavour to see whether, by and large, P3s are worth the effort.

⁷ “L’État québécois réfractaire à la modernisation, selon Jérôme-Forget” [radio program], *Maisonneuve en direct*, 14 December 2006, broadcast on Radio-Canada, Montréal, <http://www2.radio-canada.ca/radio/maisonneuve/14122006/81117.shtml>

⁸ Harry A. Kitchen, *State of Disrepair: How to Fix the Financing of Municipal Infrastructure in Canada*, C. D. Howe Institute Commentary No. 241, (Toronto: C. D. Howe Institute, December 2006) http://www.cdhowe.org/pdf/commentary_241.pdf
TD Economics, *Creating the winning conditions for Public-Private Partnerships (P3s) in Canada*, (Toronto: TD Bank Financial Group, June 2006), http://www.td.com/economics/special/db0606_p3s.pdf

Are P3s beneficial in terms of cost and service quality? Do they offer a good price-quality ratio? Are they better than the “traditional” method, in which a private enterprise lands a contract based on a call for tender, and then builds infrastructure that public servants operate “under government management”? I will try to proceed by continually providing concrete examples, in order to sidestep cumbersome debates over theories and policies.

1. The Nature of P3s

If we agree to a broad definition of public-private partnerships (P3s), we quickly realize that they are neither revolutionary nor even especially novel in the world of local government. There is nothing new about contracting the management of individual projects and even ongoing service delivery to the private sector.⁹

However, the current trend in P3s differs in comparison with traditional collaboration between the public and private sectors in the increased involvement of the private partner. This is especially noticeable in the financing of capital assets and longer-term contracts. In fact, the term “P3” may now refer to a project of 25 or 30 years, or even longer, in which the private partner assumes a considerable portion — indeed, even the whole — of the necessary investment.

Much more often, though, we find definitions of P3s that focus less on their peculiarities and more on their similarities to other forms of collaboration between the public and private sectors, placing P3s within a broader continuum. That is the main thing (and often the only thing) that supporters and opponents of P3s have in common.¹⁰ Variations on the same basic concept are found everywhere: at one end of the continuum the private sector intervenes, if only marginally, in the framework of a project that is led and almost entirely managed by the public sector; at the other end is full privatization. As a result, the Ministère des Transports du Québec describes

⁹ Xavier Bezançon, 2000 ans d'histoire du partenariat public-privé pour la réalisation des équipements et services collectifs (Paris: Presses de l'ENPC, 2004).

Lynne B. Sagalyn, “Public/Private Development,” *Journal of the American Planning Association*, Vol. 73, No. 1 (Winter 2007), pp. 7–22.

¹⁰ Gaétan Breton, “Futur proche. Éléments d'analyse progressiste,” in *Tout doit disparaître. Partenariats public-privé et liquidation des services publics* (Montréal: Lux éditeur, 2005), pp. 37–40.

Government of Nova Scotia, “Background: What Is a Public Private Partnership?” in *Strategic Public Private Partnering: A Guide for Nova Scotia Municipalities*, (Government of Nova Scotia: Halifax, n.d.), http://www.gov.ns.ca/snsmr/muns/fin/pdf-P3s/P3_1.PDF

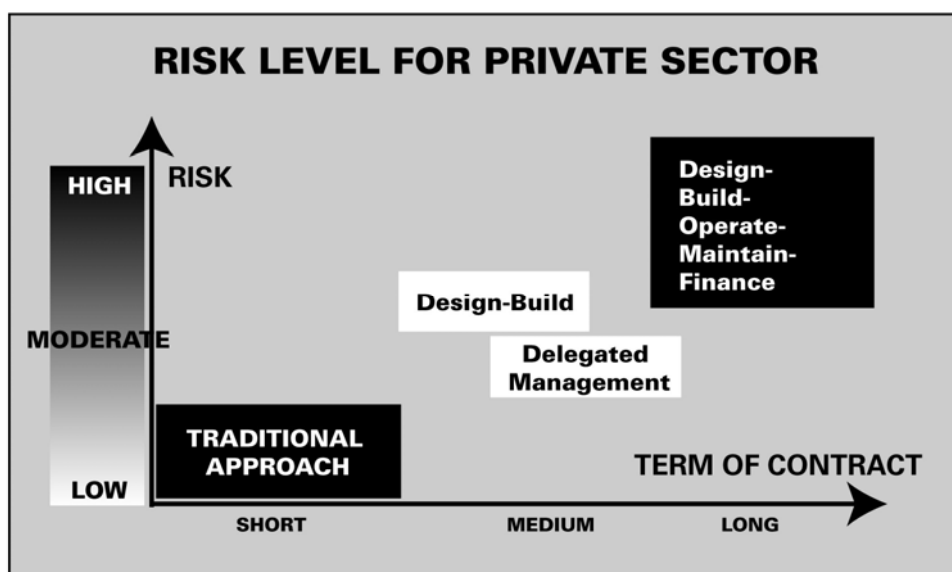
Ernst & Young, *Issues Facing the Canadian P3 Market*, (Toronto: Ernst & Young, November 2006), [http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/\\$file/16256_CDN_P3.pdf](http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/$file/16256_CDN_P3.pdf)

three forms of P3s: only the first closely corresponds to the core definition of a P3; the other two descriptions refer to quite traditional approaches, if only because of the length of contracts in the last case.

Design/build/maintain/operate/fund . . .

Design/build . . . These projects are usually carried out over an average period of two to five years. The partner is remunerated when the work is completed, following a compliance review . . .

Management of operations and maintenance delegated . . . under a five- to 10-year contract . . .¹¹



Source: Ministère des Transports du Québec.

The following broad definition from the Canadian Council for Public-Private Partnerships has largely been adopted:

Public-private partnerships span a spectrum of models that progressively engage the

¹¹ Ministère des Transports du Québec, "Partenariat public-privé," <http://www1.mtq.gouv.qc.ca/fr/affaires/Partnership/index.asp#formes>

Québec Ministère des Transports, "Le partenariat public-privé au Ministère des Transports", (Québec: Ministère des Transports, May 2004), <http://www.mtq.gouv.qc.ca/fr/publications/ministere/PPP.pdf>

expertise or capital of the private sector. At one end, there is straight contracting out as an alternative to traditionally delivered public services. At the other end, there are arrangements that are publicly administered, but within a framework that allows for private finance, design, building, operation and possibly temporary ownership of an asset.

... Unlike our American counterparts who tend to use the words “privatization” and “public-private partnerships” interchangeably, in Canada “privatization” refers to the furthest point on the PPP spectrum, where most or all assets are held by the private sector.¹²

Within the framework of this study, it has been decided to restrict the term “P3” to projects in which the private partner has been very deeply involved throughout the entire process and has been heavily committed financially over an especially long period — longer, at least, than the periods of three to five years to which municipalities are generally accustomed.

However, it is true that P3s are only one (certainly a common one) project approach within a wide range of ways for the public and private sectors to work together. In fact, this is why we can use analyses of other models to understand certain common mechanisms or to advance theories about what might happen in the case of a P3, in the strictest sense.

¹² Canadian Council for Public-Private Partnerships, http://www.PPPscouncil.ca/about_PPP_definition.asp

2. The PPP Craze Among Higher Levels of Government

2.1 *The Federal Government and Its Recent Announcement*

In November 2006, through the Minister of Finance, the federal government expressed its desire to vigorously promote the PPP approach:

The Government will encourage . . . the development and use of P3 best practices by requiring that P3s be given consideration in larger infrastructure investments that receive federal program funding...

Policy Commitment

Canada's New Government will work toward a comprehensive plan for infrastructure that includes: . . .

- Separate national infrastructure funds, accessible on a merit basis, to support (1) P3 projects, and (2) gateways and border crossings, particularly projects selected pursuant to a new national gateway and trade corridor policy.
- A requirement that provinces, territories and municipalities consider P3 options for all larger projects receiving funding from the program envelope and the national infrastructure fund for gateways and border crossings.¹³

It was, in fact, based on this announcement that the FCM asked me to look at the matter and respond to this announcement. The question to be answered was quite simple: Is it right to promote P3s this way, to the extent of making federal funding contingent on “consideration of” the P3 option? It is, after all, only one way of doing business. Above all, the P3 formula is not

¹³ Jim Flaherty, “Investing for Sustainable Growth,” Chapter 4 in *Advantage Canada: Building a Strong Economy for Canadians and Economic and Fiscal Update* (document filed with The Economic and Fiscal Update 2006), latest update November 23, 2006, <http://www.fin.gc.ca/ec2006/plan/plc4e.html> and http://www.fin.gc.ca/budtoce/2006/ec06_e.html

backed by any consensus, nor is it unanimously praised. If we go a step farther, we could ask, “Is the public-private partnership solution necessarily *the* solution to all problems, everywhere and always?” And the answer would very obviously be, “No.” Besides, even the most fervent sponsors of P3s generally qualify their statements, as did the chair of Québec’s Conseil du Trésor, Monique Jérôme-Forget:

[Translation]

Public-private partnerships are neither dogma nor panacea; they represent one more tool the Québec state wishes to adopt to develop its infrastructure . . . Public-private partnerships form part of the solution, but they are not a quick fix. This is neither dogma nor panacea. They are a tool that we are adding to the state’s toolbox. This formula is neither applicable nor desirable for all projects, but it is for a limited number of major ones.¹⁴

As my work experience is limited to the borders of Québec, I could (almost) have acted as if I were not immediately concerned by this federal announcement, leaving the pleasure of responding to others. In any case, it might seem that federal intentions would not, at least directly, have any tangible impact on Québec municipalities, since they are, pursuant to the Constitution, exclusively (and jealously) controlled by the Government of Québec. For more than 30 years now, successive Liberal and Parti Québécois (PQ) teams have adopted and maintained this policy. The Government of Québec rather strictly limits direct relations between municipalities and federal departments, by fairly rigorous enforcement of the Act respecting the Ministère du Conseil exécutif.¹⁵ It might therefore seem that, as in the past, after a few months of arguing over jurisdiction, the federal government would have agreed to reconciling itself to

¹⁴ Monique Jérôme-Forget, chair of the Conseil du trésor and Minister responsible for governmental administration [speech], delivered at the close of the parliamentary committee on Bill 61, *An Act respecting the Agence des partenariats public-privé du Québec*, Québec, November 11, 2004, <http://www.tresor.gouv.qc.ca/fr/ministre/discours/forget/ppp-cloture.asp>

¹⁵ *An Act respecting the Ministère du Conseil exécutif*, http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/M_30/M30_A.HTM

paying “Québec’s share” in an envelope deposited in a “mail box,” such as the Société de financement des infrastructures locales du Québec.¹⁶ This recently created ad hoc body serves as something of a “decontamination chamber” to transfer federal monies to municipalities with no ties and no resulting federal standards. The Government of Québec could then apply its own standards, adjusted to its own objectives, without the federal government really having much say. That approach would be in keeping with practice since at least the first cost-shared infrastructure program, the Canada-Québec Infrastructure Works Program, launched in 1994. At that time, then-Minister of Municipal Affairs, Claude Ryan, fearlessly and blamelessly managed affairs alone.¹⁷

Despite this inescapable factor in our intergovernmental relations, nothing would prevent the Government of Québec from adopting the P3 idea as its own. However, frankly, it seems as if it already did so a long, long time ago.

¹⁶ Government of Québec, *La Société de financement des infrastructures locales du Québec débute ses opérations* [news release] (Québec: Government of Québec, February 1, 2006), <http://communiqués.gouv.qc.ca/gouvqc/communiqués/GPQF/Fevrier2006/01/c3036.html>

Ministère des Affaires municipales et des Régions, Guide relatif aux modalités révisées de transfert aux municipalités du Québec d’une partie des revenus de la taxe fédérale d’accise sur l’essence et de la contribution du gouvernement du Québec pour leurs infrastructures d’eau potable, d’eaux usées et de voirie locale, (Québec: Government of Québec, 2006), http://www.mamr.gouv.qc.ca/publications/infrastructures/guide_transfert_taxe_essence.pdf

¹⁷ The September 1994 election brought the Parti Québécois (PQ) to power, at a time when numerous decisions had been made and the program was really starting to take off; the new PQ Minister set about reviewing his predecessor’s decisions, but finally concluded that he could find no fault with them.

2.2 The Previous Commitments of the Québec Government

P3s are in the air in Québec and they have, in fact, been since long before this current Liberal government was elected. Already in 2000, the Parti Québécois government had unobtrusively passed legislation allowing the Ministère des Transports to establish P3s.¹⁸ The Liberal Party, after winning the 2003 election, quickly promoted P3s as one of its top ideas for advancing progress in Québec. In fact, on the eve of the 2007 election, very little has been achieved. The plan for university hospitals, to be based on P3s, is resulting in more than its fair share of criticism, as well as fears of all kinds.¹⁹ We do see a few bridge and highway projects, which were apparently making slow progress, now gathering speed; they may well end up being the first true P3s created directly as a result of government action.²⁰

However, the municipal scene has already witnessed a number of experiments approximating the P3 formula. Specifically, I note the common and already long-standing implementation of the leasing formula, in which a custom-constructed property is rented for a prolonged term. Finally, there are even a few genuine P3s — although they are not always so named — in particular, those involving the University of Québec at Montréal. (I will come back to this.)

¹⁸ *An Act respecting Transport infrastructure partnerships*, R.S.Q., chapter P-9.001, <http://www.canlii.org/qc/laws/sta/p-9.001/20040802/whole.html>

¹⁹ Note, specifically, the following series of articles entitled “La Face cachée des P3,” published in *La Presse* in November 2006 and written by Ariane Krol, formerly an editorial writer: “Histoires d’horreur”, *La Presse*, November 25, 2006, Cahier Plus section, p. 5, <http://www.cyberpresse.ca/article/20061201/CPOPINIONS/61123124>; “Vraiment moins cher?”, *La Presse*, November 26, 2006, p. A15, <http://www.cyberpresse.ca/article/20061201/CPOPINIONS/61123127>; “Un carcan” renamed “Le meilleur des PPP”, *La Presse*, November 27, 2006, p. A15, <http://www.cyberpresse.ca/article/20061201/CPOPINIONS/61123133>

We could add the reply by Pierre Lefebvre, chief executive officer of the Agence des partenariats public-privé (“Une conclusion étonnante”, *La Presse*, December 1, 2006, p. A22), to which Ariane Krol responded (“Aller au-delà des arguments théoriques”, *La Presse*, December 1, 2006, p. A22). The reply and response were combined in another editorial called “Vérités et PPP”, *La Presse*, December 15, 2006, p. A26. See also “Éléphants blancs à l’horizon”, <http://www.cyberpresse.ca/article/20061201/CPOPINIONS/61123129> and “Les fonctionnaires à l’école des PPP” <http://www.cyberpresse.ca/article/20061201/CPOPINIONS/61123128>

²⁰ Maxime Bergeron and Hélène Baril, “Modernisation de l’État. Pas de “big-bang,” *La Presse*, February 17, 2007, *La Presse* Affaires section, p. 3.

In 2004, at discussions surrounding the creation of the Agence des partenariats public-privé du Québec, Québec municipalities came very close to being forced to “consider” establishing P3s, exactly in line with the obligation mentioned by the federal minister. The adopted act imposes this obligation on departments and bodies under the direct control of the government.²¹

As the loyal servant of the government majority, the Ministère des Affaires municipales et des Régions is in the process of preparing a P3 guide for municipalities, and at least one public servant is already engaged in this project.²² Similarly, the department’s website recently promoted an activity with the following headline: “Formation Réussir un PPP en milieu municipal!” [Training in Undertaking a Successful Municipal P3].²³

[Translation]

The Institut des partenariats public-privé (IPPP) and Québec City’s Chamber of Commerce will offer training in municipal public-private partnerships (P3s). The [department] will play an active role in the training.²⁴

And, of course, there is a link to the IPPP site. Ernst & Young Orenda Corporate Finance

²¹ Marie-Claude Prémont, “La réingénierie québécoise version municipale,” *Flux*, Nos. 60–61 (April–September 2005), pp. 69–82.

During this time, discussion continued on the West Coast. According to one newspaper editorial, “Faced with a growing PR problem about P3s in British Columbia, the Campbell government has adopted a policy forcing B.C. municipalities, and other public institutions to accept P3s as the price of provincial support for major capital projects.” Paul Moist, national president, Canadian Union of Public Employees (CUPE), “P3s widen Harper’s accountability gap.” *The Hill Times*, 27 November 2006, http://cupe.ca/p3s/Texte_dun_ditorial_d

Another CUPE publication noted, “The British Columbia government has announced that any capital project costing more than \$20 million must be considered as a P3 in order to qualify for provincial cash.” CUPE, *BC pushes P3s on citizens*, (Ottawa: CUPE, 6 December 2006), http://cupe.ca/p3alernovember2006/La_ColombieBritanniq

²² Stéphane Martinez of the Service du développement et des infrastructures stratégiques, Direction des infrastructures, Ministère des Affaires municipales et des Régions submitted a paper on this topic, “L’émergence des PPP dans le milieu municipal : le cas de l’eau,” to the Infra 2006 symposium organized by the Centre for Expertise and Research on Infrastructures in Urban Areas (CERIU), held in Québec City on November 21, 2006. A CD-ROM of the slide show is available from CERIU.

²³ Ministère des Affaires municipales et des Régions, *Formation Réussir un PPP en milieu municipal!*, [cited 16 February 2007], http://www.mamr.gouv.qc.ca/news/actualite_suite.asp?no=576

²⁴ Ministère des Affaires municipales et des Régions, *Formation Réussir un PPP en milieu municipal!*, [cited 16 February 2007], http://www.mamr.gouv.qc.ca/news/actualite_suite.asp?no=576

presents the IPPP as the Québec counterpart of the Canadian Council for Public-Private Partnerships (CCPPP), indicating that the IP3 is thinking about developing a “light” P3 model, specifically for municipalities.²⁵

The Québec National Assembly has passed a bill giving municipalities all the leeway they need to establish P3s for water distribution systems.²⁶

In short, the pro-municipal-P3s stance of the Québec department (and the entire government) is unequivocal²⁷ and independent of developments in the always fascinating relationship between Québec and Ottawa. It is therefore absolutely relevant for us to take an interest in the announcement by the federal minister, even if from a purely Québec perspective.

²⁵ “IPPP. . . plans to develop a P3 ‘light’ model for municipalities. . . .” Ernst & Young Orenda Corporate Finance Inc., *Canadian P3 Survey, Issues Facing the Canadian P3 Market*, (Toronto: Ernst & Young Orenda Corporate Finance Inc., 2006), p. 9, [http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/\\$file/16256_CDN_P3.pdf](http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/$file/16256_CDN_P3.pdf). There is still no public sign of this project, apart from the draft guide mentioned by Stéphane Martinez of the Ministère des Affaires municipales et des Régions in his presentation (see note 22).

²⁶ Section 22 of Québec’s *Municipal Powers Act* states, “A local municipality may entrust a person with the [construction and] operation of its waterworks or sewer system or other water supply or water purification works for a maximum term of 25 years.” It may also transfer responsibility for its operations for this term. It took Yves Bellavance to draw attention to what observers had not seen, at a time when eyes were riveted on the most publicized bills.

Yves Bellavance, “La porte est ouverte pour les PPP et la tarification de l’eau. Le gouvernement va de l’avant sans aucun débat public”, *Le Devoir*, Monday, December 19, 2005, p. A7, http://www.vrm.ca/documents/LeDevoir_bellavance.pdf At the time, he was a permanent employee at the Table régionale des organismes volontaires en éducation populaire de Montréal (TROVEP Montréal).

²⁷ Marie-Claude Prémont, “La réingénierie québécoise version municipale,” *Flux*, Nos. 60–61 (April–September 2005), pp. 69–82.

3. The Role of the Private Sector in Municipalities

The private sector has played a regular, long-standing role in municipal activities, almost always in construction and frequently in utility management and provision. In fact, the memorandum on P3s submitted by the Union des municipalités du Québec begins with this fact, adding other examples that are P3s in all but name.²⁸ (I will come back to this.)

It does not seem reasonable to force municipalities to “consider the P3 option” out of some sense that elected representatives and municipal public servants are completely ignorant or narrow-minded, or allergic to something as fantastic as P3s or to the involvement of the private sector in general. This sector has been around for a long time, and ongoing, unflagging solicitation from business ensures that all decision-makers constantly bear this fact in mind.

3.1 The (declared) Pragmatism of Elected Municipal Representatives

Every day, here and elsewhere around the world, elected municipal representatives consider the private sector option or consider switching options. Those who decide to move forward sometimes do so successfully, but they sometimes err. However, these elected representatives choose their options well (at least, they think so), bearing in mind the interests of their citizens (at least, we hope so).

Even more numerous are municipal councils that weigh the pros and cons of various scenarios at length, and then finally decide to let things be — for instance, to retain public control of one

²⁸ Union des Municipalités du Québec, Brief submitted to the Commission des finances publiques regarding Bill 61, *an Act respecting the Agence des partenariats public-privé du Québec* (Montréal: Union des Municipalités du Québec, September 2004), p. 2, http://www.umq.qc.ca/publications/memoire/_pdf/M_PL61.pdf This brief basically aimed to ensure that municipalities are not forced to funnel all projects receiving government grants through the agency, and that was achieved.

utility and renew the contract with a company for another utility. Why? Doing so is easier and often less costly, at least in the short term. After all, things are not going so badly, and it is best to leave well enough alone.

While the City of Longueuil decided to purchase the property it had been leasing from Dessau-Soprin to house its city hall,²⁹ the City of Gatineau seriously thought about entering into a P3 with Dessau-Soprin for a new arena.³⁰

We could quote countless examples of such situations and decisions involving many different options, such as Regional County Municipalities (RCM) getting involved in garbage collection. The Haute-Yamaska RCM decided to become involved in garbage collection³¹ and seized the opportunity to force the hand of a private company in building a sorting plant on a lot adjoining the dump.³² Just a few kilometres away, 12 of the 24 member municipalities of the Arthabaska RCM became shareholders (to the tune of 51 per cent) of a garbage collection company.³³ In contrast, at the same time, the Granit RCM entered into an agreement with a private company and a not-for-profit organization to divert refrigerators that would otherwise have ended up in its dump.³⁴ Meanwhile, the Témiscamingue RCM was forced to assume public control of garbage collection:

²⁹ Jean Maurice Duddin, "Longueuil rachète son hôtel de ville. La Ville versera 26 M\$ à Dessau-Soprin", *Le Journal de Montréal*, 21 December 2006, <http://www.canoe.com/infos/quebecanada/archives/2006/12/20061221-080202.html>

³⁰ "Nouvel aréna: Dessau-Soprin serait prêt pour un partenariat public-privé", *Le Droit*, 8 February 2007, p. 5, <http://www.cyberpresse.ca/article/20070207/CPDROIT/70207278/5174/CPDROIT>.
Christian Rouillard, "Gatineau et les PPP: une mise en garde," *Le Droit*, 16 February 2007, p. 19.

³¹ Isabel Authier, "Bientôt l'affaire de la MRC", *La Voix de l'Est*, 30 November 2006, <http://www.cyberpresse.ca/article/20061130/CPACTUALITES/611300988>

³² "Des discussions intenses ont permis aux deux parties de s'entendre après Noël et d'éviter ainsi d'en découdre publiquement." Michel Laliberté, "Affrontement évité entre Thibault et la MRC de la Haute-Yamaska", *La Voix de l'Est*, 16 January 2007, <http://www.cyberpresse.ca/article/20070116/CPACTUALITES/701160869&SearchID=73272469658635>

³³ Gilles Besmargian, "Une autre étape de 19,7 millions \$", *La Tribune*, 14 September 2006, <http://www.cyberpresse.ca/article/20060914/CPACTUALITES/609140814&SearchID=73272469983854>

³⁴ Ronald Martel, "La MRC du Granit s'occupera dorénavant des halocarbures", *La Tribune*, 1 June 2006, <http://www.cyberpresse.ca/article/20060601/CPACTUALITES/605270837&SearchID=73272469983854>.

[Translation]

A first invitation to tender, in October, proved a failure. No company showed any interest in taking charge of the utility in the 21 municipalities in the RCM. The RCM therefore launched another invitation to tender, this time to purchase three trucks required to collect residual material.³⁵

We can blame municipalities for many shortcomings, but we certainly cannot accuse them of all operating in the same manner, never changing their minds, systematically going private or, on the contrary, turning their backs on the private sector.

3.2 Developments in the Private Sector's Role

As discussed by Dany Fougères,³⁶ Québec water utilities generally started in private hands, but nearly all of them fell into municipal hands during the second half of the 19th century (especially in Montréal). This transfer of ownership occurred almost everywhere in North America.

Sometimes this process was a reaction to corruption, but most often the aim was to transfer “public” resources (funding through taxes and the regulatory obligation to hook up to the network) to a business that was struggling to establish a universal service. A sewage disposal system and an accessible, universal drinking water supply were considered essential. This was so even among the elite mainly for public health reasons, as epidemics do not always respect social distinctions and the health of the poorest also affects those who are better off.

³⁵ “La MRC du Témiscamingue s’organise”, Radio-Canada, December 5, 2006, http://www.radio-canada.ca/nouvelles/regional/modele.asp?page=/regions/abitiabi/2006/12/05/001-mrc_temis_residuelles.shtml

³⁶ For Montréal, see Dany Fougères, “De l’eau partout pour tous. La naissance du service d’eau universel à Montréal au milieu du XIX^e siècle,” *Flux*, No. 55 (January–March 2004), pp. 30–42.

Dany Fougères, *L’approvisionnement en eau à Montréal. Du privé au public, 1796–1865* (Sillery, Québec: Les éditions du Septentrion, 2004). www.Septentrion.gc.ca/fr/catalogue/213q.html

This process did not prevent the creation of private or cooperative networks to serve new peripheral neighbourhoods. These were then often incorporated into municipal networks. The Great Depression bankrupted numerous private operators, and the public sector was forced to assume responsibility, sometimes unwillingly.³⁷ The private sector's share is generally limited. In this respect, Québec's experience is completely in line with general experience in industrialized countries, with three exceptions: France, England and Wales.³⁸

What is true of water is also true of other municipal services. In Québec, most local services are still under public control and staffed by municipal public servants. Thus the water supply is mostly provided by the public sector. However, the private sector has sometimes been called upon, especially to operate new water treatment systems when several municipalities are involved. Similarly, public transit in major cities is always wholly public, even though some support services are outsourced to the private sector. But the picture is already different in the suburbs of major centres and in the smallest municipalities, where private-public transit operators have made breakthroughs. The private sector is already frequently involved in parking lot operations and even more so in public works and waste management, where large European companies have rapidly acquired a strong bargaining position. This advance is particularly noticeable in new markets, such as the management of recyclable materials.³⁹

³⁷ David L. Seader, *The United States' Experience with Outsourcing, Privatization and Public-Private Partnerships*, (Washington, D.C.: National Council for Public-Private Partnerships, n.d.), http://ncppp.org/resources/papers/seader_usexperience.pdf

³⁸ Water privatization has affected neither Northern Ireland nor Scotland. See Pierre J. Hamel and Alain Sterck, *Analyse comparative de la gestion de l'eau dans divers pays, pour le compte du Ministère du Conseil exécutif*, (Montréal: Groupe de recherche sur les infrastructures et les équipements urbains, 1997), http://www.inrs-ucs.uquebec.ca/pdf/rap2003_02.pdf Even today, most analysts agree that the private sector accounts for an estimated five per cent of the water supply worldwide.

Mike Esterl, "Dry Hole: Great Expectations For Private Water Fail to Pan Out. Under Fire, Germany's RWE Plans to Exit U.S. Market; Global Ambitions Thwarted. An Uprising in California Town," *The Wall Street Journal*, June 26, 2006, p. A1. (A reprint in the Pittsburgh Post-Gazette is available at <http://www.post-gazette.com/pg/06177/701300-28.stm>)

³⁹ Pierre J. Hamel and Louis Carrier, "Les groupes européens de services urbains prennent position au Québec," *Organisations et territoires*, Vol. 15, No. 1 (Winter 2006), pp. 41–51. (A much longer version, specifically including a detailed methodological section, is available online at <http://www.inrs-ucs.ca/pdf/GroupeEuropeens.pdf>)

For a few years now, doubts about the Welfare State have surfaced in all Western countries, and many people have advocated various forms of deregulation and privatization. In the 1980s and 1990s, advocates of a greater role for the private sector predicted an imminent tidal wave of privatizations, but 10 or 20 years later, we are still awaiting the tsunami.

In fact, analyses conclude with increasing frequency that a switch from public to private ownership does not produce any noteworthy gains — or any gains at all.⁴⁰ Here is one example:

(This paper) assesses evidence from two detailed case studies of partnerships and demonstrates, first, that there is little evidence of mutual gains from partnership arrangements and, second, that because of an imbalance of power between public and private sector partners, any gains achieved are not distributed equitably.⁴¹

This is even the case with studies conducted with a slight bias in favour of privatization. Such was the finding of researchers working for the World Bank who studied the experience of developing countries:

There are few overall policy lessons from these few studies but those emerging from a comparison of experiences across regions and countries are important. Probably the most important lesson is that the econometric evidence on the relevance of ownership suggests that in general, there is no statistically significant difference between the efficiency performance of public and private operators in this sector.⁴²

The same finding applies when we compare the performance of American water utilities:

⁴⁰ R. Bozec, Gaétan Breton and L. Côté, "The Performance of State-Owned Enterprises Revisited," *Financial Accountability and Management*, Vol. 18, No. 4 (November 2002), pp. 383–407.

⁴¹ Damian Grimshaw, Steve Vincent and Hugh Willmott, "Going Privately: Partnership and Outsourcing in U.K. Public Services," *Public Administration*, Vol. 80, No. 3 (Autumn 2002), pp. 475–502, p. 475.

⁴² Antonio Estache, Sergio Perelman and Lourdes Trujillo, *Infrastructure Performance and Reform in Developing and Transition Economies: Evidence from a Survey of Productivity Measures*, World Bank Policy Research Working Paper 3514, (Washington, D.C.: World Bank, February 2005)
http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/03/06/000090341_20050306101429/Rendered/PDF/wps3514.pdf

We find that when controlling for water source, location fixed effects, county income, urbanization and year, there is little difference between public and private systems. (...) Overall, the results suggest that absent competition, whether water systems are owned by private firms or governments may, on average, simply not matter much.⁴³

In Montréal, in the mid-1980s, the possibility of delegating water to the private sector was seriously considered and then abandoned. Then, in the mid-1990s, debate turned to mixed enterprise corporations (MECs), which swept Québec, leading to the adoption of an act allowing the creation of municipal MECs. No MEC has been registered since then, but that may change, now that P3s are in fashion.

The exceptional British experience of all-out privatization remains to be evaluated, but we can already detect some reluctance to describe the experience as a success.⁴⁴ It is far from obvious, even in the eyes of the World Bank, that the British water privatization model can be duplicated elsewhere.⁴⁵

In making the numerous decisions they face each year, sometimes municipal councils have decided to privatize an activity; other times, they've decided to re-assume public control. But most often municipal councils have decided to leave things as they are. As such, the private sector's role in supplying urban utilities has accounted for a very small, but fairly stable, fraction of the total.

Cities tempted to turn to the private sector, whether P3s or something else, likely have one of

⁴³ Scott Wallsten and Katrina Kosec, Public or Private Drinking Water? The Effects of Ownership and Benchmark Competition on U.S. Water System Regulatory Compliance and Household Water Expenditures, Working Paper 05-05, (Washington, D.C.: AEI-Brookings Joint Center for Regulatory Studies, March 2005), <http://www.aei-brookings.com/admin/authorpdfs/page.php?id=1128>

⁴⁴ [Translation] The advantages of privatization do not stare you in the face. Thus the French economics daily, *La Tribune*, which employs an editorial staff reputed to be anything but allied with the opponents of privatization, recently wrote, "Water, electricity, gas, transport, defence, nuclear energy, health: there are few British sectors or public utilities that have escaped the wave of privatization submerging Thatcher's England. Twenty years later, reviews are very mixed, but one of the most respected economists in the country has noted: 'There has not been one single true success.'" February 24, 2004.

⁴⁵ Karen J. Bakker, *An Uncooperative Commodity: Privatizing Water in England and Wales* (Oxford and New York: Oxford University Press, 2003), pp. xviii and 224, p.180.

the following characteristics.

- They face new responsibilities for which they are not equipped and, rightly or wrongly, they are afraid that they will be unable to supply their citizens with good service at a good price. This is the case in Saint-Louis-de-France, which I will discuss in more detail later. This municipality was entrusted with the maintenance of its side roads, that had previously been the responsibility of the Ministère des Transports. This is also the case in Côte Saint-Luc, which recovered its autonomy after a brief merger with Montréal. It has inherited a water network, but has no personnel, equipment or experience to handle it, since water was never its direct responsibility, even before the merger (until recently, Montréal owned and maintained the networks). The private sector provides a quick and easy solution, but not necessarily a more economical one.
- They cannot manage to solve a nagging problem and, weary of the struggle, try another solution. In desperation, the private sector is called in, like a sort of pinch-hitter. This was likely the scenario at work in Walkerton.
- They only need specialized expertise occasionally.
- They are “advised” by authorities, who may use some kindly arm-twisting and will not take no for an answer (as many Third World leaders have found in their dealings with the World Bank).

For a long time, municipalities have frequently relied on public-community partnerships and on public-public partnerships. This has especially been the case in the field of recreational services, where there are often long-term and sometimes onerous agreements involving the use of facilities, buildings and other infrastructure belonging to the municipality's partners, such as the YMCA, other associations, school boards, CEGEPs, universities, higher levels of government and so on. One of the advantages for the municipality of having its recreational activities organized by a non-profit association is that the association may be able to obtain a

federal grant, whereas any direct relationship between a Québec municipality and the federal government is not legal.

Conversely, municipalities will resume public control of activities previously vested in the private sector under the following circumstances.

- They constantly or regularly need a service or expertise.

For years now, the old cities of Beauport, Québec City and Sainte-Foy have been hiring computer science experts on a contract basis. ... The problem is that, with time, these private consultants have become just as permanent as any municipal employee. Some of them have been working solely for the city, on city premises, using city facilities, for 10 years, but under contracts that often pay twice as much as what municipal employees receive.

[Translation]

“Subcontracting is necessary for *peaks*, to manage excess workloads and when there is no expertise in a particular field,” said Denis Deslauriers, manager of the information technology and telecommunications department. “But we believe that employees who maintain regular systems should be city employees.”⁴⁶

- The company serving them does not provide a satisfactory response to their repeated requests. This was probably the case in Hamilton recently. When the 10-year water contract expired, the only offer that could be considered, after the qualifying stages and other screening, was the existing operator’s offer. (I will come back to this.)
- They are struggling to find a competitor to replace a supplier they have complaints about, or an invitation to tender attracts no response. (A few examples will be presented later.)

⁴⁶ Isabelle Mathieu, “‘Syndiquer’ pour économiser,” *Le Soleil*, December 10, 2003.

The most likely trend, so long as municipal councils hold on to their decision-making autonomy, is that there will be a steady shift in both directions. However, given the trend to longer-term agreements and partnerships, it is plausible that the private sector's share (which is still relatively weak) may tend to increase slightly only it is more difficult (and more costly) to change horses in midstream after five to 10 years. Local governments will have to wait 20 or 25 years before they can revisit the issue, and odds are that it will then be more difficult to return to government control. After all, the municipal employees assigned to these tasks in the past will have retired, techniques will have evolved without in-house personnel being kept up to date, and the skills and abilities required will have been lost.

4. The Problem of Funding Municipal Infrastructure

As stated by the chair of the Conseil du trésor, Monique Jérôme-Forget,⁴⁷ P3s are not a panacea or a miracle cure for all situations, once and for all. Specifically, P3s do not offer municipalities a magic solution to the real problem of financing infrastructure.

The problem of funding municipal infrastructure is not related to the availability of the needed funding or to the cost of borrowing.

Municipalities can easily borrow almost all the funds they need at very favourable rates, or at least at much better rates than those granted to private companies with the highest credit ratings. Indeed, even the numerous spin doctors promoting the P3 formula do not challenge this obvious fact: they admit it without hesitation. In the same breath, they insist that P3s are still financially beneficial overall. They claim that savings are realized in other respects, such as innovative design providing novel solutions, more efficient construction (meaning that P3s meet deadlines and come in under estimates) and better management of operations. These savings might allow P3s to compensate for a private company's higher borrowing costs.

4.1 The Availability of Funding

Municipalities can easily borrow all the funds they need when investing in their infrastructure. Nobody disputes this any longer. I remember an interview in 1996 with Bernard Drainville,⁴⁸ it was then rumoured (justifiably, as it turned out) that some public servants and elected

⁴⁷ Monique Jérôme-Forget, chair of the Conseil du trésor and Minister designated to be in charge of government administration [speech], delivered at the closing of the parliamentary committee for the study of Bill 61, *An Act respecting the Agence des partenariats public-privé du Québec*, Québec, November 11, 2004, <http://www.tresor.gouv.qc.ca/fr/ministre/discours/forget/PPP-cloture.asp>

⁴⁸ "Montréal ce soir", February 15, 1996, early evening television news program, Société Radio-Canada.

representatives, both in Montréal and in the Government of Québec, were considering privatization scenarios.⁴⁹ Drainville constantly came back to the same persistent questions, which all revolved around the tenacious urban legend that municipalities are penniless and practically insolvent. My exasperation increased until I urged the reporter to get the information before continuing to spread falsehoods. After checking, Drainville acknowledged, in astonishment, that it did indeed seem that municipalities were having no problems obtaining all the money they needed to invest in their infrastructure.

4.2 The Required Credit Rating and Interest Rates

Nobody questions the fact that the necessary amounts are available and accessible, and absolutely nobody doubts that municipalities always borrow at rates better than those obtained by the strongest private company.

Even so, we commonly read statements by P3 promoters asserting that, while municipalities obtain better interest rates than businesses, P3s end up being less costly and more beneficial than wholly public initiatives. We shall see later on. For the moment, let us accept the universal view: municipalities obtain loans on better terms. Here are a few examples that bolster that view:

The U.K. government accepts that private finance is more expensive than conventional procurement, but argues that the extra costs of private finance are offset by the transfer of

⁴⁹ Direction générale des infrastructures et du financement municipal, Ministère des Affaires municipales et des Régions, "Proposition d'un modèle québécois de privatisation des services d'eaux," (Québec: Ministère des Affaires municipales et des Régions, February 1996). Document obtained by Louise Vandelac, University of Québec at Montréal, under the *Access to Information Act*.

risk and responsibility for performance to the private sector.⁵⁰

Financing Options: Municipalities in Nova Scotia usually arrange long-term borrowing through the Nova Scotia Municipal Finance Corporation (MFC). ... MFC generally has access to lower-cost funds than those available to the private sector.⁵¹

[Translation]

[W]e note that municipal bonds generally sell on the same basic spread as bonds wholly guaranteed by the Government of Québec, i.e., bonds issued by CEGEPs, universities, hospitals and school boards and sometimes even by the Government of Québec itself.⁵²

Although it is true that the cost of borrowing in the private sector is invariably higher than in the public sector, this is only part of the calculation we need to make.⁵³

4.3 New Opportunities for Private Investors

I should stress that when governments promote P3s, they are trying to provide investors with new business opportunities. A move in the direction of P3s would allow pension fund managers to invest (as they already do elsewhere) in stable, solid operations, such as municipal water

⁵⁰ Allyson Pollock, David Price and Stewart Player, *The Private Finance Initiative: A policy built on sand*. An examination of the Treasury's evidence base for cost and time overrun data in value for money policy and appraisal. A report produced at the request of the British trade union UNISON by researchers of the Public Health Policy Unit, (London, U.K.: University College London, 2005), p. 4, http://www.health.ed.ac.uk/CIPHP/publications/unison_2005_pfi_a_policy_built_on_sand_pollock.pdf
The authors cite PFI: Meeting the Investment Challenge (London: Her Majesty's Treasury, 2003), p. 109.

⁵¹ Government of Nova Scotia, "Background: What Is a Public Private Partnership?" in *Strategic Public Private Partnering: A Guide for Nova Scotia Municipalities*, (Government of Nova Scotia: Halifax, n.d.), p. 3, http://www.gov.ns.ca/snsmr/muns/fin/pdf-PPP/PPP_1.PDF

⁵² Finances Fiscalité Évaluation Foncière, Ministère des Affaires municipales et des Régions, *Le certificat de validité émis par le MAMSL pour le finacement à long terme* (Québec: Ministère des Affaires municipales et des Régions, 18 August 2004), p. 2.

⁵³ Agence des partenariats public-privé du Québec, "Do PPPs cost the State more than the Conventional Method?", http://www.PPP.gouv.qc.ca/index.asp?page=question_6_en&lang=en

utilities. Currently, our pension funds (which are used to make our savings grow) often have to look elsewhere for opportunities to invest in water or public transit. The federal Minister of Finance did not contradict this:

A core challenge is to ensure that federal spending has maximum impact. This can be achieved by taking advantage of innovative financing sources through public-private partnerships (P3s). Greater use of P3s will also provide opportunities for Canadian pension funds and other investors to participate in infrastructure projects here in Canada rather than being forced to look abroad, as is often the case now.⁵⁴

Incidentally, this boils down to admitting the obvious fact that P3s provide investors with a better return than the municipal bonds normally used to fund the same municipal utilities.

The Caisse de dépôt et placement du Québec,⁵⁵ the Ontario Teachers' Pension Plan,⁵⁶ OMERS (Ontario Municipal Employees Retirement Savings)⁵⁷ and others as well as a number of banks and private investment funds — including the Australian company Macquarie, the Franco-Belgian Dexia group and others⁵⁸ — certainly have every interest in developing P3s. They have clearly said so in every forum available to them. How can we reconcile the interests

⁵⁴ Jim Flaherty, "Investing for Sustainable Growth," Chapter 4 in *Advantage Canada: Building a Strong Economy for Canadians and Economic and Fiscal Update* (document filed with The Economic and Fiscal Update 2006), latest update November 23, 2006, <http://www.fin.gc.ca/ec2006/plan/plc4e.html> and http://www.fin.gc.ca/budtoce/2006/ec06_e.html

⁵⁵ Caisse de dépôt et placement du Québec, "Les infrastructures, un secteur de choix pour les investisseurs institutionnels", *Perspectives*, vol. 2, no. 1 (Spring 2006), pp. 1–3, http://www.cdp.ca/media/Perspective_printemps06_fr.pdf

⁵⁶ Ontario Teachers' Pension Plan, *Inflation-Sensitive Investments* (Toronto: Ontario Teachers' Pension Plan, November 2006), <http://www.otpp.com/web/website.nsf/web/inflation-sensitive>

⁵⁷ OMERS, *INFRASTRUCTURE large scale security* (Toronto: OMERS, n.d.), http://www.omers.com/About_OMERS/Corporate_publications/Corporate_brochure/INFRASTRUCTURE_large_scale_security.htm

Borealis Infrastructure Management Inc., *Learning More*, (Toronto: Borealis Infrastructure Management Inc., n.d.), <http://www.borealisinfrastructure.com/news/learningmore.aspx>

⁵⁸ The most recent of numerous investment funds specializing in infrastructure is the Criterion Water Infrastructure Fund, launched by a "Canadian" firm, funded by "worker monies" and managed by a Swiss firm: http://www.vengrowth.com/criterion_pressDetails.asp?id=591. See Keith Damsell, "Water fund seeks to quench investor thirst," *The Globe and Mail*, February 22, 2007, p. B19, <http://www.globefund.com/servlet/story/GFGAM.20070222.RWATER22/GFStory/>

of an individual who is a citizen and a taxpayer as well as a future pensioner who will someday get an annuity that could be guaranteed a better return from the institution managing the pension fund? We should not confuse all these issues: P3s should only be considered advantageous if they represent an improvement for the municipality and its citizens, not if they make things better for a pension fund and its pensioners.

We could let the private partner take responsibility for funding, even though conventional municipal funding is simple, easy and much cheaper than its private counterpart. But this is a poor solution to a non-existent problem. The fact remains that some parties have an interest in making us think that there is a problem, because they have solutions to sell.

4.4 One of the Great P3 Illusions: A Fake Loan, “Off the Balance Sheet”

With decreasing frequency we read that P3s compensate for the problems municipalities have tracking down a lender or that P3s pave the way to less expensive funding. Such statements are much too obviously untrue and completely untenable. Today, almost everybody recognizes this.

On the other hand, another falsehood of the same ilk somehow manages to persist: the argument that a P3 allows one to benefit from an asset, such as a city hall property or the walls of a municipal garage, without having to enter a loan as a liability. Strictly speaking, this is correct: instead of a commitment to repay a loan, the municipality has to pay rent. Therefore, by sleight of hand, this approach would not affect the municipality's credit.

If this seems too good to be true, that is exactly the case. It is a tantamount to believing that you can have your cake and eat it too.

Anyone who has ever contacted a lending institution to take out a personal loan will realize that all the questions posed are aimed at calculating borrowing (or repayment) capacity. We have all noticed that the rent paid for a rented unit reduces borrowing power by the corresponding amount. For an individual, as for an institution, the lender attempts to identify long-term commitments. If an annual lease, possibly renewed when it expires, has a significant impact on a household's reimbursement power, what effect would firm 25- or 30-year commitment have on a municipality?

From the reaction of Moody's, one would think that its managers believe that a P3 is a true partnership in the strict sense of the term, in that it entails a long-term commitment, for better or for worse. Moody's has reduced the debt rating of the University of Québec at Montréal because the university is committed to a large-scale P3. The promise to pay rent over the long term is only a promise but it is governed by a contract.

New York, February 08, 2006 -- Moody's Investors Service has revised the University of Quebec at Montreal's (UQAM) debt rating to A2 from A1. The rating outlook is stable. The downgrade reflects an expected sharp increase in financial obligations as the university embarks on a large capital improvement project. . . .

If the university's obligation under the lease were added to its outstanding debt, the university's debt burden would more than double . . .

Potential budgetary pressures generated by these long-term contractual commitments could be exacerbated by the university's limited financial resources. . . .

And, in fact, it seems that Moody's was correct; it became apparent that the project, already fairly far advanced, was headed for a cost overrun. Since then, the project, baptized Îlot

Voyageur, has been in the headlines every week.⁵⁹

The myth of off-the-balance-sheet P3 commitments persists in the United Kingdom. Thanks to a particular accounting treatment (both debatable and debated); the government has built a number of schools and hospitals using P3s without having to enter the corresponding commitments as liabilities, which allows it to appear to be reducing the public debt. But now the accountants are finally balking at accepting this unacceptable arrangement, and this issue has triggered a fascinating debate, which is currently raging:

A furious argument is brewing in the Treasury over a surprise change to accounting rules that could suddenly dump billions of pounds of PFI liabilities in the government's lap. ...

(R)ival camps are battling over an obscure, 38-page piece of accounting guidance known as Technical Note 1 to Application Note F of FRS5. The turgid title is an accurate indication of the readability of the text. Yet this document could hardly be more important: it has hidden the government's liability for PFI schemes for nearly a decade. Now government advisers and senior accountants want the note removed, and if they are successful, they could also dispose of Chancellor Gordon Brown's reputation for economic prudence — and throw the future of the PFI into doubt.

... Gordon Brown or his successor will have to choose between two no-win options: take a hit on national debt and his reputation for competence or be accused of playing fast and loose with accounting standards — and the nation's finances.⁶⁰

⁵⁹ Marie-Andrée Chouinard, "UQAM: le projet de l'Îlot Voyageur perdra du lustre. La rentabilité serait moindre qu'anticipé en mars 2005," *Le Devoir*, December 13, 2006, p. A4.

⁶⁰ Mark Leftly, "Out of the blue ... and into the red", *Building*, No. 5 (February 2, 2007), <http://www.building.co.uk/story.asp?sectioncode=667&storycode=3080636&c=0>

4.5 Is Municipal Income Adequate?

The real problem in municipalities is the inadequate rate of investment in maintaining, rehabilitating and rebuilding existing infrastructure. These difficulties are not caused by borrowing problems or by the incompetence of municipal employees, who have sufficient know-how.

The problem is related to municipal income levels, which are often insufficient to cover the required loan repayments. And the difficulty is convincing people that they must pay more now (and forever) to ensure nothing changes. Not a very good sell!

P3s cannot provide a solution insofar as they do not decrease annual funding needs. Indeed, expenditures still have to be covered, as the annual amounts payable to the proponent are about the same as the annual instalments to repay a municipal loan taken out for a traditional project.

P3s do not enable municipalities to reduce expenditure levels. However, a P3 can serve as a front to facilitate the introduction of a fee structure that would allow municipalities to reduce general taxes or use the sums freed up for other purposes. User fees or taxation? Vertical equity, horizontal equity, efficacy, efficiency, transparency, contrary outcomes and so forth: user fees are, of course, matters of public finance that, in themselves, have nothing to do with the P3 formula. Indeed, a municipality can already impose a fee system whenever technically and politically feasible. The idea that a private partner can be brought onboard can then be advanced to (claim to) justify the imposition of a fee structure to cover the cost of a utility that used to be paid for out of the consolidated budget and general taxes. However, to tell the truth, this is of little or no consequence, as numerous publicly controlled utilities are financed through fees, whereas numerous P3s are funded from the consolidated budget. We can even see to it

that the private partner is compensated for its efforts based on service volume, as if fees had been in effect, without users being charged at all. This is done through *shadow tolling*: for example, the government uses its budget to pay the private operator of a highway a quasi-fee, based on traffic volume. It must be noted that P3s basically change nothing, but they can sometimes alter appearances and make user fees more acceptable.

Avenues to compensate for the lack of municipal income are well known, but that does not make them any easier to follow. Otherwise, there would no longer be a problem! Assuming the higher orders of government do not transfer sufficient funds to cover the entire cost of an investment, whether for new construction or for rehabilitating existing infrastructure, a municipality must increase its taxes or its rates (or cut other expenses), regardless of whether it saves the amount to be spent over the years or borrows to spread cash disbursements out over a longer period. This is a classic public finance problem in which the core issue is the political ability of municipal authorities to mobilize their people by making choices that win the support of citizens. This is nothing new: it has always been more popular to promise “bread and circuses,” a new arena or playing field than to announce significant allocations to keep the water supply or the somewhat functional sewage systems running. Nobody is concerned about such invisible infrastructures until they break down. A P3 solution does not, in itself, facilitate the strictly political task of persuading taxpayers of the immediate need for additional efforts to safeguard the future.

4.5.1 The Demand for More Diversified Income Sources

Municipalities and their associations are demanding that the other orders of government increase transfer payments, and that these transfers be long-term. They are also demanding the right to source additional revenue from tax bases currently not within their jurisdiction, in order to

diversify their income sources.⁶¹ Municipalities put up with the loss of taxes they used to receive, which have been expropriated by other orders of government. For example, the first legal lotteries were municipal, and known as “voluntary taxes.”^{62 63} While fascinating, these matters are not immediately relevant to the P3 issue.

4.5.2 P3s and Municipal Income

A P3 is not a licence to print more money. Whether you repay a loan or pay a private partner, you need to increase municipal revenue to do so. Adopting the P3 option is no magic solution.

In fact, it is fascinating to see how the word “affordability” is becoming very popular in the United Kingdom, especially among people questioning the creditworthiness of local governments involved in P3s.

⁶¹ Federation of Canadian Municipalities, *Building Prosperity from the Ground Up: Restoring Municipal Fiscal Balance*, (Ottawa: Federation of Canadian Municipalities, June 2006), <http://www.fcm.ca/english/documents/fiscalim.pdf>

Union des Municipalités du Québec, *Mémoire pour les Consultations prébudgétaires 2007–2008 “Des régions plus prospères”*, (Montréal: Union des Municipalités du Québec, February 2007), http://www.umq.qc.ca/publications/memoire/_pdf/UMQ-Memoire-Consultations_prebudg-Prosperite_des_regions-VI.pdf

City of Montréal, *Pour relancer la Métropole: des solutions nouvelles et durables*, (Montréal : City of Montréal, 2007), http://ville.montreal.qc.ca/pls/portal/docs/page/librairie_fr/documents/solutions_durables.pdf

⁶² Pierre J. Hamel, “Le ‘pacte fiscal’ entre le gouvernement du Québec et les municipalités: la raison du plus fort est toujours la meilleure,” *Organisations et Territoires*, Vol. 11, No. 3 (Fall 2002), pp. 31–38, http://www.vrm.ca/documents/Hamel_PJ.pdf

⁶³ From 1856 until the end of the 1960s, under federal law, all games of chance were considered harmful and immoral, except for races (if, indeed, races count as games of chance), and they were prohibited, especially lotteries. The mayor of Montréal found a trick to circumvent the *Criminal Code* and set up a municipal lottery. In 1968, he introduced a voluntary tax system, which randomly compensated a few of the taxpayers who had proved to be such responsible citizens, by drawing at random the numbered tax receipt stub issued to each donor, not to be confused with a mundane lottery ticket. This happy tax initiative was soon imitated by the mayor of Sherbrooke. The Government of Québec then opportunistically hastened to take advantage of the loophole in the *Criminal Code*, thus displacing the ingenious municipalities.

North American Association of State and Provincial Lotteries, *Lottery History*, (Willoughby Hills, Ohio: North American Association of State and Provincial Lotteries, 2002), <http://www.naspl.org/index.cfm?fuseaction=content&PageID=12&PageCategory=11>

City of Montréal, *The voluntary tax*, http://ville.montreal.qc.ca/portal/page?_pageid=165_230383&_dad=portal&_schema=PORTAL (Funds of the Clerk’s Office (VM6); press clipping files, D401.12, Voluntary Tax; Funds of the City Council (VM1); and Dossiers de résolution, 4th series, No. 908).

4.5.3 The Montréal Water Fund

While municipalities still hope for new sources of income or more generous and more stable transfers, it is now possible to attack the infrastructure renewal file by going about it gradually, methodically and, it must be added, courageously.

Montréal owns more than its share of aging infrastructure, especially within its waterworks system.⁶⁴ However, funding will soon no longer be a problem. In 2004, in view of funding needs that were at least as great as those faced by other cities, the City of Montréal began to gradually compensate for its lack of resources by increasing property taxes every year. Now it plans to be able to cover the cost of rehabilitating its water infrastructure by 2013.⁶⁵ The results of this new direction can already be felt. A majority (but not unanimous) choice is leading to a project controlled entirely by the public sector and funded by local taxes, without user fees based on residential consumption.

4.6 P3s and the Rehabilitation of Existing Infrastructure

The construction of new infrastructure is always more attractive than investing in the rehabilitation and maintenance of existing assets. And so it is easier to sell taxpayers and other orders of government on spending for new infrastructure or for a new service, which can be inaugurated with great public fanfare. P3s are most often used to start new services and build new infrastructure, which is exactly where the problems are least evident.

⁶⁴ Age does not explain everything, as practically new underground pipes can give up the ghost prematurely when subjected to excessive stress, if there is a manufacturing defect or if they have been installed incorrectly. Similarly, a water pipe can easily have a life span of 100 years. In Montréal, we sometimes encounter much older water pipes, built of wood or brick, that are still perfectly functional. However, somewhat like our arteries, old pipes statistically are at greater risk of becoming dysfunctional.

⁶⁵ City of Montréal, "Public Management of Water," in *Budget 2006* (City of Montréal, 2006), pp. 85–90, http://ville.montreal.qc.ca/pls/portal/docs/page/service_fin_en/media/documents/budget-2006-5a-global-fonds-eau-a.pdf

If we all adopt a genuine sustainable development perspective, we will have to invest more in rehabilitating and strengthening what exists, in regenerating the urban network, and in consolidating city cores and conurbation centres. To the detriment of new infrastructure, this inevitably force (or not) urbanization and full into the countryside.

Apart from the fact that maintaining and rehabilitating an existing sewer system will always be the least glamorous investment imaginable, taking action to maintain existing structures poses itself particular problems. The design and construction of a new facility from A to Z probably makes the involvement of the private sector easier. Conversely, using a P3 to rehabilitate an existing facility raises the problem of the relative ignorance about the state of the infrastructure needing intervention. The partners must agree on a fair price for work of largely unknown scope. The picture may well change over the years, which increases the uncertainty of long-term agreements. And uncertainty, like information, has its price

5. Risk Sharing

P3s might be particularly well suited to responding to the risks and uncertainty that inevitably surround very long-term projects. Several proponents of the P3 formula insist that its main advantage is not financial. They admit from the outset that the cost of borrowing is higher for private business and that, even though this higher cost is counterbalanced by greater efficiency (from better cost control, lower salaries and so forth), any financial advantage is lost to tax considerations and the contractor's legitimate profit. They concede that whatever financial advantage remains is too small to justify the strategy. Instead, the main advantage of P3s may lie in risk-sharing, as the private partner assumes some of the risk that would otherwise be borne by the public alone.

Several learned colleagues strive to prove that risk is distributed differently under various arrangements. But, in the end, the breakdown seems simple enough in actual practice. Private businesses landing contracts generally form an ad hoc consortium and their liability is, by definition, limited to their investment in the consortium. In fact, generally, private partners' capital contribution is limited, as long-term funding will be found and secured by assets or by regular and predictable receipts. This funding will bear interest at rates lower than the companies had hoped to earn as return on their capital. (This is the much-sought-after "lever effect.")

[Translation]

(T)he lenders (following the example of the public body) only enter into agreements with the company (the consortium) and not with the sponsors (the companies landing the contract). The security offered is therefore limited to the assets of this company. As this company has very little equity, the sponsors can, in the event of a problem, throw in the towel and abandon it to its fate. This temptation will be even greater if the weakness

occurs during operations, if the capital invested has already been recovered and the current net value of future cash flow falls below refinancing costs. This problem may arise even in the case of the dedicated subsidiary of a large group, in so far as the contract is only with the subsidiary.⁶⁶

Another factor to consider concerns the strategy of companies that are selected for a P3 contract based on their reputation and their expertise. It is not unusual to see these companies sell their equity and withdraw completely from the business. This is particularly common among public works and civil engineering companies, which are interested first and foremost in the construction phases of projects. P3s seem eternal, whereas financial markets are focused on next-quarter results. This makes changes in private-partner ownership all the more frequent.⁶⁷

The result is that, if by misfortune a P3 crashes at the end of the runway, the private companies will certainly end up paying — and this is sometimes a real risk. Our sympathy is appropriate in such cases, but they will pay what they have invested and not a cent more. It is indeed very rare for the parent companies controlling the consortium to fully guarantee the subsidiary's involvement.

As for the public partner, it has several options.

- It will normally allow the private consortium to declare bankruptcy, hoping that the enterprise will be started up again “on a sounder footing.” In such cases, those who lose out most are generally the unsecured creditors and the workers, who are offered their jobs back, but under “more competitive” conditions.
- It can change the rules of the game, even though this is unfair to the unselected competitors, who may have been eliminated because of a more expensive but ultimately

⁶⁶ Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 74.

⁶⁷ This often involves only a single project, but now Amec, a giant British company, has announced that it intends to dispose of its entire impressive portfolio of P3/PFI projects. See Mark Milner, “Amec issues profit warning and unveils construction sell-offs”, *The Guardian*, December 14, 2006, <http://business.guardian.co.uk/story/0,,1971418,00.html>

more realistic offer, in which case the public partner may intervene in one of the following ways:

- by granting the P3 an outright subsidy;
- by bringing in fresh capital from the consolidated budget;⁶⁸
- by extending the period during which the business can be repaid — for example, the concession for a Californian highway was extended from 35 to 45 years,⁶⁹ not to avoid a bankruptcy, but to compensate for the inevitable unexpected expenses that occurred during the work and to increase the expected return to a “reasonable”⁷⁰ level of 18.5 per cent, despite strong opposition by public servants at the California Department of Finance;⁷¹ or
- by guaranteeing the enterprise and enabling it to be refinanced.

Undoubtedly, we could accept a turn of events in which a P3 arena project turned out badly. A population capable of surviving the cancellation of a professional hockey season would likely endure the temporary closure of an arena.⁷² But what would happen if a financial catastrophe affected a private water utility or public transit operator? Can we for one moment imagine a municipality sitting by and watching the fallout without getting involved? In the case of a vital service, P3 risk sharing seems to be a fool’s bargain.

⁶⁸ Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 74.

⁶⁹ “Schwarzenegger approves bill extending toll road agreement”, *The San Diego Herald Tribune*, September 26, 2006, http://www.signonsandiego.com/uniontrib/20060926/news_1m26tollroad.html

⁷⁰ The inverted commas are used in the official text: “reasonable return” on investment http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0451-0500/sb_463_cfa_20060831_204613_sen_floor.html

⁷¹ There was also a case where a similar extension was prolonged for up to 54 years, to ensure that the project was profitable for the private partner. See Graeme A. Hodge, “The risky business of public-private partnerships,” *Australian Journal of Public Administration*, Vol. 63, No. 4 (December 2004), p. 37, <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1467-8500.2004.00400.x> This was not a record term, as some P3s stipulate longer terms at the outset. We have seen 99-year terms, as in the case of Highway 407, and even longer ones. However, my interest here is in extensions that occur along the way.

⁷² However, we must not minimize the possible problems caused when a P3 goes wrong. See CUPE, *P3 recreation facilities: Who benefits?* (Ottawa: CUPE, 1 September 2005), http://cupe.ca/recreation/P3_Recreation_Facili?slashSess=f9e2bfd6c6ed3d066b74a2675d8e4abf

The issue of official risk-sharing has, in fact, gained some importance, to the extent that it can increase the apparent weight of the commitment of either partner. This is why the British government is stubbornly doing battle over what would seem to be a highly technical, almost philosophical, accounting detail. Depending on decisions to be made in the spring of 2007, the British national debt may abruptly increase, if financial accounts better reflect the risks caused by P3s. These risks, which objectively would be borne by the government, are currently entered in the private partner's books and therefore do not appear on the public partner's balance sheet.⁷³

⁷³ Mark Leftly, "Out of the blue ... and into the red", *Building*, No. 5 (February 2, 2007), <http://www.building.co.uk/story.asp?sectioncode=667&storycode=3080636&c=0>.

See section 4.4 of this report, "One of the great illusions about P3s: A fake loan, 'off balance sheet.' "

6. Flexibility

One of the arguments frequently used in favour of P3s is that they permit a great deal of flexibility. But what kind of flexibility are we talking about? The preliminary discussions prior to the preparation of estimates are certainly longer and more arduous for a P3 project than on a traditional one. Would there then be more flexibility for P3s once operations are underway? Yes, and maybe not. The contractor has every interest in sticking firmly to the conditions originally negotiated, even if it means changing the project along the way, in return for corresponding compensation. Flexibility too, has its price. P3s limit flexibilities as they constrain elected representatives and reduce over the long term their ability to adjust to unforeseen circumstances.

6.1 Investing on the Quiet: Renting Rather than Buying or Building

By signing a lease on a new building, we can avoid the bylaw procedures governing municipal loans, such as the provision that if a sufficient number of opponents to the loan petition for a referendum one must be held or the borrowing bylaw and the departmental authorization must be withdrawn. P3s are attractive to some people because they offer a way to circumvent cumbersome mechanisms that protect taxpayer interests and because they can prevent a debate on the appropriateness of an investment. This is not an advantage one would promote publicly.⁷⁴ However, it is a major advantage of P3s and other forms of leasing. Officials appear to be adhering to ceilings on long-term debt or commitments, while benefiting de facto from the

⁷⁴ André Beauvais of the *Journal de Montréal* is about to publish one or more articles illustrating this specific point.

same asset, although generally at greater cost.⁷⁵

6.2 The Onerous Task of Preparing Estimates

It is not always easy doing business with the private sector. Like any good contract, a P3 contract must attempt to foresee the unforeseeable, in order to limit quarrels as the work progresses. Elected representatives and citizens seek assurances about each party's responsibilities and seek remedies in the event of a disagreement with the private partner. The company, quite legitimately, seeks assurance that it is not on the road to ruin. What is already true of any contract becomes very important in the case of a P3, because we have to look ahead, not just one year or five years, but 20 to 30 years. Normally, if we get service or merchandise that does not meet expectations, or if we cannot get after-sales service as covered by the contract, we can change suppliers when the contract comes up for renewal. With a P3, there is no choice. We have to remain with the same supplier for decades and try to get the supplier to see things our way.

How can we foresee what will happen in the next 25 or 30 years? How did the future look to us in 1982 or in 1977, when we still had no idea how personal computers and the Internet would change things? We had confidence (blind confidence) in North American automobile manufacturers as pillars of the economy. Consider companies like Enron: it was born of a merger in 1985, sailed high for a decade and finally declared bankruptcy in 2001. Its Azurix subsidiary was involved in water projects, and briefly participated in a 1998 P3 contract in Hamilton that was dismantled a few months after Enron went bankrupt.

Everyone agrees on one thing about P3s: the increased use of P3s by municipalities will

⁷⁵ Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* "Repères" Collection No. 441. (Paris: La Découverte, 2006), p. 74.

doubtless make some people happy, particularly business lawyers who draw up contracts. The parties to a P3 always want these contracts to be as sophisticated as possible, to foresee the unforeseeable (even over 25 or 30 years) and to avoid nasty surprises. Anyone who is even distantly related to a lawyer will be happy about this. But consider the following two examples.

The first relates to nutritional logistics and concerns a weapon of mass consolation: the fruitcake intended for American GIs. When the Pentagon ordered fruit cakes from the private sector, it wanted its money's worth. But it was also concerned about taste, shelf life, the quality of the ingredients and so on. Leaving nothing to chance, to avoid picking the wrong supplier, an estimate was prepared that was as heavy and rich as a good fruitcake:

Can anything be nuttier than a fruitcake? Try the Pentagon's recipe for making one. MIL-F-14499F, the Defence Department's specifications for holiday fruitcake for its 2.2 million servicemen and women, consumes 18 pages vs. the two-thirds of a page for standard dark fruitcake in the classic *Joy of Cooking*. Even for the organization that created 22 pages of specs for a "trap, mouse," and 16 pages for a "whistle, plastic," the recipe for "fruitcake, canned," represents a point, high.⁷⁶

If, to guarantee the provision of a decent fruitcake, an 18-page estimate of specific parameters is required, imagine the number of pages required for a complex P3!

The second example concerns the London Underground, a good portion of which is undergoing major rehabilitation through a P3:

⁷⁶ "Fruitycake. A yummy MIL-F-14499F," *Time*, January 6, 1986, <http://jcgi.pathfinder.com/time/magazine/article/0,9171,1074894,00.html>

PPP on the Underground is both costly and complicated. ... 135 volumes and 28,000 pages of contract.

During the October 2005 safety crisis on the Northern Line, London Underground was forced to employ an army of lawyers to read two million words of the PPP agreement in order to check it was allowed to impose emergency levels.⁷⁷

6.3 A Contract: Sounder Than a Constitution

[Translation]

“You can change a law, a bylaw and even a constitution, but terminating a contract is very complicated and very expensive,” Marie-Claude Prémont warns.⁷⁸

In Ottawa, the newly elected city council is discovering this painful fact. On December 14, 2006, it decided to either cancel or completely rework its light rail project. However, the private partner, Siemens, which had invested in project preparations, did not see things the same way: it demanded \$175 million for breach of contract if the new council insisted on going back on the former council’s plans. But even if the council became more obliging again, Siemens still required compensation in the amount of \$70 million, as a “penalty.”⁷⁹

In several respects, a P3 lease is more restrictive than a mortgage: you can always decide to sell the property you own, even if you are not sure you will be able to sell it quickly, but you

⁷⁷ Public Services Not Private Profit, *The Case Against Privatisation*, <http://www.publicnotprivate.org.uk/booklet.pdf>. P. Blémont reports another British contract that is 12,000 pages long; see P. Blémont “Le partenariat public-privé à la source,” *Bulletin juridique des contrats publics*, No. 38 (2004), quoted in Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 74.

⁷⁸ Ève Gauthier, “La démocratie soluble dans l’eau privatisée,” *Alternatives, le journal*, Vol.12, No.6 (March 2006), p. 5, <http://www.vrm.ca/documents/EveGauthier-PPPeau.pdf>

⁷⁹ Susan Sherring, “Things go bump in the night,” *Ottawa Sun*, February 15, 2007, <http://www.ottawasun.com/News/OttawaAndRegion/2007/02/15/3626815-sun.html>

cannot easily rid yourself of the commitments entered into under a 30-year P3.

Elected representatives have to adapt to changing circumstances, making adjustments and cuts. But P3s create rigidities that impose constraints on elected representatives and reduce the leeway they should have to adjust to unforeseen circumstances. In fact, with a contract that is costly to terminate or amend, budget tensions are deflected and the burden of making adjustments and cuts is transferred to the weakest links. In this way, adjustments will first be made to operations that are not run by a P3, as the iron-clad P3 contract provides a kind of protective sanctuary, to the detriment of other projects:

(The Monklands Hospital, which is not a P3) was downgraded because of the huge cost of the other two hospitals in Lanarkshire, Hairmyres and Wishaw. These were built using Private Finance Initiatives (PFI). Professor Pollock added: "Wishaw and Hairmyres both have 30-year PFI contracts. So if you were to make a significant change or service closure then the PFI consortium would have to be compensated so therefore Monklands would have to be sacrificed because it is not protected by a PFI contract."⁸⁰

In 1994 in France, conditions in Grenoble's 1989 water utility contract led to an accusation that the mayor (who was also a minister) had accepted a bribe.⁸¹ He was convicted and sentenced in 1996, and then imprisoned for several months. His opponents won the elections that followed, but even so, they could not break the contract. All that they managed to achieve was to induce the concession holder to reopen the contract and grant minor amendments. Grenoble did not assume control over the utility again until 2000, despite a privatization that was legally recognized as fraudulent in 1996.

⁸⁰ *Reverse casualty unit downgrade*, BBC News, 6 December 2006, http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/6212940.stm

⁸¹ Dominique Begles, "Un grand patron pris dans la tourmente de l'affaire Carignon," *L'Humanité*, 15 September 1994, <http://www.humanite.fr/journal/15/09/94/15/09/94-708069>

6.4 P3 Inflexibility as a Guarantee of Long-Term Commitment

Paradoxically, the inflexibility caused by long-term commitments is one of the strongest points in favour of P3s. Municipalities can be criticized — all too often rightly — for haphazardly maintaining and improving their infrastructure. All too often, infrastructure spending is cut to take pressure off the municipal budget. Deferring investments *sine die* reduces the volume of expenditures and to restrains debt in the short run, while keeping current expense programs steady. Too often, however, maintenance and rehabilitation programs that ought to be performed on a regular, planned and foreseeable basis are instead subjected to sudden stops and starts that tend to be unforeseeable because they depend on the current state of the budget. We might hope that these artificial periods of deprivation would be succeeded by waves of investment in prosperous times, but that is not the case. In general, municipalities practise chronic underinvestment.

A typical reaction, especially from interested parties who argue for reduced government intervention, is to want to take away these harmful powers from the elected officers and “relieve” municipalities of the responsibility for maintaining infrastructure. Often in the United States, a municipal service is taken away from the local government and entrusted to a “special district authority,” in which non-elected “experts” are given a secured budget, are kept free from all other pressures and only allocate money so as to keep providing the best possible service. Elected officers are deprived of the authority to undertake real political bargaining, a process that necessarily leads to readjusting priorities, often to the detriment of regular investment in restoring existing infrastructure.

In fact, frozen, protected budgets impose a “final settlement” once and for all, as well as an everlasting division of resources between the various facilities for which the municipality assumes responsibility. Sometimes, instead of guaranteeing a budget out of the municipality’s general revenues, a special district authority is ceded the income, in whole or in part from a certain tax. For example, the municipality might determine that one cent of every \$100 of property assessment must be allocated to an agency charged with a specific responsibility, no part of that amount can be transferred to other budget items.

Along similar lines, P3s sometimes make it possible to ensure more regularity, at least in principle, insofar as their contracts “write in stone” the financing of a service and its rate of investment. For instance, at the start of the contract, the partners may agree on the level at which investments must be maintained (allowing for a few fluctuations). They may fix a minimum or set a target for the quality that must be sustained, or they may define the acceptable limits of deterioration. In more general terms, proponents of the P3 formula claim that it is to a private partner’s advantage to act as a responsible tenant, without being constrained to respect the spirit or the letter of the partnership. However, this hope of securing a steady rate of investment crumbles when we look into a number of concrete cases where it is clear that the private partners have had difficulty doing so: it is especially true for water utilities in France⁸² and in the United Kingdom.⁸³

One thing is certain: the promoters of the P3 formula can hardly promote it for its flexibility and for its inflexibility in the same sentence.

⁸² Philippe Moreau, “Distribution d’eau: les opérateurs privés accusés de sous-investir.” *Les Échos*, November 24 2006, <http://www.lesechos.fr/info/energie/4503374.htm>

⁸³ Mark Milner, “Leaks stem flow of profits at Thames Water,” *The Guardian*, December 1 2006, <http://money.guardian.co.uk/utilities/story/0,,1961584,00.html>

7. Accountability

With lives equal to several periods of electoral office, P3s limit the accountability of elected officers, who can no longer be held responsible for day-to-day operations. To tell the truth, that is just what some people would like.⁸⁴

A guide intended for Nova Scotia municipalities alludes to this as an advantage of P3s, which put a given service at arm's length from elected officials:

Arm's-Length Independence: PPPs may facilitate the efficient and needs-based delivery of certain services by removing political influences from day-to-day operations.⁸⁵

Under normal circumstances, following the traditional way of doing business, it is already often very difficult for elected officers to exercise real control over municipal operations.⁸⁶ There can be no doubt that P3s will only increase these difficulties.⁸⁷

Hopefully, everyone will agree that there is not, *a priori*, any absolute and universal “good practice” in this matter. We can and must discuss whether elected officers should have direct control over managing the public services for which they are responsible. Everyone will have an opinion about whether such control is good or bad; what is certain is that elected officers will have less control under a P3.

⁸⁴ See section 6.4, “P3 Inflexibility as a Guarantee of Long-Term Commitment.”

⁸⁵ Government of Nova Scotia, “Background: What Is a Public Private Partnership?” in *Strategic Public Private Partnering: A Guide for Nova Scotia Municipalities*, (Government of Nova Scotia: Halifax, n.d.), p. 5, http://www.gov.ns.ca/snsmr/muns/fin/pdf-PPP/PPP_1.PDF

⁸⁶ See section 8, “Transparency.”

⁸⁷ Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 53.

8. Transparency

There is something that is even clearer, if I may be so bold as to say so. P3s make the management of services less transparent, because it is the accepted practice in business to do that. In private enterprise, it is in nobody's interest to reveal their little manufacturing secrets to competitors who, next time around, would take advantage of them to walk off with the prize.

8.1 Transparency in Public and Para-public Corporations

Expecting transparency in private sector activity is unrealistic. Citizens and their elected representatives even find it hard to get information about businesses under full public control, let alone to verify or claim to control their activities. If anyone needs to be convinced of this, recall that even the auditor general of Québec was forced to publicly acknowledge that his scope for action and understanding is limited because he does not have outright authority to investigate either the Caisse de dépôt et de placement or Hydro-Québec, even though these organizations are completely "public."⁸⁸

As time goes by, we could easily collect an array of such stories showcasing public or para-public corporations embezzling amounts often in excess of tens of millions of dollars. In December 2006, such a case arose involving Fannie Mae, an American federal agency that finances housing.⁸⁹ Although most para-public and near-public enterprises doubtlessly perform their tasks in a manner that is above reproach, in Québec and in France, municipally-owned and

⁸⁸ Canadian Press, "Le vérificateur général n'est pas le bienvenu," *Le Devoir*, December 7, 2006, p. A3.

⁸⁹ Accounting manipulations permitted the inflation of bonuses awarded to senior managers. See Eric Dash, "Fannie Mae Ex-Officers Sued by U.S.," *The New York Times*, December 19, 2006, http://www.nytimes.com/2006/12/19/business/19fannie.html?_r=1&ref=business&oref=login In fact, Fannie Mae has been making headlines since 2004 with stories of "creative accounting," especially inflating performance and consequently awarding over-generous performance bonuses.

inter-municipal enterprises are in the news more frequently than would be warranted by their numbers, due to all sorts of “scandals.”⁹⁰ Cases of misappropriation of “public” monies to covertly fund political parties, or even to line individual pockets, are exposed much more frequently among these bodies than they are within conventional publicly controlled operations. This cannot be coincidence.

The first example sheds light on the difficult role of local elected representatives. In France, a local authority joint board for refuse disposal, the Syndicat intercommunal de traitement des ordures de la région de Rambouillet (SITCOM), was doing business with SITA, a subsidiary of the Suez-Lyonnaise des Eaux group.

In April 2003, an investigation was launched into the [Translation] “misappropriation of public monies, forgery and the use of forgeries, favouritism and covering up these misdemeanours”:

[Translation]

One of the first people to raise questions about the murky accounts (of these) local authority joint boards (reported that), like many elected municipal representatives, he tended to trust the directors: “I voted for the budgets, just like everyone else. From time to time, there were certainly conflicts, but nothing out of the ordinary was detected. ... In fact, we had become part of a process that lulled us to sleep”⁹¹

⁹⁰ Relatively speaking, there is no lack of Québec examples any more than there is a lack of French ones, and a multitude of articles can be found recounting all kinds of scandals. Thus, just to cite the case of one single para-municipal company (created by the merger of three others) in the City of Montréal, we find a good 20 articles in the daily press exposing various schemes that are not strictly kosher.

Pierre J. Hamel, “Loin des yeux...Les agences unifonctionnelles et les sociétés d'économie mixte (SEM),” in Sandrine Cueille, Robert Le Duff and Jean-Jacques Rigal, eds., *Management local, de la gestion à la gouvernance: 6e Rencontres Ville-Management* (Paris: Dalloz, 2004), pp. 337–359, p. 358.

⁹¹ Jacques Moran, “Ordures ménagères et scandales financiers,” *L'Humanité hebdo Île-de-France, L'Humanité*, No. 18241 (April 5 and 6, 2003), p. 1.

Even when the rules and laws are observed to the letter, we find that para-public and inter-municipal companies are far removed from the eyes of city councils and sometimes take the liberty of some small sleight of hand, which would be much more difficult within the framework of a traditional municipal service. This doubtless explains, to a large degree, why proponents are interested in these agencies.

It is symptomatic that the salaries of CEOs of companies under municipal authority are more substantial than the salaries of the highest public servants in the municipal administration. Their salaries are well above those of mayors.⁹² The same scenario is clearly visible at all levels of government. It is common for a senior executive of a government-owned company to be paid more than the Prime Minister. Consider the unsurprisingly high remuneration of the head of the Agence des partenariats public-privé du Québec:

[Translation]

The PQ critic of government services, Sylvain Simard, is astounded at the remuneration paid to Mr. Lefebvre: “With his annual salary of a quarter of a million (dollars), the president of the Agency manages an outfit with a budget of \$7.2 million, which employs 25 people at the moment. The Deputy Minister of Health earns 30 per cent less and manages \$22 billion and 272,833 employees. What’s wrong?”⁹³

There’s more. The bosses of Québec municipally-owned companies are entitled to “French style” expense accounts, which enable them to host a delegation of foreign visitors quite amply. Under the same circumstances, elected municipal representatives sometimes have to dig into their own pockets (if only to act the same with their French counterparts).

In the case of para-municipal and inter-municipal companies, we again very clearly see this

⁹² François Cardinal, “L’ex-chef de cabinet du maire Tremblay dirigera la SHDM. Les circonstances de la nomination de Martial Fillion restent nébuleuses,” *Le Devoir*, October 18, 2002, p. A4.

⁹³ Antoine Robitaille, “L’Agence des PPP coûte plus cher que prévu. Le p.-d.g a un salaire plus élevé que le sous-ministre de la Santé, s’indigne le PQ,” *Le Devoir*, November 16, 2006, p. A3.

distance from the local council and this “paid in advance” thinking: once the council has voted on the annual budget, sometimes after lengthy discussions, monitoring and control are no longer of the same quality as they are for the operations of traditional municipal services. As one source told me, once the budget has been voted on and the funds have been paid to this somewhat independent agency, “the money no longer belongs to anyone.” Only very rarely are unexpended amounts returned to the general budget. It is as if the representatives had kissed this money goodbye. It will all be spent or committed, if only to justify extending or even increasing the budget allowance the following year.

We can illustrate the real distance between a para-municipally-owned company and the municipality that owns it with one last anecdote. An executive from a major Québec bank was blamed, by some stunned colleagues, for having increased the line of credit of a municipally-owned company — despite rumours and media reports that the company was technically in bankruptcy.⁹⁴ The executive responded that he had not wasted the millions committed to the credit extension and, in fact, he had recovered all the funds advanced. Despite the fact that the initial loans were secured by the company’s property holdings, the company was in fact now technically bankrupt. It seemed that the security on the loan was no longer sufficient. The bank’s legal advisers had warned the executive that it would likely not be easy to hold the city accountable for the debts of a para-municipal company. Any proceedings initiated against the company would almost certainly be won but they would also be long and costly. To keep everyone happy, the bank assisted the municipally-owned company in exchange for a formal credit guarantee from the city that would guarantee all the sums loaned.⁹⁵ This shows that the

⁹⁴ Jean-Pierre Bonhomme, “Trois sociétés para-municipales de Montréal en ‘faillite technique’,” *La Presse*, May 5, 1993, p. A6.

Claude-V. Marsolais, “La SHDM est pratiquement en faillite technique,” *La Presse*, November 28, 1997, p. A7.

⁹⁵ Gilles Gauthier, “La Ville de Montréal emprunte 72 millions pour des sociétés para-municipales trop endettées,” *La Presse*, December 17, 1991, p. A4.

Yvon Laberge, “Montréal verse 262 millions pour secourir ses sociétés para-municipales,” *La Presse*, May 7, 1993, p. A3.

distance between a para-municipally-owned company and the para-municipality that owns it is not just theoretical.

8.2 Transparency in Mixed Enterprises

Between a traditional, para-municipal company and the municipality that owns it outright, there is already a certain arm's-length relationship. The distance increases in mixed enterprises (MECs). MECs are a whole other species. They combine the public and private sectors. Under Québec law, the public partner is the majority shareholder, with a 50 per cent plus one share.

In a huge study of MECs in France, the Le Galès team made some comments that seem to apply perfectly to the case I will present below:

[Translation]

Faced with the movement to redefine the boundaries of what is public and what is private, the fragmentation of urban government and questions about local public space, LMECs (local MECs) can be or could be one of the instruments central to local public action. They may also represent the worst form of collusion between public and private interests, obscuring the public debate, creating local fiefs for certain elected representatives and manipulating public interest.⁹⁶

In many ways, France is the homeland of MECs, although French MECs are not always really “mixed,” in that they do not always have a private partner.⁹⁷ France is not the only land of

⁹⁶ Patrick Le Galès, Jacques Caillosse and Patricia Lonce-Moriceau, *SEML et la gouvernance urbaine, rapport de synthèse* (Rennes: Centre de recherches administratives et politiques, 1995), l'Université de Rennes I, Institut d'Études politiques de Rennes, URA CNRS 984.

⁹⁷ Indeed, a typical French MEC is, or at least was until quite recently, a joint venture between a single municipality and one or more essentially public partners (such as a Caisse des dépôts et consignations, department, region or

opportunity for MECs, Belgium has had them for at least as long, and Belgian MECs are even more diversified.⁹⁸ Québec also began using MECs recently and although the experience has been limited, it has attracted a lot of attention.

There is only one active MEC in Québec in spite of the fact that four projects were authorized by ad hoc laws adopted in 1994 and 1995. More than six years have passed since the 1997 adoption of parent legislation which was expected to give rise to scores of projects that backers were eagerly anticipating. It is important that we understand why all this enthusiasm has waned. For example, it seems that Québec's transparency requirements are difficult to reconcile with the legitimate needs of private enterprise.

I will not reproduce here the study that highlighted some of the defects afflicting a number of French and Belgian MECs.⁹⁹ Let us simply focus on control and transparency.

The Québec MEC, Compo-Haut-Richelieu,¹⁰⁰ has two shareholders: the Regional County Municipality (RCM) of Haut-Richelieu holds 60 per cent of the shares, and the rest are held by a private partner, the Compo-sortium, a member of the Suez-Lyonnaise des Eaux group. Compo-sortium provides expertise in sorting, recycling and, above all, composting.

affordable housing office), which traditionally join hands to take action in the field of urban renewal and real estate development.

⁹⁸ Alain Sterck and Pierre J. Hamel, "Les sociétés d'économie mixte en Belgique: les intercommunales et le groupe Tractebel," in Sylvain Petitet and Denis Varaschin, eds., *Intérêts publics et initiatives privées. Initiatives publiques et intérêts privés: travaux et services publics en perspectives*, proceedings of a symposium held as part of the 11th conference of le Centre Jacques Cartier, Lyon, December 1998 (Vaulx-en-Velin, France: École nationale des travaux publics de l'État and Arras, France: Presses Universitaires d'Artois, n.d.), pp. 163–168.

⁹⁹ Some elected municipal representatives blamed their colleagues, who are elected municipal representatives like themselves, and directors of the MEC, for the excessively high "compensation" they paid themselves. The amount of each director's fee was certainly reasonable, but the MEC sometimes held as many as eight meetings on the same day, and eight times a reasonable amount results in an unreasonable amount. See Alain Sterck and Pierre J. Hamel, "Les sociétés d'économie mixte en Belgique: les intercommunales et le groupe Tractebel," in Sylvain Petitet and Denis Varaschin, eds., *Intérêts publics et initiatives privées. Initiatives publiques et intérêts privés: travaux et services publics en perspectives*, proceedings of a symposium held as part of the 11th conference of le Centre Jacques Cartier, Lyon, December 1998 (Vaulx-en-Velin, France: École nationale des travaux publics de l'État and Arras, France: Presses Universitaires d'Artois, n.d.), pp. 163–168.

¹⁰⁰ See <http://www.compo-haut-richelieu.qc.ca/>

Although the RCM as a whole is the majority shareholder of the MEC, three municipalities have chosen not to do business with it, even though they are members of the RCM and therefore joint shareholders of the MEC. Worse still, at least one municipality is engaged in a prolonged battle to obtain access to what it deems necessary information on this MEC, even though it is one of its regular joint shareholders.

It is true that transparency is not the primary virtue of business. Indeed, within the framework of her master's thesis at INRS-Urbanisation,¹⁰¹ France Boucher unsuccessfully tried to obtain some of the MEC's governance documents, such as the directors' bylaws, the shareholder agreement and management contracts. After an initial favourable reply, which asked for a slight delay of a few days to permit a few verifications, all doors suddenly became hermetically sealed. Since then, the situation has been akin to the Mafia code of silence. Following several unsuccessful requests, this valiant student formally requested a copy of the documents in June 1995. Given the MEC's refusal, she contacted the Ministère des affaires municipales, which, by law, possessed these official documents. The department claimed that the requested documents were confidential. The persistent student brought her request before the Commission d'accès à l'information, which handed down its judgment in November 1996, recognizing that the internal documents of a "private" company, separate from the RCM, were private and therefore not subject to the *Access to Information Act*.¹⁰² Boucher appeared during February 1996 consultations concerning the draft bill that was to result in the parent legislation respecting MECs. Before the commission's decision, Boucher stressed the contradiction between, on the one hand, this apparently legitimate concern to preserve the secrecy of what falls within the purview of private enterprise and, on the other hand, the principle of

¹⁰¹ France Boucher, *Les municipalités et la gestion intégrée des déchets* [activity report submitted to ENAP, the INRS and the University of Québec at Montréal towards a master's degree in urban analysis and management], (Montréal: INRS-Urbanisation, 1996).

¹⁰² Commission d'accès à l'information du Québec, 95 11 86 Boucher, *France versus Ministère des Affaires municipales and Compo-Haut-Richelieu*, 1996, 9 pp., <http://www.cai.gouv.qc.ca/951185.htm>

transparency that is supposed to prevail in matters of public administration.¹⁰³ Since then, MECs have appeared in all public forums as soon as the issue of lifting the secrecy surrounding their affairs has been raised. Just as invariably, we find the same requests for access to information from some citizens and even some mayors of municipalities that are members of the RCM of Haut-Richelieu, even though they are formally co-owners of the MEC.

To defend their case before the Commission d'accès à l'information, the MEC's managers demonstrated that it is well and truly a private business, one completely separate from its main RCM shareholder. To prove this claim, they obtained testimony from the Mayor of a village in the RCM who is also a director of the MEC. [translation] "[The Mayor] came to explain his role in this capacity. He submits reports on his activities as (a) director of the board of administration (of the MEC) neither to the municipal council (of his municipality) nor to the RCM of Haut-Richelieu."¹⁰⁴

Under these conditions, how can citizens still obtain information? An annual report in keeping with sound accounting practices? It may well prove insufficient, as accounting standards are basically concerned with a company's income and financial position, and this type of report will not provide us with any information about a MEC's hiring policy, let alone contain details about suppliers, purchases, prices or prevailing conditions. We will not obtain any of this public information, which could then be discussed and critiqued when municipal councils make decisions.

There is a conflict here between the need for transparency in public affairs and the equal need for trade secrecy in private business. For we must admit that the arguments advanced in support of confidentiality are often convincing. Since MEC is a genuine company, it competes with other companies, which would delight in having those secrets exposed to the public eye,

¹⁰³ France Boucher, *Les Sociétés d'économie mixte et l'accès à l'information* (memorandum submitted to the Commission parlementaire de l'aménagement et des équipements in charge of examining the draft bill respecting Mixed enterprise companies in the municipal sector), 1996.

¹⁰⁴ Commission d'accès à l'information du Québec, 95 11 86 Boucher, *France versus Ministère des Affaires municipales and Compo-Haut-Richelieu*, 1996, 9 pp., <http://www.cai.gouv.qc.ca/951185.htm>

especially when competing against the MEC during tendering processes or in the non-residential market.

Supporters and opponents of the secrecy surrounding MEC management first confronted each other during two public consultation sessions on the draft bill and then on the bill with respect to municipal MECs. This parent legislation was supposed to throw the doors wide open to budding projects.¹⁰⁵ This entire debate finally resulted in a section of the act that raised the hackles of proponents of the MEC concept. This section most probably contributed to the complete lack of MEC projects since the law was enacted in 1997, since, during the period between the tabling of the draft bill and the bill itself, the Minister convinced himself of the need to guarantee citizens' rights to information, as a safeguard to help protect the public interest:

[Translation]

(I)n order to avoid the appearance of any democratic deficit whatsoever, through any loophole at all for citizens, as the issue is always to render and deliver a public service, and the majority share assumed by the municipal entity must be such that the taxpayer remains the focus, remains responsible and retains control. Control is also exercised through information.¹⁰⁶

¹⁰⁵ Among others: Yves Ménard, *Proceedings of the Commission de l'aménagement et des équipements*, (Québec: National Assembly, February 4, 1997), <http://www.assnat.qc.ca/archives-35leg2se/fra/Publications/debats/JOURNAL/CAE/970204.HTM>

France Boucher, *Les Sociétés d'économie mixte et l'accès à l'information* (memorandum submitted to the Commission parlementaire de l'aménagement et des équipements in charge of examining the draft bill respecting Mixed enterprise companies in the municipal sector), 1996.

Pierre J. Hamel and Alain Sterck, *Les sociétés d'économie mixte: pour le meilleur ou pour le pire?* (memorandum submitted to the Commission parlementaire de l'aménagement et des équipements in charge of examining the draft bill respecting Mixed enterprise companies in the municipal sector), 1996.

¹⁰⁶ Rémy Trudel, transcribed comments in form of preliminary remarks made at the opening of the consultation sessions addressing the bill respecting Mixed enterprise companies in the municipal sector, proceedings of the Commission de l'aménagement et des équipements, (Québec: National Assembly, February 4, 1997), <http://www.assnat.qc.ca/archives-35leg2se/fra/Publications/debats/JOURNAL/CAE/970204.HTM>

The final version of the act therefore says that MECs will immediately be considered public agencies as far as the *Access to Information Act* is concerned.

Several speakers at the public hearings on the bill stressed that these transparency measures would decrease the enthusiasm of potential applicants. Subsequent years have proved them right. There is still only one functioning MEC, the one in Haut-Richelieu. Since then, the debate has continued. There were, for example, public hearings on a proposal to develop a landfill site, submitted by the MEC, but this was challenged by several parties, including one municipality that was a joint shareholder.¹⁰⁷ A second proposal for this landfill site was also turned down.¹⁰⁸ There have also been parliamentary debates on reviewing the *Access to Information Act*.¹⁰⁹ Each time, the same arguments are advanced. A bizarre episode involved a tireless citizen, who managed to obtain a decision from the Commission d'accès à l'information allowing him to receive all the information he wanted,¹¹⁰ but the case was appealed and the decision was suspended and overturned.¹¹¹ To be continued.

¹⁰⁷ Gilles Bérubé, "Mont-Saint-Grégoire demande à la MRC d'abandonner son projet," *Le Canada français*, Vol. 139, No. 21 (October 28, 1998), p. A32.

Bureau d'audiences publiques sur l'environnement, *Projet d'agrandissement du lieu d'enfouissement sanitaire de Saint-Athanase* [investigation report and public hearing], 2001, <http://www.bape.gouv.qc.ca/sections/rapports/publications/bape151.pdf>

¹⁰⁸ Québec Cabinet, Order 88-2004, (Québec: Government of Québec, 2004), <http://www.menv.gouv.qc.ca/evaluations/decret/st-athanase.htm>

Québec Department of the Environment, *Lieu d'enfouissement Sanitaire Saint-Athanase : le Gouvernement du Québec refuse le projet d'agrandissement*, 2004, <http://www.menv.gouv.qc.ca/Infuseur/communiqué.asp?no=463>

¹⁰⁹ Commission permanente de la culture, "Consultations particulières sur le projet de loi n° 122", *Hansard*, Parliamentary proceedings of the 36th legislature, 2nd session, Québec National Assembly, June 13, 2001, <http://www.assnat.qc.ca/fra/Publications/debats/journal/cc/010613.htm>

¹¹⁰ Commission d'accès à l'information du Québec, 98 18 06 Morazain, Jacques versus Regional County Municipality of Haut-Richelieu and Compo-Haut-Richelieu inc., June 11, 1999.

¹¹¹ Court of Québec, Judgment No. 500-02-077386-998: Regional County Municipality of Haut-Richelieu versus Jacques Morazain, Compo-Haut-Richelieu, and Commission d'accès à l'information (Québec: Court of Québec, 2000).

Is it possible to reconcile democratic control and business? How can citizens obtain information about the management of their MEC without thereby handicapping it against its competition? How can we ensure that elected representatives do not confuse public interest with the interests of their administration, or with their political or even personal interests?

The asymmetrical power relationship between the public and private partners remains one of the basic problems with MECs.¹¹² Is a small (or even large) municipality capable of negotiating good terms with a private company that provides many urban services in many countries? Not only is it difficult to negotiate rules guaranteeing that the public interest will be respected, it is also difficult to exercise real control.

[Translation]

In theory, elected representatives hold a majority of seats on the board of directors of a LMEC (local MEC) these days, and therefore control and direct its activities. And yet it's not that simple... The control exercised by the elected representatives on the board of directors is often theoretical: they do not spend much time at it, they are not familiar with the files and they rely on management.¹¹³

MECs were not born yesterday, but nowadays they often form part of a movement that depicts the public sector as ineffective and inefficient — or, at any rate, as less efficient overall than the private sector. This movement, on the other hand, deems specialized agencies, focused on specific missions, to be in a better position to provide services that meet consumer expectations, in keeping with the logic of supply and demand. MECs are participating in this trend, thus fragmenting government, maybe even to the extent of dismantling local public structures.

¹¹² Nicolas Mettan, "Synthèse. Enjeux et limites du recours au PPP," in Jean Ruegg, Stéphane Decoutère and Nicolas Mettan, eds., *Le partenariat public-privé. Un atout pour l'aménagement du territoire et la protection de l'environnement?* (Lausanne, Switzerland: Presses polytechniques et universitaires romandes, 1994), pp. 293–302.

¹¹³ Patrick Le Galès, Jacques Caillosse and Patricia Lonce-Moriceau, *SEML et la gouvernance urbaine, rapport de synthèse* (Rennes: Centre de recherches administratives et politiques, 1995), l'Université de Rennes I, Institut d'Études politiques de Rennes, URA CNRS 984.

With MECs or any other single-function agency, an attempt is being made to rid ourselves of certain bureaucratic rules¹¹⁴ and to short-circuit procedures deemed to be pointless. But it is far from certain that much flexibility and efficiency will be gained this way or that we will reduce user costs. On the contrary, it is fairly certain that we are losing out in terms of accountability, transparency and bureaucratic control — which remain, in theory, guarantors of the public interest.

The dispersal of decision-making centres forces local elected representatives, who often serve part time, to engage in exhausting acrobatics to reconcile the requirements of their multiple mandates with the requirements of their work and personal lives. This is also the experience of many people who represent their inevitably sacred “partner” agency and who sit ex officio on boards and subcommittees. The same is true of local media, which can no longer cover all the meetings making decisions that affect the lives of their voting readers-voters as they themselves have considerable trouble finding their way through the jungle of governance.

8.3 Transparency in P3s

There are issues of transparency and of control by elected officers in municipally-owned organizations of which a municipality is the sole proprietor. These are also issues with MECs in which a municipality is the majority shareholder. Given that, how can we hope for the situation to be any better where a P3 is involved?

Based on international examples, it is clear that a P3 partner behaves, as it should, like the true private business it is. It is practically certain, when applied in Canada, that the P3 formula would

¹¹⁴ Patrick Le Galès, Jacques Caillosse and Patricia Lonce-Moriceau, “Les sociétés d’économie mixte locales: outils de quelle action publique?” in Francis Godard, coordinator, *Le gouvernement des villes. Territoire et pouvoir* (Paris: Descartes & Cie, 1997), pp. 23–96.

be no more transparent than the MEC formula. In fact, P3 transparency has already been addressed by government decisions that are unambiguous and particularly transparent:

[Translation]

The CAI [Commission d'accès à l'information] had also required that P3 contracts and business plans should be public in nature and that private companies involved in a P3 should be subjected to strict transparency requirements. Monique Jérôme-Forget (the Minister responsible for the laws creating the P3 agency in Québec and allowing P3s to be established) has refused to make any amendments in this respect. She explained that the ministers were still responsible for a P3 and would have to be held accountable.¹¹⁵

That speaks for itself. Perhaps we could add this: as P3s tend to be created by very large companies,¹¹⁶ we can expect the problems of transparency and lack of information to be magnified. Indeed, one constant finding concerning relations between municipalities and private business is the asymmetry of resources and information. Typically, a municipality has, for example, only one wastewater treatment plant, and that local government has, and will only ever have, one contract to grant for it. However, that same municipal government deals with companies that generally have much greater means and that possess experience from negotiating contracts and operating plants in numerous cases around the world. This will almost always be the case with P3s. One of the two players has much more experience and greater resources than the other.¹¹⁷

¹¹⁵ Tommy Chouinard, "PPP: Québec corrige le tir. L'Agence des partenariats public-privé disposera de pouvoirs réduits," *Le Devoir*, December 2, 2004.

¹¹⁶ See the following sections, especially section 9.2, "A Formula More Suited to Very Large Companies."

¹¹⁷ John Hood, "Minimising Risk: The Role of the Local Authority Risk Manager in PFT/PPP contracts," *Public Policy and Administration*, Vol. 18, No. 2 (Summer 2003), pp. 57–70, p. 68, <http://ppa.sagepub.com/cgi/reprint/18/2/57>

Darinka Asenova, Matthias Beck, Akintola Akintoye, Cliff Hardcastle and Ezekiel Chinyio, "Partnership, value for money and best value in PFI projects: Obstacles and opportunities," *Public Policy and Administration*, Vol. 17, No. 4 (Winter 2002), pp. 17–18, <http://ppa.sagepub.com/cgi/reprint/17/4/5>

9. Competition

In addition to reduced flexibility, elected representatives that are less directly accountable and reduced transparency, P3s also promise reduced competition. Almost certainly, by their very nature P3s involve a substantial long-term financial commitment on the part of the private partner inevitably reduces the competitiveness, which is already not as great as we might wish.

9.1 The Problem: Too Few Bidders

Competition is not a natural state. We always assume or hope that there will be plenty of bidders prepared to strive to obtain every contract. But this is far from always being the case. It suffices to recall the case of the Témiscamingue RCM, which drew no interest with its invitation to tender in the fall of 2006 and ended up being forced to assume public control of garbage collection.¹¹⁸ But what happens even more frequently is that there is only one response to an invitation to tender, as was the case in the spring of 2006 for operation of the Beauceville water plants.

We read this warning in a guide for Nova Scotia municipalities that might be interested in P3s.

Limited Competition: Where municipalities are seeking to increase private partner participation in services that have been provided by the public partner, there may be a limited number of firms with the experience or expertise to compete for the contract. In such cases, a public monopoly may simply be replaced with a private monopoly that

¹¹⁸ “La MRC du Témiscamingue s’organise,” Radio-Canada, December 5, 2006, http://www.radio-canada.ca/nouvelles/regional/modele.asp?page=/regions/abitiabi/2006/12/05/001-mrc_temis_residuelles.shtml

nullifies many of the advantages of a partnership.¹¹⁹

And by searching for partners interested in a P3 formula, we run every chance of further limiting the number of applicants.

9.2 A Formula Better Suited to Very Large Companies

It seems clear that systematically relying on P3s also displaces small and medium-sized local businesses and fosters the consolidation of enterprises. What banker would agree to a 25-year financial commitment to lend a hand to a small building contractor? To ask the question is to answer it!

Some have suggested we should encourage local businesses, but we should realize that this is far from simple and that their attempt to direct the course of events may rapidly prove futile.

Indeed, even if the initial contract is awarded to a local business, there is nothing to prevent a very large company from buying it out shortly afterwards. This in fact happened in Hamilton. In 1994, a local business called Philip Utilities Management Corporation won a contract. At the time, Philip Services owned 70 per cent of the corporation and the Ontario Teachers Pension Plan owned the other 30 per cent. The corporation was subsequently bought by Azurix, an Enron subsidiary. Later it was purchased by American Water Services, itself a subsidiary of the British firm Thames Water (which operates the London water supply network), itself a subsidiary of the German electricity company RWE.¹²⁰ This is hardly a small local business anymore.

¹¹⁹ Government of Nova Scotia, "Background: What Is a Public Private Partnership?" in *Strategic Public Private Partnering: A Guide for Nova Scotia Municipalities*, (Government of Nova Scotia: Halifax, n.d.), p. 9, http://www.gov.ns.ca/snsmr/muns/fin/pdf/ppp/ppp_1.PDF

¹²⁰ *Rheinisch-Westfälisches Elektrizitätswerk Aktiengesellschaft* (Rhine-Westphalia Electricity, Inc., or RWE) is the second-biggest energy company in Germany. RWE sold Thames in 2006 and is said to be preparing to sell American Water to the Australian corporation Macquarie in the next few months.

There are two morals to the story. First, if you give a contract to someone in the private sector, you are giving it to the private sector as a whole and not to one particular firm, because there is always a possibility that the firm will change hands. Second, this kind of contract only attracts the very largest firms.

This scenario is rather common. Let us take a second and final example, the case of Saint-Louis-de-France, a small independent municipality before it merged with Trois-Rivières in 2002. In 1999, the municipality invited tenders from companies interested in a project to rebuild and maintain 35 kilometres of roads in a semi-urban area for the following 15 years.¹²¹ Out of the 17 companies involved in the file, only three completed all the stages and qualified for the final stage. These were not just any businesses: among these companies were Québec's largest public works and civil engineering companies. These three firms came first, second and fourth, respectively, based on the allocation of Québec departmental contracts.¹²² Sintra tops the industry, with 13 per cent of sales generated by contracts awarded by the Ministère des Transports. It has been associated with Bouygues since 1974 and was fully absorbed by it in 2001 (in 2006, world sales for Bouygues were €26.4B including €19B from its affiliates involved in construction). In second place, construction DJL obtained 7 per cent of departmental contracts and was integrated into Eurovia subsidiary of the Vinci group, which had world sales of €25.6B in 2006. Finally, Simard-Beaudry, with five per cent of sales, is the largest company still controlled by Québec interests.

¹²¹ Pierre T. Dorchies, "Saint-Louis-de-France, Retrofit du réseau routier collecteur. Bilan de l'expérience de Partnership après 6 ans," paper presented to the Infra 2006 symposium organized by the Centre for Expertise and Research on Infrastructures in Urban Areas (CERIU), held in Québec City on November 21, 2006. A CD-ROM of the slide show is available from CERIU.

¹²² André Dubuc, "Deux géants français dominent l'industrie du pavage d'ici," *Les Affaires*, August 2, 2003, p. 15.

The three qualifying companies filed their bids and, in October 2000, the municipality accepted the bid of Pagé Construction, a subsidiary of Simard-Beaudry. But then in February 2002, Simard-Beaudry sold its Pagé Construction subsidiary to Sintra, the industry leader, which had lost the bid for Saint-Louis-de-France to Simard-Beaudry.

The same two morals apply to this story. First, as in the Hamilton case, we note that the contract may well be awarded to one particular company, but that this company can always change hands. Second, we note that, even with a relatively unimportant contract, albeit one with a 15-year term, we find only the biggest companies still competing in the final stage of the process.

In fact, an executive from the Caisse de dépôt et de placement expressed the same opinion as others had, clearly stating that when a P3 is open for bids, it is hard for small players to compete.

Marv Hounjet of Johnson Controls believes more international competitors with P3 experience will come to Canada on the big deals, but things may be different when it comes to smaller projects.¹²³ “Looking at the smaller deals and players, it is a question of how efficient the process is for them,” Hounjet said. “There are a limited number of players who want to, or who can take on the entire risk transfer expected by the clients.” As Ghislain Gauthier of the Caisse de dépôt said, “It will be tough for smaller players as the financial capacity will be key to enter the market.”¹²⁴

¹²³ From looking at the remainder of the document, we understand that, in the minds of the people questioned by Ernst & Young, a small project corresponds to an investment of less than \$50 million. In Québec, ministers such as Ms. Jérôme-Forget imply that the dividing line would rather be \$30 million or even \$20 million.

¹²⁴ Ernst & Young Orenda Corporate Finance Inc., *Canadian P3 Survey. Issues Facing the Canadian P3 Market*, (Toronto: Ernst & Young Orenda Corporate Finance Inc., 2006), p. 23, [http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/\\$file/16256_CDN_P3.pdf](http://www.ey.com/Global/download.nsf/Canada/TAS_P3_Survey_2006/$file/16256_CDN_P3.pdf)

The very nature of P3s is such that few companies will be able to compete and land such a contract. Few of those companies, in turn, will be small or medium-sized companies. However, one of the basic conditions for a well-functioning market economy is the existence of intense competition.

The literature on privatization and public-private partnerships has long recognized that business transactions between government and private companies are more likely to serve public objectives when competition is robust, when measurable performance requirements can be specified in advance, when the contractor can be readily replaced and when the transactions are transparent.¹²⁵

However, for there to be competition, there must be a minimum number of competitors and, of course, it is also essential that there be no collusion among them to divide all the contracts market among themselves. On the contrary, they must truly compete against each other, fairly and openly.

9.3 Cartel Agreements

To understand competition, there is nothing like examining situations where competition is lacking. It is always astonishing to note how much some people tend to minimize the very real phenomenon of cartel agreements, as if discussing the topic was taboo.¹²⁶ These agreements among competitors apportion the world to each other by dividing the contracts “equitably” so that competitors do not need to be at each other’s throats by offering the lowest prices. This

¹²⁵ Pamela Bloomfield, “The Challenging Business of Long-Term Public-Private Partnership: Reflections on Local Experience,” *Public Administration Review*, Vol. 66, No. 3 (March/April, 2006), pp. 400–411, p. 409, <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1540-6210.2006.00597.x>

¹²⁶ A reader of a preliminary version of this text made a comment: asking about the possible risks of a cartel when a municipality enlists the aid of the private sector would be equivalent to a tourist asking if he would encounter a few mosquitoes at a wilderness campsite at the end of June.

way, business remains profitable. The considerable costs involved in submitting a service offer within a truly competitive process are thus controlled. And finally, as a crowning touch, the cartel preserves the appearance of intense competition, just as “pure and perfect” as in the most theoretical textbook chapters on classic economics.

It is, by definition, difficult to see beyond the rumours and to clearly identify, beyond all doubt, true cartel agreements. This makes the rare convictions all the more spectacular. The record fine went to a quartet of elevator manufacturers, who agreed on the prices for their business transactions in Germany and the three Benelux countries. On Wednesday, February 21, 2007, the European Commission fined them €992 M, or more than \$1.5 B Cdn at that day’s exchange rate.¹²⁷

[Translation]

ThyssenKrupp ended up with the most onerous bill, with a fine of €480M. That was again a record fine for a single company in any such price-fixing case. ThyssenKrupp paid the price for its repeat offence, as this was not its first cartel.¹²⁸

The amounts involved are not always that high, but news reports constantly contain numerous examples of “understandings between friends.” This dispatch from Agence France-Presse (AFP) arrived on December 12, 2006; a day that was particularly busy as we will see:

[Translation]

¹²⁷ European Union, *Competition: Commission fines members of lift and escalator cartels over €990 million* (Brussels: European Union, February 21, 2007), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/209&format=HTML&aged=0&language=EN&guiLanguage=en>

Le Monde, Reuters and Agence France-Presse, “La Commission européenne inflige une amende record à un cartel d’ascenseurs,” *Le Monde*, February 22, 2007, <http://www.lemonde.fr/web/article/0,1-0@2-3234,36-870314@51-865722,0.html>

Bertrand Bissuel and Thomas Ferenczi, “Bruxelles monte en puissance dans sa guerre contre les cartels,” *Le Monde*, 18 February 2007, <http://www.lemonde.fr/web/article/0,1-0@2-3234,36-868552@51-852480,0.html>

¹²⁸ L’Expansion.com and Agence France-Presse, “Bruxelles sans pitié pour le cartel des ascenseurs,” *18h.com*, No. 1950, February 21, 2007, <http://www.lexpansion.com/18h/4470.1.154355.html>

The four major energy groups in Germany, EON, RWE, EnBW and Vattenfall Europe, have confirmed that the European Commission searched the premises of some of their subsidiaries on Tuesday. A little earlier, Brussels had announced that electricity suppliers in Germany had been searched, on the suspicion that they had violated the rules of competition, although the parties concerned were not identified.¹²⁹

A little later the same day, one of the five major headlines in *Le 18h.com*, an Internet daily belonging to the magazine *L'Expansion*, reported the repercussions on the stock market of a possible electronics cartel affair.

[Translation]

Three of the major world manufacturers of LCD screens have agreed to rein in price decreases. ... Although few facts have emerged thus far, the threat of financial penalties is being taken sufficiently seriously to trigger a minor upheaval on the stock market. Based on the profits raked in during these last two years in this sector by LG.Philips and Samsung, the penalties imposed on each company could reach \$216 million, according to the estimate of Min Chun Hong, an analyst at Goodmorning Shinhan Securities. On Tuesday, LG.Philips securities lost nearly 8% in value, falling to an all-time historic low, before recovering and closing down 4.2% at the end of the trading session. For Samsung, this investigation was a reminder that it had just been fined by the American courts a record fine of \$300 million, the second-highest fine in American history, for similar practices involving DRAM computer memory chips.¹³⁰

¹²⁹ Agence France-Presse, "EON, RWE, EnBW et Vatenfall Europe confirment des perquisitions ...," *Le Monde*, December 12, 2006, <http://www.lemonde.fr/web/depeches/0.14-0.39-29107259@7-46.0.html>

Simultaneous to European authorities, the German anti-cartel office moves on the same issue:

Jean-Philippe Lacour, "Concurrence. Visé par l'Office anti-cartel allemand, RWE se défend d'avoir gonflé ses tarifs," *La Tribune*, December 20, 2006, [http://www.latribune.fr/info/Visé-par-l-Office-anti-cartel-allemand--RWE-se-defend-d-avoir-gonfle-ses-tarifs--ID5B07DE04C295D1C3C125724A003F9C8F-\\$Db=Tribune/Articles.nsf-\\$Channel=Entreprises%20%26%20secteurs-\\$SubChannel=Industrie](http://www.latribune.fr/info/Visé-par-l-Office-anti-cartel-allemand--RWE-se-defend-d-avoir-gonfle-ses-tarifs--ID5B07DE04C295D1C3C125724A003F9C8F-$Db=Tribune/Articles.nsf-$Channel=Entreprises%20%26%20secteurs-$SubChannel=Industrie)

¹³⁰ "LG.Philips, Samsung et Sharp soupçonnés de cartel dans les LCD," *18h.com*, No. 1901, December 12, 2006, <http://www.lexpansion.com/art/4391.151868.0.html>

The second major headline in Le 18h.com repeated the news published somewhat earlier, again on December 12, on the website of the financial daily *La Tribune*, which contained the following report:

[Translation]

The Court of Appeals confirmed this morning the fine totalling €534 million imposed one year ago by the Conseil de la concurrence on three mobile phone operators that had entered into an agreement. ... Orange, SFR and Bouygues Télécom have been convicted for reaching an agreement detrimental to consumer interests between 2000 and 2002.¹³¹

A few hours later, doubtlessly inspired by this juicy news, AFP went further by creating a hit parade of the largest convictions for infringing competition. Ranking fourth was a case involving amicable sharing among competitors, which consisted entirely of wasting the fewest possible resources to produce an obliging offer, while creating the illusion of ferocious competition.

[Translation]

March 22, 2006: Monetary penalty totalling €48.5 million imposed on 34 public works and civil engineering companies for a generalized agreement regarding government contracts in the Île-de-France between 1991 and 1997.¹³²

[Translation]

"A manager of the South Korean electronics giant Samsung, accused of having participated in a cartel agreement to fix DRAM memory prices, has agreed to serve a 10-month prison term and pay a fine of \$250,000 US. ... All in all, 18 individuals and four companies have been targeted in this affair, which is the second-most serious anti-trust case in legal history, with \$731 million in fines having been collected." Agence France-Presse, "Samsung: 10 mois de prison aux USA pour dirigeant impliqué dans cartel DRAM," *Le Monde*, December 21, 2006, <http://www.lemonde.fr/web/depeches/0.14-0.39-29205771@7-46.0.html>

¹³¹ Guillaume de Calignon, "La Cour d'appel confirme l'amende de 534 millions d'euros des opérateurs mobiles," *La Tribune*, December 12, 2006, [http://www.latribune.fr/info/La-Cour-d-appel-confirme-l-amende-de-534-millions-d-euros-des-operateurs-mobiles--IDB639D2EF4B9CB35CC125724200332CBB-\\$Db=Tribune/Articles.nsf](http://www.latribune.fr/info/La-Cour-d-appel-confirme-l-amende-de-534-millions-d-euros-des-operateurs-mobiles--IDB639D2EF4B9CB35CC125724200332CBB-$Db=Tribune/Articles.nsf); <http://www.conseil-concurrence.fr/pdf/avis/05d65.pdf>

¹³² Agence France-Presse, "Les plus grosses amendes infligées par le Conseil national de la concurrence," *Le Monde*, December 12, 2006, <http://www.lemonde.fr/web/depeches/0.14-0.39-29108333@7-46.0.html>; <http://www.conseil-concurrence.fr/pdf/avis/06d07.pdf>

This scandal, duly condemned in the usual way, is a fine example of the French sense of genius, refinement and good taste. Indeed, we cannot help but note the beauty, sophistication and above all the singularity of this “generalized agreement,” in some way assisted by computers and facilitated by:

[Translation]

... an engineer at Bouygues who developed the Drapo software (détermination aléatoire du prix de l'offre [Random determination of the supply price]), which permitted responses from companies to publicly advertised tender calls to be rigged. ... The Conseil de la concurrence ... thus determined that, from the end of 1991 to 1997, “the key companies in the sector agreed to divide the public works contracts for the Île-de-France among themselves or their subsidiaries, dragging in numerous other companies.” According to the Conseil, the contracts were shared out at “roundtable discussions,” during which company managers voiced their wishes for future building contracts. A “particularly elaborate” system then allowed them to “organize the allocation system and [to] ensure compliance” thanks to “a compensation system that could involve cash payments, the official or covert subcontracting out of work, or the creation of undeclared partnerships.”¹³³

With the Drapo software, it was possible to issue a successful offer on the targeted services and, in little time produce competitive bids, that appeared to be extremely carefully and soundly drawn up, that were just slightly more expensive. The trick was to issue credible cost estimates, sometimes lower and sometimes higher than those of the competitor who had been pre-selected to win, ensuring that, all in all, the company selected by the cartel would win. The bids were then placed on the letterhead of the obliging competitors. The matter has been public

¹³³ Cyrille Poy, “Trente-quatre entreprises du BTP sanctionnées pour entente,” *L’Humanité*, 24 March 2006, http://www.humanite.fr/popup_print.php3?id_article=826874. The link to the decision by the Conseil de la concurrence is *Décision No. 06-D-07 du 21 mars 2006 relative à des pratiques mises en œuvre dans le secteur des travaux publics dans la région Île-de-France*, <http://www.conseil-concurrence.fr/pdf/avis/06d07.pdf>

knowledge for a long time, via the French satirical newspaper *Le Canard enchaîné*.¹³⁴ Even the very serious business magazine *L'Expansion* had published a long, very informative, almost admiring article, back in November 1995.

[Translation]

Rather than engaging in a vain fight and risking their profit margins, the companies take turns in dividing the contracts amongst themselves before responding to invitations to tender.

With the Drapo software, an estimate can be drawn up in two minutes. The other advantage of the agreement is that it enables the builders to hike their prices substantially. A member of the Conseil de la concurrence stated that increases of up to 100 per cent over the initial budget had been observed in some school retrofitting contracts.

For the agreement to work without attracting attention, all the companies must submit a cover bid higher than the selected winner's bid. But even a fake study is expensive.

So the future winner undertakes to produce the alternative versions and then forward them to the interested parties.¹³⁵

The need to police building and public works companies alone justifies a considerable workforce dedicated to enforcing the basic rules of competition and propriety.¹³⁶ Those who laugh and

¹³⁴ Hervé Martin, "Bouygues soupçonné d'informatiser le truquage des marchés," *Le Canard enchaîné*, July 5, 1995, p. 4.

"Bouygues trahi par un détail informatique," *Le Canard enchaîné*, December 20, 1995, p. 4.

¹³⁵ Gilles Fontaine, "Un logiciel étrange fait trembler le bâtiment," *L'Expansion*, November 13, 1995, <http://www.lexpansion.com/art/6.0.117647.2.html>

¹³⁶ Among others: Conseil de la concurrence, *Le Conseil de la concurrence sanctionne 6 entreprises de BTP spécialisées dans la fourniture d'enrobés bitumineux pour un montant cumulé de 33.6 millions d'euros*, December 2005, http://www.conseil-concurrence.fr/user/standard.php?id_rub=149&id_article=510

Conseil de la concurrence, *Le Conseil de la concurrence condamne 21 entreprises de BTP pour entente et les sanctionne à hauteur de 17 millions d'euros*, May 2005, http://www.conseil-concurrence.fr/user/standard.php?id_rub=149&id_article=510.

pretend to believe that there is absolutely no risk that such evil practices will cross the Atlantic perhaps need reminding that four of the five biggest companies in the Québec public works market are subsidiaries of European groups (incidentally, the largest groups internationally) and the winner's podium is European platform if we go by the awarding of Québec departmental contracts.¹³⁷

We should not be naive about such matters. Anyone who believes that pure, perfect arm's length competition reigns supreme and that the invisible omnipresent hand of the market always regulates relations between the private sector and municipalities has never set foot in local government. In Canada, we have seen few convictions for infringing the rules of competition but, for the benefit of those who persist in choosing to close their eyes, perhaps we need to bluntly explain the realities of life.

Better even than paper¹³⁸ or snow removal cartels,¹³⁹ the concrete cartel is the best example, as the same individuals were convicted twice. The companies that dominate the Québec concrete market are, unsurprisingly, the largest groups worldwide: Lafarge, of course, but also the Swiss company Holcim, represented by its subsidiary, Ciment Saint-Laurent.¹⁴⁰ The second

"Le Conseil de la concurrence inflige des amendes records aux groupes de BTP," *Le Monde*, February 15, 1996, p. 16.

Other sectors occasionally stand out. See, for example, Martine Orange, "La Cour des comptes critique les services de gestion de l'eau," *Le Monde*, January 28, 1997.

¹³⁷ André Dubuc, "Deux géants français dominent l'industrie du pavage d'ici," *Les Affaires*, August 2, 2003, p. 15.

¹³⁸ Martin Vallières, "Le cartel du papier puni. Amendes records pour Domtar, Cascades et Unisource," *La Presse*, January 10, 2006, p. La Presse Affaires section, p. 1.

¹³⁹ Snow removal cartel in the Québec City region : Élisabeth Fleury, "Cartel de la neige. Snow removal cartel in the Québec City region : Nouvelle entente hors cour," *Le Soleil*, January 17, 2001, p. A6.

Brian Myles, "Snow removal cartel in the Montréal region: Le cartel de la neige condamné à des amendes totalisant un million," *Le Devoir*, October 25, 2000, p. A3.

¹⁴⁰ Pierre J. Hamel and Louis Carrier, "Les groupes européens de services urbains prennent position au Québec," *Organisations et territoires*, Vol. 15, No. 1 (Winter 2006), pp. 41–51. (A much longer version, specifically including a detailed methodological section, is available online at <http://www.ucs-inrs.ca/pdf/GroupeEuropeens.pdf>) The pagination varies from one version to another—the version now online comprises 50 pages, whereas the version currently being prepared will contain more than 250 pages. The best approach is to use the search function.

shareholder of another major player, Ciment Québec (which also operates as Unibeton), is ESSROC, controlled by Ciments français, which in turn has been controlled since 2002 by Italcementi. The names of these three giants (Lafarge, Ciment Saint-Laurent and Ciment Québec) can all be found in what we may henceforth legitimately call the concrete cartel. We are aware that one must be extremely cautious when making such accusations. Various actors frequently suspect such plots, but it is very rare for agreements among competitors to be demonstrated beyond such reasonable doubt that a court formally convicts them for this completely illegal infringement of the sacrosanct laws of healthy competition and the free market. However, this is what happened in the case of Québec concrete suppliers, first in 1983 and then for the second time with the same repeat offenders, in 1996.¹⁴¹ A fourth firm, Béton Orléans, was among the guilty parties in 1996; Ciment Saint-Laurent (Holcim) had held 50 per cent of its shares since January 1995 and it has since acquired the remainder.

It is helpful to stress that the two concrete cartel convictions were both the result of arduous work by journalist Monique Giguère, who collected the evidence and then passed it on to the authorities.¹⁴² If a journalist has to become interested in a subject to raise eyebrows, what happens when a municipal activity is not regularly covered by independent professional journalists? In this era of press concentration, very few urban centres have these sorts of attentive journalists.

But we can set our minds at ease. There is no doubt that these exemplary judgments have already helped clean up the marketplace and that these dishonourable practices are now no more than a bad memory.

¹⁴¹ Monique Giguère, "Le cartel du béton," *Le Soleil*, May 8, 2001, p. A3.

Monique Giguère, "Cartel du béton à Québec: 4 compagnies condamnées en 83," *Le Soleil*, July 27, 1995, p. A3.

¹⁴² Berthold Landry, "Un vrai travail de 'bénédictine'," *Le Soleil*, January 18, 1999, p. A20.

9.4 Corruption

Unlike cartel agreements, corruption involves not only the companies benefiting, but also someone at the other end who is in the know. Corruption is very ugly. It is (fortunately) rather rare, but it does exist and it is impossible to discuss P3s and pretend that there is no connection. The newspapers are loaded with stories of corruption. For instance, if we only consider cases involving at least €100 M, in December 2006 there was talk of investigating corruption at the French electronics and defence group Thales¹⁴³ and at the Total oil company,¹⁴⁴ as well as an affair involving the German Siemens.¹⁴⁵ In fact, Siemens seems to be becoming a separate case, as so many files are emerging.

[Translation]

Corruption, illegal price fixing, suspected tax fraud: the list of scandals tarnishing German conglomerate Siemens seems to be becoming endless. Since the November 2006 opening of an inquiry in Munich into a huge embezzlement network using foreign accounts, the company has been confronted with new revelations and accusations on a daily basis.¹⁴⁶

¹⁴³ Gérard Davet, "Deux mises en examen dans l'enquête pour corruption visant le groupe Thales," *Le Monde*, December 15, 2006, <http://www.lemonde.fr/web/article/0,1-0@2-3226,36-845604@51-845368,0.html>

¹⁴⁴ "Total à nouveau visé par une affaire de corruption présumée en Iran," *LesEchos.fr*, December 19, 2006, <http://www.lesechos.fr/info/energie/300124832.htm>

¹⁴⁵ Bénédicte de Peretti, "Siemens a identifié 420 millions d'euros de factures obscures," *La Tribune*, December 12, 2006, [http://www.latribune.fr/info/Siemens-a-identifie-420-millions-d-euros-de-factures-obscures---IDF73E732EEC9974B8C1257242004E0E1F-\\$Db=Tribune/Articles.nsf-\\$Channel=Entreprises%20%26%20secteurs](http://www.latribune.fr/info/Siemens-a-identifie-420-millions-d-euros-de-factures-obscures---IDF73E732EEC9974B8C1257242004E0E1F-$Db=Tribune/Articles.nsf-$Channel=Entreprises%20%26%20secteurs)

Cécile Calla, "Corruption chez Siemens: un ex-dirigeant en détention," *Le Monde*, December 14, 2006, <http://www.lemonde.fr/web/article/0,1-0@2-3234,36-845100@51-844812,0.html>

Cécile Calla, "Petites vertus chez Deutschland AG," *Le Monde*, December 22, 2006, <http://www.lemonde.fr/web/article/0,1-0@2-3234,36-848009@51-824512,0.html>

¹⁴⁶ Cécile Calla, "Le géant allemand Siemens sous le feu des accusations de corruption et de fraudes," *Le Monde*, February 17, 2007, <http://www.lemonde.fr/web/article/0,1-0@2-3234,36-868266@51-868374,0.html>

Local government is also represented. The most spectacular scandal in the last few years is doubtless the delegated water management contract in Grenoble: the former mayor of Grenoble had to resign hurriedly from his position as Minister of Communications in the Balladur government only a few weeks before being convicted and imprisoned for a term lasting several months. The Lyonnaise des Eaux group, the happy contractor hired without tender, had simultaneously paid a hefty price for a small, indebted publications group owned by the former mayor; it published free weeklies and had started up shortly before an electoral campaign.

Once again, we could claim — with a tiny bit of bad faith, some blindness or a lot of ignorance — that such affairs never cross the Atlantic. To do so would be to depend on selective memory, enabling one to forget, in particular, the conviction (coupled with a US\$3-M fine) of what was a then subsidiary of what is now known as Veolia Environnement (formerly Générale des Eaux), found guilty of bribing a Louisiana public servant.¹⁴⁷

It would doubtless be improper to dwell on the subject, but all the same, it should be emphasized that the size of the bribe is in direct proportion to the coveted business volume. Since it is possible with P3s to obtain a contract for a block of business lasting 20 or 30 years, it is a reasonable assumption that this would increase the amount and thus the attractiveness of the bribes. If this is the case, God help us if such an ugly practice should ever appear in our midst.

¹⁴⁷ “Une filiale de Vivendi condamnée pour corruption,” *Le Monde*, December 18, 2001, p. 22, http://www.lemonde.fr/web/recherche_breve/1.13-0.37-733264,0.html

9.5 Strategies to Stimulate Competition: Divide up the Prize, Reduce the Terms and Compete with the Private Sector

We frequently find that municipalities reduce and divide contract terms into smaller portions on which parties are invited to tender (for garbage collection routes or snow removal, for example) expressly so that smaller contractors can share in the prize. This is particularly the case in Montréal, where parties are invited to tender on contracts small enough to allow self-employed truckers to compete. Moreover, certain routes are kept under direct management of the city, so the civil servants can collect information first hand about the specific conditions of these routes. When time comes for the renewal of the contracts, these routes are put up for tender again, while other routes are kept under direct management. Thus the “cards are shuffled” each time.

One of my favourite examples relates to a municipal works service that followed all the rules, playing the competition game with the private sector, properly responding to offers to tender. From 1968 to 1984, the municipality of Hull (now Gatineau) issued 79 invitations to tender for infrastructure work, excluding contracts basically related to resurfacing roads or building rebuilding sidewalks. The municipal Public Works Department responded to 39 of the invitations to tender. It and several private companies filed their bids side by side.¹⁴⁸ The Public Works Department (PW) was awarded 24 of the 39 tenders on which it bid. Two times out of three, it offered a lower price than did the private companies, generating savings of at least 16 per cent on the work completed. At first glance, there was active participation and good performance.

Having delved into this story, to ensure all costs were considered (very nearly the case), having met with numerous public and private stakeholders, and having combed through the

¹⁴⁸ Pierre J. Hamel and Nancy Guénette, “La concurrence entre le privé et le public,” in Marcel Miramond and Thierry Prost, eds., *La vétusté des infrastructures urbaines*, proceedings of a symposium held as part of the 6th conference of le Centre Jacques Cartier, Lyon, December 1993, pp. 191–212.

records, I believe that this competition was completely fair. Furthermore, if the private competitors had felt that the dice were loaded in favour of PW, it would be hard to understand why they wasted their time and money submitting so many bids: for the 79 invitations to tender, nearly 50 companies filed a total of 230 bids, and the most aggressive companies filed eight, 13, 20, even 23 bids. Either these determined companies were masochistic or they felt that the competition was fair and that PW was playing by the rules of the game. All things considered, PW's bidding on the invitations to tender was clearly advantageous for everyone, except the contractors.¹⁴⁹

To the best of my knowledge, this case of "fair" competition between the public and the private sectors does not really have any equivalent elsewhere in Québec or perhaps elsewhere in North America, except for Phoenix (incorrectly considered to be the pioneer, given that it started experimenting 11 years later than Hull¹⁵⁰) and Indianapolis.¹⁵¹ On the other hand, several other Québec municipalities, in particular Sherbrooke, have had similar experiences, although much more limited in scope or in sectors other than public works. In the American cases, as in the Québec cases, we generally find that, most surprisingly, the public company did an extremely good job, usually offering costs below those of its private competitors.

Finally, another method of stimulating competition is to avoid including specific parameters and restrictive clauses in the tender that effectively exclude a priori some potential competitors. In February 2007, for example, the auditor general of the City of Sherbrooke gave municipal council a report on procedures for adjudicating contracts to mobile waste containers used to

¹⁴⁹ The official reason for stopping the experiment in 1984 appears extremely logical: it had attained its goal, to stimulate competition, and there was no point in continuing.

¹⁵⁰ Jim Flanagan and Susan Perkins. "Public/Private Competition in the City of Phoenix, Arizona," *Government Finance Review* (June 1995), pp. 7–12.

¹⁵¹ Marc Gilbert, "La privatisation a une ville," *L'Actualité*, June 15, 1996, pp. 30–36.

collect recyclable materials.¹⁵² The specifications were so restrictive, for no valid reason, that only one supplier was in a position to respond.

[Translation]

(T)wo elected representatives had publicly raised doubts about the procurement procedure for the mobile waste containers. “That shows that my uneasiness was completely real,” said Ms. L’Espérance, a member of the executive committee at the time of the 2005 events. “At the time, the information had not reached us,” she lamented vigorously. “If you are a decision-maker, you need all the information required to make an informed decision; this was not the case in this file.”¹⁵³

The auditor general explained this breach as a “misunderstanding.”¹⁵⁴ Referring to the Sherbrooke case, as well as others, a journalist wondered:

[Translation]

So far, there is no evidence that elected representatives or municipal public servants have obtained favours or bribes to prevent them from developing rigorous invitations to tender. But it is clear that the lack of rigour in several cases explains why municipalities have paid more for the same product or why superior products were purchased for lower prices by neighbours who were stricter about the rules of the game.¹⁵⁵

¹⁵² Le vérificateur général de la ville de Sherbrooke dépose au conseil municipal son rapport spécial sur le processus d’adjudication des contrats de bacs roulants [news release], (Sherbrooke: City of Sherbrooke, February 5, 2007), <http://ville.sherbrooke.qc.ca/fr/citoyens/communiqu/index.cgi?COMM=bacroulantfinal>

¹⁵³ David Bombardier, “L’homme d’affaires Pierre Morency souhaite que le rapport du vérificateur général n’accumule pas la poussière sur une tablette,” *La Tribune*, February 7, 2007, <http://www.cyberpresse.ca/article/20070207/CPACTUALITES/702070765&SearchID=73271438625581>

¹⁵⁴ François Gagnon, Special report by the Auditor General of the City of Sherbrooke, submitted to the municipal council. Verification of the adjudication procedures for mobile waste containers (Sherbrooke: City of Sherbrooke, January 2007), p. 8, paragraph 4.15.

¹⁵⁵ Louis-Gilles Francoeur, “Polémique au sujet de l’achat de bacs de recyclage au Québec,” *Le Devoir*, February 7, 2007, p. A4.

However, it seems that similar practices — of course, in lands far, far away — can sometimes be attributable to less innocuous circumstances. Indeed, regarding invitations to tender of the same type, from time to time I note convictions for “price-fixing infringements,” as in the recent business involving road signs.

[Translation]

According to preliminary investigations in Nantes by Justice Frédéric Deseaunettes, for more than 10 years, Bouygues and the other road sign specialists had been secretly dividing up this market, worth €300M to €400M annually. ... Some of the conspirators wrote the specifications for the invitations to tender, instead of the local authorities. ... For some contracts, they thus included a clause requiring the use of rivets of a specific diameter, which were used by only one company in France.[...The Conseil (de la concurrence) has addressed this case seven times since 1997. ... After the conviction of about 10 managers, police officers and magistrates started wondering ... about the extent of the incompetence or complicity of the elected representatives and public servants entering into the contracts.¹⁵⁶

Too frequently, competition is more a wish than a reality, and P3s limit the number of markets in which numerous competitors oppose each other.

¹⁵⁶ Hervé Liffra, “Bouygues veut faire tomber les juges dans le panneau,” *Le Canard enchaîné*, vol. 91, no. 4495, December 20, 2006, p. 4.

10. All in All, Are P3s Beneficial?

It is all the more difficult to produce a positive assessment of P3s based on their concrete achievements, as opposed to their theoretical ones, as we have had little long-term experience on which we can report.¹⁵⁷ Generally, especially in North America, the most prominent P3s or quasi-P3s do not last long.

Hamilton's P3 was one of the largest, because of the amount at stake, and one of the most significant. It was the perfect example. Advocates of greater private participation presented it at every turn, for a long time, as the archetype of an ideal, mutually beneficial agreement until the municipal council decided not to renew the contract after a 10-year experiment.

The authorities several times lamented the untimely discharge of untreated wastewater, and the operator does not actually seem to have provided very good service. More generally, the critics were ferocious.¹⁵⁸ However, as I attended many enthusiastic presentations, I had the impression that everything was going well, from the perspective of both the municipality and the business. But the union (as one might expect, critical of the P3), disagreed.¹⁵⁹

We certainly must not generalize from one unique, individual instance. But there are rare cases in which the experiment has been prolonged and, as in this case, involved a major city and a major service. The scale of the Hamilton example is no doubt unprecedented in North America. It is therefore all the more important that we have access to a good, complete, sound evaluation that meticulously reflects all the relevant information. This will doubtlessly be difficult to achieve,

¹⁵⁷ We can find impressive lists of examples of P3s, but they generally do not permit a very in-depth analysis. They are often recent or very small or projects, or start-up or aborted projects, such as the light rail transit system planned by the City of Ottawa and Siemens. In all cases, the minimum necessary information is not available. All the same, see the studies mentioned in note 3.

¹⁵⁸ See especially Salim J. Loxley, *An Analysis of a Public-Private Sector Partnership: The Hamilton-Wentworth-Phillips Utilities Management Corporation PPP*, (Ottawa: CUPE, September 1999), <http://www.cupe.ca/updir/Utilities-Hamilton-Wentworth%20P3.doc> or in French: <http://www.scfp.ca/updir/Les%20services%20municipaux.doc>

¹⁵⁹ CUPE, *Hamilton's contracted-in water proves cheaper, safer and more efficient* (Ottawa: CUPE, April 27, 2006), http://cupe.ca/p3s/Hamilton_les_servic

as information accessible to the public is limited.¹⁶⁰ In this particular case, we can assume that this refusal to enter into another 10-year commitment was made carefully, based on what we hope was a competent, sound analysis and, in any event, on actual experience over a prolonged period of time.

To restrict ourselves to the largest contracts, we could cite the case of Atlanta, where the contract obtained in 1999 was terminated in January 2003. The same applied to another contract in Puerto Rico, obtained in May 2002 and terminated in January 2004, which was, at €4.5B over 10 years, the largest contract to operate and manage (O&M) water in the world, as the private partner's website proclaimed proudly (but briefly).

As for the London tube, we find that there are three P3 contracts, which alone represent over 45 per cent of planned investments for all P3 contracts signed in the United Kingdom between 1987 and 2003.¹⁶¹ Now the London tube P3s are constantly in the headlines, but these headlines do not always boast of their benefits. On the contrary, the mayor of London and the unions vie with each other to expose a new aspect of these enormous P3s every week.¹⁶² At least people who are satisfied with the turn of events remain rather discreet.

Closer to home, I can present the case of Saint-Louis-de-France, Québec.¹⁶³ Starting in 2002, once Saint-Louis-de-France had merged with Trois-Rivières, it is certain that the elected

¹⁶⁰ In perusing pages and pages of reports on sessions of the Hamilton municipal council, I was struck by the recurring use of *in camera*, which I had not previously heard; practically whenever a councillor asked a question that aroused my interest, he was told that he could obtain a satisfactory answer, but *in camera*.

¹⁶¹ Calculation based on the list drawn up by Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 14.

¹⁶² This happens almost every day in the British press. See, in particular, Robert Wright, "Call for review of Tube upgrade group," *Financial Times*, February 7, 2007.

Comptroller and Auditor General, *London Underground PPP: Were they good deals?*, House of Commons papers, session 2003-04, No. 645 (London: National Audit Office, June 2004), http://www.nao.org.uk/publications/nao_reports/03-04/0304645.pdf

¹⁶³ See section 9.2, "A Formula Suited to Very Large Companies." See also Pierre T. Dorchies, "Saint-Louis-de-France, Retrofit du réseau routier collecteur. Bilan de l'expérience de Partnership après 6 ans," paper presented to the Infra 2006 symposium organized by CERIU, held in Québec City on November 21, 2006. A CD-ROM of the slide show is available from CERIU.

representatives and public servants of this major city discussed the experience they had inherited. They had all the inside information available about the public partner involved. Now, it does not seem that, being fully familiar with the facts, Trois-Rivières is inclined to repeat the experience.

Conversely, the elected representatives and public servants of Beauceville also already had some experience with outsourcing, since Aquatech was operating the treatment plant and they decided to invite the private sector to tender on its filtration and water treatment plants. This company, incidentally, won the new contract for both plants (after being the only company to bid). We may conclude that Beauceville must have been satisfied.

There are many examples of municipalities that renew contracts with the private sector or that switch from the private to the public or the public to the private sectors. Municipalities in which almost all utilities remain publicly controlled are even more numerous. What does this mean?

I am not sure that we will get very far in an attempt to take stock of general overall P3 performance as long we do not have many detailed concrete case assessments. It is easy to lapse into ill-informed caricature, and this applies to both sides. For instance, in November 2006, the Québec minister responsible for P3s recounted some examples of recently constructed hospitals that were horror stories. However, the only hospital built in the previous 10 years had actually been very satisfactory.

[Translation]

At her speech, obtained this week by *La Presse*, Ms. Jérôme-Forgêt inquired: “Why did I make the personal commitment to promote P3s when I was appointed to this position (chairman of the Treasury Board)? It’s because, quite honestly, what we used to do in the past didn’t make sense. It’s as simple as that.”

The Minister stated: “In Québec, there were up to a thousand changes in some recent hospital construction projects. Things were changed during construction, including the

location of the operating room and the floor where it was to be constructed. And this happened recently. There were a thousand changes!"

Danielle Dussault, communications manager at the Corporation d'hébergement du Québec, stated yesterday that only one hospital had been built in Québec in the last 10 years, the Centre hospitalier Pierre-Le Gardeur in Terrebonne. "It was a great achievement," she added. "And we kept within the initial budget, timeframes and costs."¹⁶⁴

Agreed! P3s may not be perfect, but are they beneficial overall? First, it is worth repeating that it is premature to draw a conclusion based on such a short frame of reference and it is dangerous to rely on such limited available information about so few cases. Before making generalizations, it would be best to have access to a good collection of well-documented cases. But this will never be possible until we have an auditor general with investigative powers, as most of the necessary information is generally kept confidential.

In the meantime, someone still has to test the waters before we can assess the appropriateness of the P3 proposals that will doubtless be submitted. Such assessments will therefore be done solely on the basis of a pro forma evaluation and hypotheses about the future, which are bound to less than perfectly reliable. It will then be crucial to ensure that the "capitalization rate" is as accurate as possible.

The capitalization rate serves, among other purposes, to measure risk. Future income from a risky operation is discounted by demanding a high capitalization rate. "A bird in the hand is worth two in the bush" and, if things are really risky, better than three or four birds in the bush. Conversely, a fairly low capitalization rate will apply to an operation that is relatively risk-free. To be completely logical, the capitalization rate chosen for a project involving a conventional public utility should be quite low, as income is not liable to drop abruptly in the foreseeable future. All in

¹⁶⁴ André Noël, "Partenariat public-privé, Monique Jérôme-Forget intervient à Toronto. La ministre se moque de l'État," *La Presse*, December 14, 2006, p. A9.

all, this is one of the safest conceivable operations. The rule would be to choose a capitalization rate corresponding to the rate at which the municipality realizes its loans. On the other hand, we must bear in mind that it will always be in the interest of P3 proponents to keep the capitalization rate as high as possible. The higher the capitalization rate, the lower the value of an amount to be received in 30 years and the greater the advantage in receiving a large amount at the beginning of the period. Conversely, the lower this rate, the more important the future becomes.

The P3 evaluation guides prepared by the British authorities include a measure called the “Public Sector Comparator” (PSC).¹⁶⁵ It introduces a bias in favour of the P3 solution in the innocuous form of a high capitalization rate. In P3 scenarios, what does indeed seem “constant” is that the “here and now” is prioritized at the expense of the “elsewhere and tomorrow.” In other words, the P3 cost evaluation structure, as is generally the case with private investments, basically takes into account what will happen in the very short term and overlooks what will happen the day after tomorrow. A new approach aimed at viable development would, on the other hand, require that greater emphasis be laid on what will happen to our children and our grandchildren. Put simply, to appear more advantageous than a publicly controlled project, a P3 project will benefit from the highest possible capitalization rate: a word to the wise is enough!

In the past, I evaluated a P3 between the City of Montréal and the Chamber of Commerce, from a purely accounting perspective. In this P3, the City gave the Chamber a 30-year mandate to manage the on-street parking meters and the off-street parking spaces belonging to the City of Montréal. As I was working for the City of Montréal auditor,¹⁶⁶ it was easy to obtain some of the

¹⁶⁵ Allyson Pollock, David Price and Stewart Player, *The Private Finance Initiative: A policy built on sand. An examination of the Treasury’s evidence base for cost and time overrun data in value for money policy and appraisal. A report produced at the request of the British trade union UNISON by researchers of the Public Health Policy Unit, (London, U.K.: University College London, 2005).*
http://www.health.ed.ac.uk/CIPHP/publications/unison_2005_pfi_a_policy_built_on_sand_pollock.pdf

Frédéric Marty, Sylvie Trosa and Arnaud Voisin, *Les partenariats public-privé* (Paris: La Découverte, 2006), p. 65.

¹⁶⁶ Pierre J. Hamel, *Analyse comparée des recettes nettes obtenues de Stationnement de Montréal avec celles qui auraient pu être obtenues en conservant la gestion du stationnement en régie (1994-2024, study carried out on behalf of the auditor of the City of Montréal (Montréal: Groupe de recherche sur les infrastructures et les*

information. According to my calculations, in 1994, this agreement was the equivalent of exchanging income received over the years equivalent to \$225M (in 1994) if the city had continued its management activities, or for \$196M if it spun off operations to a branch of the chamber. In other words, in 1994, the city had, in effect, relinquished nearly \$30 million. On close examination, it is not certain that the community always gains from projects presented to it as advantageous.

Apart from the fact that accounting calculations such as mine ignore certain intangible qualitative aspects that are quite important, the following is worth considering:

. . . while greater use of the markets and contracts may bring about an apparent reduction in costs, these savings may be offset by less readily quantifiable costs. . . . The focus is upon the immediate, local situation without regard for the wider implications and ramifications. In short, significant costs are externalized and unacknowledged.¹⁶⁷

The more we delve into these issues, the more we realize that any meagre short-term benefits are obtained by making sacrifices elsewhere and by sacrificing the future:

. . . the phrase “Faustian bargain” has entered the English lexicon, referring to any deal made for a short-term gain with great costs in the long run. The central argument of this article is that PPPs may represent a similar arrangement. The vaunted efficiency savings and risk transfer elements of this tool of governance have been forcefully disputed, while concerns regarding increased fragmentation, complexity and opaque accountability channels suggest that PPPs may involve substantial political and democratic costs. In simple terms, the Faustian bargain may be delivering very little . . . myopic method of

équipements urbains and Groupe de recherche sur l'innovation municipale, INRS-Urbanisation, 2000), <http://www.vrm.ca/stationnement.asp>

¹⁶⁷ Damian Grimshaw, Steve Vincent and Hugh Willmott, “Going Privately: Partnership and Outsourcing in UK Public Services,” *Public Administration*, Vol. 80, No. 3 (Autumn 2002), pp. 475–502, p. 479.

modernisation that fails to appreciate the long-term consequences of such a strategy.¹⁶⁸

Even though we do not have access to all the ideal information about all the cases we would be interested in analyzing, it is already clear that P3s certainly do pose several problems, to say the least. It is just as clear that the supposed advantages of P3s are very far from having been proven beyond all doubt. The least that can be said is that the rare examples of large municipal projects (for which minimal critical data have been made public) certainly do not enable us to draw the clear conclusion once and for all that P3s offer particular advantages regarding the price or quality of service.

¹⁶⁸ Matthew Flinders, "The Politics of Public-Private Partnerships," *British Journal of Politics and International Relations*, Vol. 7, No. 2 (May 2005), pp. 215–239, p. 234 and p. 236.

11. Conclusion

In short, instead of representing a revolution or even a real novelty, P3s create much closer relations between the public and the private sectors, the latter being associated much more closely with the long-term planning and reflection that go on before the project, until the funding stage, and on into the operations and maintenance.

The Government of Québec and, more recently, the Government of Canada have become infatuated with the P3 formula, at least judging by what they say. But in fact, we are barely beginning to witness the appearance of concrete projects inspired by such words. Regardless, both levels of government want municipalities to adopt their recent infatuation, immediately and en masse, so much so that the federal Minister of Finance has announced that he is thinking of forcing municipalities to “consider” the P3 formula wherever it is appropriate.

It is easy for municipalities to retort that they did not wait for P3s to savour the joys of delegation, financial leasing and all possible conceivable formulas. To tell the truth, despite restrictive regulatory monitoring, some municipalities have found ways to negotiate quasi-P3s, which are sometimes P3s in all but name. As municipalities show no reluctance to do business with the private sector, why on earth would we force them to give priority to “considering” any one particular way of doing business? For this to be justified, the P3 formula would have to be exceptionally strong and municipalities would have to be totally ignorant of the formula or refuse to adopt it, ruling it out *a priori* for incomprehensible reasons. However, municipal elected representatives and public servants do not seem to be any less savvy than their average “higher” government counterparts. All the same, are they missing something? Are P3s so wonderful?

P3s offer no help with the main problem facing municipal decision-makers. How do we find the necessary sums of money to rehabilitate aging infrastructure, when everyone already complains about paying too much tax and when other orders of government, above all the surplus-laden federal government, distribute their transfers very sparingly to municipalities?

P3s do not, by any means, facilitate the strictly political work of convincing taxpayers that it is better to invest more now than wait for the sky to fall on us. We must stop delaying work just because it is not urgent, assuming we will get around to it sooner or later. The work will become urgent if we delay too long, and then it will be impossible to rehabilitate the infrastructure, in which case we will have to start the construction work from scratch and pay more in the end.

As municipalities generally have a very good credit rating, the problem with rehabilitating infrastructure is not finding a lender willing to advance all the necessary money for a very reasonable interest rate. The problem is securing the funds necessary to repay this loan. P3s are not a bargain in this respect, as the municipality will have to pay virtually the same amount from its insufficient municipal revenues in any case. Whether they take the form of rent or a loan repayment, more or less the same amounts will be involved or, at least, amounts of a similar magnitude: there will be (a little) less according to the P3 supporters or (a little) more according to opponents. Incidentally, contrary to what some people continue to claim, any lender or credit rating agency will consider a firm long-term commitment to be a firm long-term commitment, whether it is to repay a loan or to pay rent. It is an illusion to believe that the latter will not affect the financial strength of a municipality as much as the former. And the question remains: how do we obtain sufficient revenue to meet our obligations, whether for a rent payment or to repay a mortgage?

If the benefits of P3s are not apparent when it comes to funding, then they must lie elsewhere, otherwise they would not be talked about so much, don't you think?

Contrary to what we might immediately believe, doing business with the private sector does not

guarantee flexibility, especially if we use a P3. As we have to expect the unexpected over a 25- or 30-year period; as both sides fear improvisation, the completion of a P3 contract is in itself a major achievement and the fruit of long and arduous effort. Its implementation is restrictive. The detailed long-term contract has the effect of determining choices once and for all — or, at least, for the next six or seven four-year electoral mandates. Under the circumstances, it is pointless to add that the municipal council, elected 10 years after a long-term contract has been signed, will not be particularly concerned with business matters that are almost completely out of its control.

Transparency is a very popular virtue among the population, and it is frequently mentioned in the speeches of elected representatives on all sides. Nevertheless, it remains difficult to practise. None of the auditors general of any government has ever found the measure that would provide full access to all the information they feel they need to assure elected representatives and the public that public affairs are being well run. If we are far from winning when all operations on both sides are public, what can we expect of a private operator who could completely and legitimately shelter his arrangements from public view by invoking the concept of trade secrets?

In theory, as we have a market economy, and as the ideal of a market economy is pure and perfect competition, opening the door to the private sector should produce the best of all possible outcomes for the public. Indeed, to obtain a contract at their competitors' expense and then to direct operations with a masterly hand to everybody's satisfaction, in the hope of landing further contracts based on the reputation to be acquired or lost with the first contract, all these fine enterprises would vie with each other ferociously and unrestrainedly, employing shrewdness, inventiveness, creativity, devotion, determination, sophisticated technical means, bold financial setups and so on, all for the greater benefit of the contract giver and the public in general. But the real world is, on the contrary, characterized by a relative shortage of suppliers

in several markets (and not only in remote areas of the country) and is instead characterized by cartel agreements, as well as by very rare cases of corruption. It is much more difficult than is generally admitted to incite true competition between companies, which generally possess technical and financial resources considerably greater than those of the municipality launching the invitation to tender. Similarly, it is an illusion to try to rely on smaller or locally based businesses to revive this competition, as the very nature of a P3 — the heavy long-term commitment required of the private partner — eliminates the weakest and favours the biggest businesses.

It is all the more difficult to come up with a positive assessment of P3s, based on concrete achievements instead of theories, as there has been only limited long-term experience on which we can report. In North America, the most impressive P3s or quasi-P3s do not generally survive for long.

For a long time, the Hamilton case was presented at all turns as the perfect example of a mutually beneficial agreement until, in the light of the 10-year experiment, the municipal council decided not to renew the contract when it expired. We must certainly not generalize from a single case, but cases where experimentation has been rather prolonged are objectively somewhat rare. Also, this situation involved a major city and a major utility. The scale of this case is no doubt unprecedented in North America. In this particular case, we can assume that this refusal to enter into another 10-year commitment was made carefully, based on what we hope was competent and sound analysis and, in any event, on actual experience over a good long time.

The case of Atlanta is hardly any more shining an example: a contract was obtained in 1999 and terminated in January 2003. The same applied to another contract in Puerto Rico, obtained in May 2002 and terminated in January 2004, which was, at €4.5B over 10 years, “the largest contract to operate and manage (O&M) water in the world.”

If we really search, we will find many more felicitous examples — perhaps one of the cases mentioned in this text — since municipalities constantly question their operations and experiment much more frequently than some people seem to believe. Although most municipalities end up deciding to continue an arrangement (publicly controlled or with a private partner) that is functioning fairly well, although never perfectly, each year a small number of them change their minds and adopt the alternative option.

It is true that, more often than not, the balance tends to come down on the side of public control, where the municipality itself finances the project and public servants are responsible for utility operations, while generally relying on private business for most of the stages involved in the construction of new facilities. The private sector plays a considerable role in the construction of municipal infrastructure and facilities, but the part business plays in supplying the various utilities is limited, and sometimes marginal. Is this division in itself good or bad? In any case, it is the result of a multitude of decisions, big and small, made by numerous municipal councils.

There would have to be good reasons for intervening in municipal decision-making procedures. We could certainly easily dispute whether elected representatives are representative and stress the frequent lack of transparency of decisions made and the multiple failures to live up to the ideal of how a democracy should function. Yet it would not seem that decision-making processes are fundamentally flawed, that decisions are systematically hit-or-miss, or that the balance always comes down on the same side. Things are certainly not always done perfectly everywhere, but what is done does bear a strong resemblance to procedures leading to genuine choices, and at least minimally corresponding to the wishes of elected representatives. There would have to be good reasons to change things.

However, there are problems, and municipalities make no bones about proclaiming that these problems are numerous and severe. I have not hidden the fact that I do not share this apocalyptic vision. To tell the truth, I share the views expressed privately by a number of elected

representatives and municipal public servants: the situation is not catastrophic and, though nothing is perfect, a true optimist would say that things could well be worse! Municipalities first and foremost face the problem is of insufficient income to enable them to complete their projects. This income problem is mainly related to the problems municipalities experience collecting a tax as direct as the property tax, as it is a very visible tax and its effects are painful — much more painful, in any case, than are those of the objectively more onerous income tax or the consumption tax. Municipalities certainly have all the best reasons in the world to demand more transfers — or more unconditional ones, such as the French Dotation globale de fonctionnement (a general reallocation of operating funds), that would be as unrestrictive as possible. In my opinion — that of an observer with relatively little direct daily involvement — municipalities can already do more and perform better than they currently do by engaging in more politics, by attempting to convince people that it is better to react now than to wait until it is too late, by raising the taxes they already control and by investing. I have already stressed the advantage of an initiative, however flawed, such the City of Montréal, initiated in creating its Fonds de l'eau, or water fund.¹⁶⁹ What we hear from municipalities and their associations officially is more to the effect that “We’ve reached the limit; we cannot raise taxpayers’ property taxes any more, and the solution can only come from transfer payments or new taxes in taxation fields controlled by higher levels of government.” But this is really a debate on public finance — and therefore a constitutional and political debate — which goes far beyond the issue studied here.

It seems clear to me that, even under the best circumstances, P3s do not provide many solutions and basically do not have any impact at all on the real problem for municipalities. Why then do we wish to force municipalities to “consider” creating a P3?

¹⁶⁹ See the above section 4.5.3. See also City of Montréal, “Public Management of Water,” in *Budget 2006* (City of Montréal, 2006), pp. 85–90, http://ville.montreal.qc.ca/pls/portal/docs/page/service_fin_en/media/documents/budget-2006-5a-global-fonds-eau-a.pdf

This text can be found online at <http://www.ucs.inrs.ca/pdf/PPPMunEn.pdf>

Pour la version française: <http://www.ucs.inrs.ca/pdf/PPPMun.pdf>

Both versions are also available on the Federation of Canadian Municipalities Web site:

<http://www.fcm.ca/english/main.html>

Unless otherwise specified, the web pages were consulted from late November 2006 to mid-February 2007. Updates are likely and, if this is the case, they will be incorporated into the online version at the INRS Web site: <http://www.ucs.inrs.ca/pdf/PPPMun.pdf>

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