

## Navigating public-private partnerships

The '70s, '80s, '90s brought far too little investment in the repair of existing infrastructure and development of new infrastructure, leading to recognition around 2000-2003 that all levels of government in Canada needed to significantly invest in these areas.

Infrastructure projects can be structured many ways, with no "one-size-fits-all". One project model popular that has been popular in Canada in the last 10 years is the public-private partnership. In this model, the public and private sectors collaborate, with a view to allocating project risk between them in a way that results in "optimal risk allocation" — allocating project risk to the party best able to manage that risk. It is a key ingredient in achieving best value in the delivery of a project.

In 2008, the federal government established PPP Canada to improve the delivery of public infrastructure by achieving better value, timeliness, and accountability to taxpayers through public private partnerships. In the February 2014 federal budget, the government stated that PPP Canada would continue to share best practices for projects and promote the use of public-private partnerships in the infrastructure sector.

Many provinces have also created special agencies or Crown corporations to support provincial governments in their efforts to deliver the required infrastructure renewal and development projects. Two of the earliest such agencies or corporations were Partnerships B.C. and Infrastructure Ontario.



GO TO [CANADIANLAWYERMAG.COM](http://CANADIANLAWYERMAG.COM) TO WATCH WEIRFOULDS LLP LAWYERS TALK ABOUT THIS QUIZ.

**1** Which of the following projects would be considered an "infrastructure project" in Canada?

- (A) nuclear power plants
- (B) schools
- (C) transit
- (D) courthouses
- (E) waste water facilities
- (F) portland development
- (G) They all would

**2** A Canadian municipality has recently decided to issue a request for proposals for a private sector company to construct and operate a new water facility in the municipality, as a public-private partnership. Which of the following would not likely be included in the project?

- (A) the private sector having a leasehold interest in the facility
- (B) private sector ownership of the water
- (C) the private sector being responsible for compliance with statutes and regulations governing safe drinking water
- (D) penalties on the private sector for not meeting construction timelines or performance standards during the operation phase
- (E) the private sector being responsible for cost overruns

**3** In an infrastructure project that involves the construction of a building, which will be owned by the public sector during the 50-year term of the project and leased to the private sector partner for the 50-year term, which of the following obligations would typically be the responsibility of the private sector and which would be the responsibility of the public sector during the 50 year term?

- (A) property and liability insurance for the building
- (B) latent environmental defects
- (C) maintenance of the facility
- (D) repair of the facility

**1** (G) They all would. The term “infrastructure” is very broad and includes many projects that some people might not realize fall within the definition of “infrastructure.” In addition to the six types of projects listed, other infrastructure sectors include hospitals, highways and toll roads, airports, bridges, other types of energy projects, sports and recreation facilities, and downtown revitalization.

**2** (B) Only through a privatization would the private sector actually own and control the water. Safe drinking water is a politically sensitive issue in Canada with significant public policy ramifications. It would be very unusual for the private sector to own and control the water.

**3** (A), (C), and (D) would typically be the responsibility of the private sector and (B) would typically be the responsibility of the public sector. Since the public sector continues to own the facility which it has leased to the private sector, the public sector

will want to know that the building is properly maintained and repaired and that both property and liability insurance is in place in case there is damage to the building or liability from its operation. These obligations can be performed and priced by the private sector, and in many cases it is appropriate for them to assume these obligations. On the other hand, it would be very unusual for the private sector to assume responsibility for latent environmental defects on the property, which existed prior to the time that construction of the building commenced. The private sector participant would argue that such conditions are not its fault and are beyond its control, or that the cost of assuming the risk of such responsibility would be prohibitive.

### YOUR RANKING?

- **One correct:** *might be time to brush up*
- **Two correct:** *very well done, but not perfect*
- **Three correct:** *excellent*

# A DAILY BLOG OF CANADIAN LEGAL NEWS

 [WWW.CANADIANLAWYERMAG.COM/LEGALFEEDS](http://WWW.CANADIANLAWYERMAG.COM/LEGALFEEDS)



POWERED BY  
CANADIAN LAWYER & LAW TIMES

