

NOT FOR SALE

THE CASE FOR NONPROFIT OWNERSHIP AND OPERATION OF COMMUNITY INFRASTRUCTURE

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We often take community assets for granted... until they are gone.

Following decades of under investment, much of our community infrastructure is in urgent need of renewal. Schools and hospitals are in disrepair, there is need for more long-term care beds for our aging population, affordable housing is difficult to find, and there are insufficient addiction and mental health clinics. The list is long and governments are reluctant to incur more debt even for capital infrastructure.

Governments are caught in an impossible situation. Pressure is enormous to provide services, facilities and supports to people; yet governments believe they must provide this without incurring more debt.

Meanwhile, the world has seen unprecedented accumulation of capital in the private sector. Private investors, always on the lookout for lucrative stable investments, have been actively offering to rescue governments from their cash shortages. The private sector can and will put up the capital to build hospitals, drug treatment clinics, and nursing homes [1]. In many instances, private investors operate the facility with operating funds from the government. It sounds like a great solution to a serious problem.

But is it? What are the implications of using private capital to build and operate community assets?

Community assets are buildings such as hospitals, nursing homes, subsidized housing, childcare centres, homes for people with disabilities and many other community assets such as churches, recreation centres, soccer facilities and friendship centres.

These assets have been traditionally owned and operated by public benefit nonprofits. When a group incorporates as a nonprofit, as opposed to a for-profit, it must ensure it will continue to operate for the public good and that assets cannot be sold out from under vulnerable residents. Many are charities, while others are nonprofit corporations or cooperatives.

[1] Ontario Chamber of Commerce, Certified General Accountants of Ontario, Public sector Problems, Private Sector Solutions, Transforming the Government of Ontario, 2013 Public Private partnerships, What the World can learn from Canada, Service Works global, for the Canadian Council for Public-Private Partnerships

Their purpose is their mission, such as providing services to people with disabilities, running a community sailing club, or operating supportive housing. Public benefit nonprofits have members, not shareholders, and are governed by a volunteer board of directors. Not having shares, they reinvest their revenues in their work rather than distribute profits to private individuals, and their assets cannot be sold off to enrich shareholders. Should the nonprofit dissolve, their assets must be given to another similar organization.

Private corporations, even with the best of intentions, do not provide the same protections or safeguards for public interest that community organizations do. Private corporations by their very nature must make a return for their shareholders. The evidence is clear that when providing a public good, such as childcare or nursing care, private corporations provide lower quality care than public benefit corporations[2]. The public benefit nonprofit can put all revenues into care without worrying about providing a return to shareholders.

In addition, when a private interest's own assets are used for a public benefit purpose, the asset is vulnerable to being sold or repurposed. Business corporations that own assets used by vulnerable persons are answerable not to the community but to shareholders (owners). Increasingly, these business corporations extract company value by selling or repurposing the asset. This means the public may lose the use of or access to an asset, or the costs of use may escalate.

Despite public wariness, the Ontario government continues to contract with the private sector to build and maintain community assets [3]. The value of private-public partnerships (P3) continues to be heavily promoted [4]. The federal government recently doubled down on its commitment to P3s when in 2016 it created the Federal Infrastructure Bank and reallocated \$35 billion to it. The bank seeks to involve the private sector and institutional investors to provide government partners with access to capital for revenue-generating projects [5]. This initiative demonstrates how persuasive private and institutional capital can be in the face of clear evidence that it is consistently and considerably more expensive [6].

[2] <https://nonprofitquarterly.org/2018/01/08/profit-motive-nursing-home-care-suffers>

[3] <http://www.infrastructureontario.ca/Major-Projects/>

[4] Public Private partnerships, What the World can learn from Canada, Service Works Global/Canadian Council for Public-Private Partnerships. <http://tfsa.ca/storage/reports/KnowingWhenToPartner2018.pdf>

[5] <http://canadainfrastructurebank.ca/about-us/>

[6] <https://canadafactcheck.ca/justin-trudeaus-big-infrastructure-mistake/>

Moreover, this method of financing also ensures that the revenue raised from the infrastructure project will go to private investors, not government coffers. The new federal bank will leverage P3 investments in major infrastructure projects with revenue potential, and sell off public assets to the private sector [7].

Public and community assets are better safeguarded for communities than assets of private corporations- and there is room to strengthen this through improved public policy. In Canada, we have years of experience with proven methods of community ownership. However, government policy and practices that value, protect and enable these key community owned assets are weak and lacking in innovation, clarity and resolve.

This policy vacuum has meant that private businesses have been relentless and very successful in pushing for P3, also called alternative financing and procurement (AFP), and for the operation of government funded services by private sector providers [8,9]. The Ontario Chamber of Commerce, for example, has been vocal in advocating for private business to finance and operate facilities and services that have traditionally been public or community assets [10]. This lobbying for private-sector involvement in public benefit assets and services has been underway since the 1990s, with considerable success. The most recent push comes from Toronto's financial services sector, which reports that Toronto is a great marketplace for P3 transactions and the largest in North America [11].

Given recent events and challenges with P3 transactions, it may be time to refocus from P3 to what ONN is calling public-community partnerships (PCP) - building on the nonprofit sector's historic model of community service delivery by modernizing and strengthening operation and practice to ensure community ownership and access to infrastructure and services.

[7] <https://canadafactcheck.ca/justin-trudeaus-big-infrastructure-mistake/>

[8] Ontario Chamber of Commerce, Certified General Accountants of Ontario, Public Sector Problems, Private Sector Solutions, Transforming the Government of Ontario, 2013

[9] <http://www.infrastructureontario.ca/search/?q=afp%20vs%20p3>

[10] Ontario Chamber of Commerce, Certified General Accountants of Ontario, Public Sector Problems, Private Sector Solutions, Transforming the Government of Ontario, 2013

[11] <http://tfsa.ca/storage/reports/KnowingWhenToPartner2018.pdf>

A flawed model

It turns out that having private investment capital in community infrastructure is very risky business as those governments that are early adopters are finding out. Some of the known problems:

- It is costly – often very costly, auditors have found – for government to engage the private sector to build community infrastructure [12]. Private sector borrowing costs are higher and investors want a significant return on their investment, making private sector building of public infrastructure much more costly than if government built it.
- The cost of building or buying infrastructure is passed on to the facility's operating budget as expensive rent or debt repayment [13]. The result is a major long-term loss of community service and service quality. The debt repayment is hidden from view, but impacts directly on the level and quality of service provided.
- A key rationale to justify the higher building costs and multi-year drain on operating budgets is an offloading of risk to the private sector. However, as it turns out, the government cannot outsource responsibility for community infrastructure. When things go wrong, it is the government that has to step in to ensure community infrastructure is preserved and vulnerable people do not get hurt [14].
- A new threat has emerged as private sector involvement in community infrastructure has increased. Community infrastructure is vulnerable to being sold and resold. When the private owners sell the assets of a privately owned community resource, they remove the asset value and leave the community with bigger debts to carry as the facilities are sold and resold [15, 16].

[12] http://www.auditor.on.ca/en/content/news/14_newsreleases/2014news_3.05.pdf

[13] <https://www.theguardian.com/business/2011/jun/03/southern-cross-care-private-equity>

[14] <http://www.bbc.com/news/uk-politics-42688295>

[15] https://www.theguardian.com/commentisfree/2018/jan/30/financiers-foster-children-care-carer-taxpayer?CMP=share_btn_tw

[16] <https://www.theguardian.com/business/2011/jun/03/southern-cross-care-private-equity>

Equity extraction from publicly funded services

Private equity increasingly targets lucrative government funded for-profit service providers to remove the capital assets from the company. Our communities and governments are held to ransom. Here's how it works.

- **Step 1:** A private equity company or fund purchases the for-profit service provider (the more facilities they operate, the better).
- **Step 2:** It then separates the assets (surplus cash, land, and buildings) from the service provision and subcontracts the service provision (often back to the original service provider).
- **Step 3:** The private equity provider then requires the daily operating provider to pay burdensome debt and rent payments.

Here's where it becomes a big problem: Governments must fund the financial obligations or else the operating provider goes bankrupt, leaving the government and community without essential services, no local service provider and, most significantly, no physical assets.

What we should be learning from others

The United Kingdom has been a leader in contracting with the private sector for community infrastructure, goods and services.

The UK's national auditor, like the Ontario auditor, found costs for P3 infrastructure projects to be excessive. The UK established a private finance company called Special Purpose Vehicle (SPV) to borrow and construct new public assets like a school or hospital. The taxpayer then makes payments over the course of the contract term, usually 25-30 years. There are 700 operational deals in the UK with a capital value of £60 billion. Annual charges for these deals are £10.3 billion and future charges continuing until 2040 amount to £199 billion [17]. Justification for these extraordinary extra costs are touted to be certainty over construction costs, improved operational efficiency, higher quality, and well-maintained assets. Yet, the budget office noted a lack of positive data available on the benefits of private finance procurement [18].

[17] Public Private partnerships, What the World can learn from Canada, Service Works Global/ Canadian Council for Public-Private Partnerships

[18] PF1 And PF2, Report by the Comptroller and Auditor General, National Audit Office ordered printed by the House of commons January 17, 2018

An early experience for the UK of how things can go wrong involved the Southern Cross, a large UK care provider that expanded rapidly before imploding in 2011. By buying and selling its assets, Southern Cross was able to expand rapidly and make serious profits for a series of owners before finding itself unable to pay its rents and underinvested in its care services. At the time, union and backbench critics asked, How did successive governments and regulators allow the provision of social care to be bought and sold like any common commodity [19]?

Southern Cross was just one high-profile example of the private sector extracting wealth from public and community services. Filings in the tax haven of Luxembourg and data from the Paradise Papers reveal how Terra Firma hoped to make a vast profit from Four Seasons Health Care after acquiring it in 2012. Four Seasons Health Care was made to borrow £220m from Terra Firma subsidiaries. The repayment terms were huge – 15% interest a year, on a compound basis, over 10 years. By 2022, when it was due to be repaid, Four Seasons would have owed its controlling shareholder four times the original sum. By November 2017, Four Seasons was asking for government intervention and proposed a restructuring and refinancing of its 17,000 care beds [20, 21].

January 2018 brought more problems to light with an article by Aditya Chakraborty, senior economics commentator for the Guardian newspaper. This time it was foster care where private equity had turned care of vulnerable children into an opportunity for private interests to profit, at the expense of both the care provider and the taxpayer. The UK now has major for-profit chains providing foster care and, according to Liverpool Council's findings, costs per child were more than twice as expensive for the chains than when foster care was delivered in-house (The caregiver received the same amount. She is self-employed with no paid holidays and no pension). The big money did not reach the caregivers. One of the big chains, National Fostering Agency, has changed hands three times in the past six years and is now owned by Stirling Square Capital Partners. The fostering chain has been loaded with debt issued by another Sterling Capital company at 14% interest for 10 years [22].

[19] <https://www.theguardian.com/business/2011/jun/03/southern-cross-care-private-equity>

[20] [www.theguardian.com/news/2017/nov/08/private-equity-terra-firma-care-home-four-seasons-loan?](http://www.theguardian.com/news/2017/nov/08/private-equity-terra-firma-care-home-four-seasons-loan?CMP=Share_iOSApp_Other)
[CMP=Share_iOSApp_Other](#)

[21] <http://www.careinfo.org/four-seasons-proposes-major-financial-and-property-restructure/>

[22] [https://www.theguardian.com/commentisfree/2018/jan/30/financiers-foster-children-care-carer-taxpayer?](https://www.theguardian.com/commentisfree/2018/jan/30/financiers-foster-children-care-carer-taxpayer?CMP=share_btn_tw)
[CMP=share_btn_tw](#)

The January 2018 collapse of Carillion is another major disaster for contracting out to the private sector that finally has some in the UK government calling for a review of the practise [23]. The bankruptcy of Carillion, one of the government's biggest contractors, threatens more than 19,000 jobs in Britain as well as the solvency of hundreds of subcontractors and smaller businesses. It has had a major impact in Canada too, with 6,000 jobs involving numerous infrastructure and maintenance projects [24]. Canadian Carillion companies have filed for bankruptcy protection. The protection order covers Carillion Construction Inc., Carillion Canada Inc., Carillion Canada Holdings Inc. and Carillion Canada Finance Corp [25,26].

In Britain, a government-backed pension protection plan is taking over the Carillion company's pension fund, which has an £ 800 million deficit that analysts say is likely to expand. Across the UK, fire departments have been put on standby to deliver lunches to care homes and childcare centres and in general the government is picking up the pieces [27].

Canadian equity extraction examples

In February 2017, the Chinese-owned Anbang Insurance Company, through its Canadian company Cedar Tree Investment, purchased Vancouver-based Retirement Concepts, a for-profit retirement home chain that is the largest billing provider of assisted-living and residential care in British Columbia (\$86.5 million in 2015-2016 in government funding) [28]. The real estate deal is believed to exceed \$1 billion in value. Anbang only guaranteed to maintain the current levels of staffing for three years. Anbang has been buying up real estate in Canada and the United States [29]. In a further development, the Chinese Central Bank has taken control of an insolvent Anbang. The fate of the BC nursing homes is unknown [30, 31].

[23] <http://www.bbc.com/news/uk-politics-42688295>

[24] <http://www.cbc.ca/news/thenational/the-national-today-carillion-north-korea-tunisia-protests-1.4487446>

[25] <http://business.financialpost.com/news/fp-street/canadian-arm-of-uk-construction-giant-carillion-files-for-creditor-protection-2>

[26] <http://business.financialpost.com/news/fp-street/fairfax-to-buy-some-of-carillions-canadian-services-business>

[27] https://www.nytimes.com/2018/01/15/world/europe/carillion-bankruptcy-outsourcing-britain.html?emc=edit_mbe_20180116&nl=morning-briefing-europe&nlid=60711934&te=1&r=0

[28] <https://beta.theglobeandmail.com/news/politics/chinese-conglomerate-anbang-defends-takeover-of-bc-retirement-home-chain/article34126274/?ref=http://www.theglobeandmail.com&>

[29] <https://beta.theglobeandmail.com/news/politics/no-pledge-to-create-new-canadian-jobs-in-anbang-deal/article34116476/https://beta.theglobeandmail.com/news/british-columbia/bc-grants-final-approval-in-sale-of-retirement-homes-to-chinese-conglomerate/article34181624/>

[30] <https://thetyee.ca/Opinion/2018/02/26/Chinese-Government-Control-BC-Senior-Homes/>

[31] <https://www.bchealthcoalition.ca/bchc-letter-re-anbang-takeover>

Canadian equity extraction examples

In March 2018, Texas-based BayMark Health Services purchased Canadian Addiction Treatment Centres (CATC), including 72 opioid-treatment clinics, 19 pharmacies and one residential addiction treatment centre, all in Ontario. BayMark is privately held and did not disclose the price it paid for the chain [32].

A turning tide

In March 2018, Texas-based BayMark Health Services purchased Canadian Addiction Treatment Centres (CATC), including 72 opioid-treatment clinics, 19 pharmacies and one residential addiction treatment centre, all in Ontario. BayMark is privately held and did not disclose the price it paid for the chain [32].

Recent polling in the UK showed surprisingly strong support for nationalizing many of the major infrastructures that have been placed in private hands over the years, beginning with water (83%) electricity (77%), gas (77%), and railways (76%) [33]. A major political party has promised to end business operation of community infrastructure and services. A few years earlier, the case for private sector involvement in public services seemed to have gone virtually unchallenged [34]. Though there is strong public and growing political support, reclaiming essential services for the British people will be daunting and difficult.

In Canada, we have a tremendous advantage in that many of our important services have not yet been privatized. We have time in Canada to halt the private ownership of community infrastructure and services before we get into as much trouble as Britain.

[32] www.theglobeandmail.com/news/national/us-addiction-treatment-firm-buys-ontario-methadone-clinics/article38257107/

[33] <https://www.theguardian.com/business/2017/oct/01/jeremy-corbyn-nationalisation-plans-voters-tired-free-markets>

[34] <http://www.bbc.com/news/uk-politics-42688295>

The better way

In Canada we have had a longstanding and effective partnership between the nonprofit sector and the government involving community infrastructure. This model should not be hastily abandoned. We should instead be innovative in the development of community finance models that will provide cheaper permanent infrastructure in communities that can never be sold for wealth extraction because they are community-owned assets.

Our community infrastructure should not be for sale. Public benefit nonprofits partnering with governments must develop alternative financing models that do not require the selling off of our community infrastructure.

As Canadians, we need to articulate our values. We need sound policy principles and practices to guide government decision makers in determining whether the private or nonprofit community sector is the better partner-provider with government of a particular project or service.

As the UK audit of P3s noted, a lack of government funds may sometimes make P3s the only option available regardless of how inefficient and expensive they are. Being resigned to using this exorbitant method of renewing infrastructure and operating services is a failure of imagination. It is short sighted, as there are alternative financing options that need to be explored. Quebec is a pioneer in providing start-up capital for well financed community financed funds and has proved some big institutional investors can and will invest for steady but modest returns. Moreover, they now have public benefit funds big enough to fund new infrastructure projects [35]. Community bonds are also showing promise and government loan guarantees have a place in the spectrum of community finance tools. Reliance on private capital markets is not a given. We must do better. We need to develop new innovative methods of providing community finance capital and supports to community infrastructure projects.

[35] <http://fiducieduchantier.qc.ca/>

Criteria for community infrastructure and services

The lessons learned from existing public-private partnerships lead us to the following criteria for community infrastructure:

Infrastructure and services to be funded as public-community partnerships:

- Services and physical assets that are essential for the well-being of citizens and lend themselves to a monopoly or near monopoly, water, broadband internet, public transit.
- Services and physical assets that are essential for national, provincial and community well-being such as schools, universities, hospitals, jails and community arenas.
- Services and physical assets for vulnerable children and adults. These services are typically paid or regulated by the government and need to be delivered by local public benefit nonprofits.

In sum

It is time to focus on developing an alternative to the P3 model. Innovative financing needs to support the public-community partnership model. Public benefit nonprofits in partnership with the government can develop and provide cost-effective local infrastructure that is accountable to its community and will not be sold off to reward shareholders.

Given the vulnerability of for-profit assets to capital extraction, there is an urgency for government to insist community services and the assets they need be provided by nonprofits whose primary purpose is public benefit and are not for sale.

Private-sector involvement in major infrastructure projects are proving to be significantly more costly and the government has not been successful in offloading risks. When things go wrong it is the government that ends up with the problem and the taxpayer with the costs. It is time to innovate and build community not corporate infrastructure.

New community finance funds for community infrastructure are needed. Creative strategies should be developed to allow public benefit nonprofits to raise the capital they need.

Governments, their crown corporations, and agencies own substantial real estate that should be evaluated for its community purpose and potential before being sold to private interests.

Governments and public benefit nonprofits need to strengthen and modernize their partnerships to ensure all parties (like staff, investors/funders, program participants, volunteers, and community members) have a true stake in shared ownership and decision making.

Governments and public benefit nonprofits need to restart their capacity to build infrastructure and deliver services to Canadians and communities.

About ONN

ONN is the independent nonprofit network for the 58,000 nonprofits in Ontario, focused on policy, advocacy and services to strengthen Ontario's nonprofit sector as a key pillar of our society and economy.

ONN works to create a public policy environment that allows nonprofits to thrive. We engage our network of diverse nonprofit organization across Ontario to work together on issues affecting the sector and channel the voices of our network to governments, funders, and other stakeholders.

Learn more at theonnn.ca.