



# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

A guide for CUPE members, trustees and other  
pension representatives



***CUPE***



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# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

## What's at stake

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Public infrastructure is the backbone of our communities: water and wastewater systems, our energy grid, roads, bridges, buildings like hospitals and schools, public transit and so much more. These facilities and services keep our communities healthy and safe. CUPE has always fought to keep these vital systems public. We are opposed to privatization in all its forms.

CUPE is strongly opposed to our members' pension funds investing in and supporting privatization. Our union opposes private, for-profit ownership and control of public infrastructure – even when our members' pension funds may benefit. We want our pension funds to achieve decent investment returns, but not at the expense of workers and the Canadian public, or workers and residents in other countries.

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**Our union opposes private, for-profit ownership and control of public infrastructure – even when our members' pension funds may benefit.**

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It's been our official position since privatization through public-private partnerships (P3s) first emerged in Canada. In 1999, delegates to CUPE's national convention adopted a policy committing our union to opposing

pension fund investment in P3s. CUPE leaders, staff, members, and trustees have worked to implement that policy and have refined it further, including with Resolution 250, adopted at the 2015 national convention.

Resolution 250 calls on our union to maintain our strong, principled position, to raise awareness, and to take action that prevents our pension funds investing in privatization. This guide has information and action ideas to support CUPE members and CUPE pension representatives in taking the next steps in this collective work.

## What is privatization?

Privatization is the transfer of services, functions and responsibilities from the government or another public body to the private sector and private markets. It means shifting ownership, management and delivery of services or assets from public hands to the control of private, for-profit corporations.

P3s are one of many types of privatization. A P3 is a long-term (often decades) contract between the government or another public entity and a group of private, for-profit corporations. The corporations usually form a consortium that is involved in some combination of designing, building, financing, operating, maintaining and/or owning a facility like a wastewater treatment plant, or a piece of infrastructure like a road.

The private sector has always been involved in the design and construction of public infrastructure, and that is an

appropriate role. What's different with a P3 is that private, for-profit corporations are guaranteed long-term profits from government payments for financing, operating and maintaining infrastructure.

Download CUPE's guide to privatization at: [cupe.ca/privatization-buzzwords](http://cupe.ca/privatization-buzzwords)

## Liberal “bank of privatization” targets pension funds

While we've made some progress, stopping pension fund investment in privatization remains a challenge. Canadian pension funds, including CUPE members' pension funds, have been expanding their investments in infrastructure globally in countries like the United States, United Kingdom, Australia, Chile and Mexico. And there's a new home-grown privatization threat.

The federal government's Canada Infrastructure Bank (CIB) means we could soon see more pension fund-led privatization right here in Canada. The CIB targets pension funds as key investors in its plans for infrastructure that's privately financed, owned and operated. The CIB has its sights on public transit, highways and bridges, water and wastewater systems, hydro-electric utilities and transmission grids. This privatization will directly affect the employment of CUPE members, result in higher user fees for the public, and is also likely to require higher public payments over the long term.

We should be ready to challenge new privatization projects brokered by the CIB that our own pension funds may be considering investing in.

This kit will help members, trustees and

other CUPE pension representatives ask hard questions about new pitches from the CIB or other privatization pushers that our pension funds may encounter. It highlights the very real dangers of investing in P3s, including whether money managers are fully assessing the risks and current sky-high valuations of infrastructure privatization deals.

## Broadening the opposition

Often, we rely on union representatives on a pension plan's board of trustees or other governing body to challenge pension fund investments in privatization. Our trustees do an excellent job – but they can't do it alone. It's up to all CUPE members and leaders to speak up and oppose our pension funds profiting from privatization.

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### **Pension funds will respond to the collective demands and priorities of plan members.**

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As plan members, CUPE members have a powerful voice. We can propose changes to our plan's investment policy that rule out future investments in privatization altogether. We can also demand to know where our plans are invested in privatization. And we can ensure future P3 investments aren't decided behind closed doors by forcing a case-by-case review, and organizing to resist any new P3 investments.

Pension funds will respond to the collective demands and priorities of plan members. Canadian plans have changed

their policies and practices because of successful campaigns for pension plans to divest from the tobacco industry and companies linked to apartheid-era South Africa. We are also seeing a new wave of organizing in recent pushes to shift away from high-carbon investments. Most recently, in 2019, the Canada Pension Plan Investment Board (CPPIB) sold its shares in two private prison corporations that operate migrant detention centres in the United States. The CPPIB did not make a public statement about its divestment from CoreCivic and GEO Group, but the move came amid widespread public pressure and outrage about human rights violations and abysmal conditions at the facilities, and their use as a tool to enforce US President Donald Trump's anti-immigration policies. Activists sent letters, signed petitions, and packed CPP public

meetings to protest the investment in private, for-profit prison corporations.

Pension plan decision makers need to know that CUPE members don't want their deferred wages invested in ways that hurt workers and community members – or that put the plan's health or reputation at risk. At the same time, our trustees need the backing of CUPE members when they challenge investments in privatization. This kit has information for all CUPE members, CUPE pension trustees and other CUPE pension representatives. It covers the risks of investing in privatization, information about fiduciary duty, and provides ideas for action.

**Together, let's work to keep our pensions out of privatization.**



# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

## Backgrounder on the risks of investing in privatization projects

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In recent years, many Canadian pension funds have significantly increased their investments in various forms of public infrastructure as a new, emerging “asset class.” Infrastructure investments have been increasingly promoted to pension trustee boards as offering strong rates of return with what is claimed to be a low risk profile. But investing in this controversial field often brings pension funds and trustee boards into highly contentious areas, placing public interest concerns and workers’ rights in direct conflict with the return and performance demands of the funds.

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### **The risks of infrastructure investment are most notable with projects that commodify and commercialize public services.**

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In fact, many of CUPE’s reasons for opposing infrastructure privatization and public-private partnerships (P3s) also explain why these investments can expose investors to much greater risk than is generally recognized. Union pension trustees have an obligation to assess these risks and bring their assessment to all decisions taken in relation to these issues at their respective boards.

The risks associated with infrastructure investments have been most notable in cases of projects or initiatives that commodify and commercialize vital goods and services used by the general public such as water, health care, education, mass transit, roads and bridges, and energy. There have been various cases where not only public sector partners, but pension funds and other financial investors have been burned badly. The 2018 bankruptcy of private infrastructure and public services contracting specialist Carillion PLC underlined the risks involved in this area (Grote 2018). Pension fund investors in Carillion shares as well as corporate bonds were exposed to millions of dollars of losses – a result generally unreported to plan members.

In Canada and around the world, many infrastructure investments using private finance (including pension funds) have fallen apart, with governments (and ultimately taxpayers) paying a steep price (Hall 2014). Sometimes, this has led to the infrastructure being brought fully back into the public sector through “remunicipalization,” as in the case of water services (Kishimoto et al 2015). The poor performance and high cost of privately contracted services and P3 structures in the UK has led to a very strong push by the opposition Labour Party to eliminate P3 contracting (called Private Finance Initiative, or PFI, in the UK) and bring the public utilities and services that were privatized back into public ownership.

## Cautionary tales of infrastructure investor risk

A *National Post* profile of Canada's largest pension funds referred ominously to "the risky strategy" that many are using – that is, focusing an increasing portion of their funds to less-regulated and less "liquid" assets such as infrastructure. Many pension trustees would probably be surprised to read the article's citation of high-profile actuary Malcolm Hamilton, who says of pension funds: "I think they are taking significant risks and they aren't acknowledging it" (Schechter and Tedesco 2016).

Such warnings from Hamilton and other industry watchers should be taken very seriously. But what are the actual risks involved? Experience with P3 infrastructure investments underlines the fact that, notwithstanding significant hype, they do not always work out well even for some investors. For example, toll highway projects have repeatedly proven to be disastrous public policy failures. While expensive bailouts at public expense have protected some investors, other operators and investors have faced losses and even bankruptcy (Salzman 2016; Dannin 2011). In one widely publicized US case, a Virginia toll highway operator went bankrupt, and the initial investor – Australian infrastructure manager Transurban – was forced to entirely write off its \$138 million equity investment. This was just one of many recent toll highway bankruptcies:

Nearly every high-profile tolling project has failed. The Indiana Toll Road went bankrupt in 2014. The 91 freeway high occupancy toll lanes in Orange County, California was one of the first modern toll projects to go

wrong, with the county taxpayers in 2003 paying for more than the original cost of construction to buy out the project. San Diego's South Bay Expressway went bankrupt in 2010 and was also bought out by county government. California's Foothill-Eastern Transportation Corridor Agency, which runs the 241, 261 and 133 toll roads in Orange County, has been teetering on the edge of default despite \$1.7 billion in subsidies from the taxpayer. In South Carolina, the Greenville Southern Connector went bankrupt in 2010. Transurban, the Australian company that runs the Pocahontas Parkway in Richmond, Virginia, wrote down the toll road as having a value of \$0 in 2012 ("Texas" 2016).

While no monitors or databases are reporting on which pension fund investors have suffered losses as a result of these bankruptcies, there is little doubt that some did.

Another example suggests greater caution and scrutiny are needed when pension fund trustees retain external infrastructure managers. In the UK, a group of 30 pension funds, including those from the Oxford Investment Partners, Trinity College Cambridge, Kent County Council, BBC and Tesco, filed an unprecedented lawsuit in 2011 against their infrastructure fund manager, Henderson Global Investors (Thorpe 2011). These pension funds argued that what had been promised and sold by Henderson as a diversified and "low-risk" infrastructure pool had actually been a concentrated and high risk gamble that exposed the funds to some £450 million (over CAD\$700 million) in losses when the infrastructure "fund" they had invested in lost 60 per cent of its value.



On closer scrutiny, the pension plan trustees discovered that this fund – the Henderson PFI Secondary Fund II – had not been invested in a diverse range of projects (as indicated) but in the acquisition of one single company, the infrastructure specialist John Laing Inc. The pension fund group representatives were shocked and sought remedy from the courts.

After a three-year legal battle, the case was dismissed. The pension funds (and in turn, their beneficiary members) had to fully absorb large, multi-million-dollar undisclosed losses. In one media report, an anonymous observer ‘close to’ the pension funds who had filed the action had the following observations about the case:

We need trustees to specify in the investment contract exactly what the fund manager can invest in. Henderson told us they would invest in a wide range of infrastructure projects, but when it came to the small print of the contract, it said ‘we can invest in anything we like’. **The fact they had said they would spread our money across a wide range of infrastructure investments counted for nothing because of a tiny clause in the contract.** Instead of having a diversified range of investments, we ended up invested in a company with a large pension fund deficit (Cullen 2013).

This was a large and sophisticated group of experienced pension fund investors – and yet they were still manipulated by their infrastructure manager. Such stories are not nearly as widely publicized as the attractive returns (10 to 20 per cent or more) sometimes promised by

infrastructure marketers, and responsible trustees will need to challenge the “optimism bias” often shown by money managers and advisors promoting such investments.

Finally, here in Canada, even “investment grade” (i.e. low-risk) fixed income securities attached to infrastructure projects have involved more risk than expected. In several cases, bonds attached to Canadian P3 projects have suffered from negative reviews and downgrades by ratings agencies in both the construction and operational phases (DBRS 2016). Given that many of these bonds are traded in public markets, downgrades can translate into sudden declines in their value. Such downgrades have occurred for bonds supporting the Confederation Bridge P3, Highway 407, the McGill University Hospital P3, and the Oakville-Trafalgar Memorial Hospital P3 (Critchley 2016; DBRS 2016). Pension funds can be exposed to the losses and risks of these securities – sometimes without realizing it – through both direct ownership and indirect investments and pools.

## The risk profile of infrastructure investments

The negative experiences and investor losses described above should not be entirely surprising. Despite its recent visibility and popularity, infrastructure remains a relatively new “asset class” – one for which risk management and analysis is still developing. In 2011, an Organisation for Economic Co-operation and Development (OECD) OECD study warned that private infrastructure remains “relatively new” for institutional investors, and that a



“shortage of objective and comparable information and quality data make it **difficult to assess the risk of infrastructure deals**” (OECD 2011, emphasis added). A more recent study suggested that political and regulatory risks are widely seen as “increasing, rather than receding” (Inderst 2014). Even a 2016 Bank of Canada review of the investing practices of large Canadian pension funds underlined the special risks associated with their focus on higher-risk and not-easily-sold (“illiquid”) or valued investments such as infrastructure:

The trends toward more illiquid assets...may, if not properly managed, lead to a future vulnerability that could be tested during periods of financial market stress (Bédard-Pagé et al 2016).

Prequin, a high-profile market research firm specializing in “alternative” investments (including infrastructure) has highlighted an ongoing risk of overvaluation:

The demand for infrastructure and the increased availability of debt financing, together with more investors looking to make direct investments and the high levels of dry powder available to fund managers, has led to increased competition for infrastructure assets, pushing up pricing.... Furthermore, investors face the challenge of identifying the managers that can truly deliver the returns they seek at an acceptable level of risk within an intensely competitive market (Moylan 2016: 8).

Taken together, these observations underline the risky and experimental

aspects of infrastructure as an asset class. In some cases, the political risks faced by infrastructure investors have even generated explosive social unrest, as seen in the case of the water utility privatization in Cochabamba, Bolivia (Spronk 2009). When aspects of the monopoly contract for water provision between public authorities and a private consortium became widely known, including the imposition of unaffordable water rates, residents mobilized against it, arguing that water should be recognized as a human right. After weeks of confrontations between local residents and police, the government intervened and forced a reversion of control back to the public sector. This case illustrates the intense political sensitivities that can be generated when vital public services and goods are privatized. All pension fund trustees whose fund managers are recommending establishing or expanding an infrastructure mandate should be equipping themselves with as much information and context as possible, so they can understand the risks involved, and be able to fully meet their obligations to beneficiaries.

## **The challenge for union pension trustees**

CUPE has clear and long-standing national policy expressing its opposition to pension fund investment in P3s and privatization. We have repeatedly shown that this model of infrastructure investment is bad public policy, unnecessarily expensive, and generally in conflict with the public interest. Many other unions in Canada, and internationally, have expressed similar concerns.

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**CUPE is concerned  
infrastructure has become  
the latest asset category  
to be overhyped, high risk,  
and poorly understood.**

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But this is not our only concern. As a union observing the growing trend of Canadian pension fund investment flowing into higher risk and increasingly complex infrastructure investments, CUPE is also concerned that infrastructure has become the latest asset category to be overhyped, high risk, and poorly understood.

Some pension funds have explicitly acknowledged this risk and have worked to avoid the sector altogether. The former CEO of the Healthcare of Ontario Pension Plan (HOOPP), the \$68 billion Ontario fund for hospital workers, has expressed skepticism about infrastructure, saying “they do not feel the current market pricing

appropriately compensates for the inherent risks” (Peram 2014).

Unfortunately, many other pension plans have continued to increase their allocations to this risky asset class. Given these risks, pension plan trustees have a special responsibility to take them seriously and to ensure that their boards and fund managers are developing comprehensive risk management strategies. Ultimately, the best way to avoid the risks associated with infrastructure investing is to exclude this asset class from a pension fund’s portfolio. Where that is not possible, trustees are encouraged to pursue the secondary strategies for active monitoring and risk management outlined above and in the list of actions for trustees in this kit.

# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

## Backgrounder on fiduciary duty and privatized infrastructure

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In the pension context, fiduciary duty refers to the special legal responsibility of those in control of pension “trust property” (such as pension funds) to act exclusively in the best interests of the plan’s ultimate owners, which are the plan’s beneficiaries. CUPE representatives on pension trustee boards owe a fiduciary duty to plan members.

Investment consultants and money managers often tell CUPE trustees that their fiduciary duty is simple: to maximize the fund’s rate of return without regard to any other aspects of the investments. This narrow interpretation of fiduciary duty can be used to try and prevent CUPE trustees from speaking out or being critical of a fund’s investments. Our trustees are commonly told that considering other aspects of an investment – particularly when done through a union or social lens – violates their fiduciary duty. Trustees may hear this specifically in relation to when they question private infrastructure investments.

Legal experts recognize that fiduciary law has evolved over time to allow fiduciaries to consider factors, including risks, that are beyond the balance sheet when making investment decisions. As pension experts Murray Gold and Adrian Scotchmer write, “it is now commonplace for investors and legal commentators to recognize that investment decision-making must consider a range of relevant factors beyond those

*that lie at the heart of traditional securities analysis.”*

For example, all criteria that may affect financial performance, including environmental, social and governance factors, ought to be considered in making investment decisions. Instead of taking a “moment-in-time” approach to their investment strategy, trustees should consider the duration of the plan’s liabilities.

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**Focusing solely on maximizing rates of return on investment, without any consideration of associated risks, may be considered a breach of fiduciary decision-making.**

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Gold and Scotchmer also argue that “the genesis of fiduciary law lies in the protection of vulnerable beneficiaries and in the interests of the public as a whole, which requires acting honourably, avoiding unethical actions, and acting in accordance with prevailing norms as a responsible member of society.”

Focusing solely on maximizing rates of return on investment, without any consideration of associated risks, may be considered a breach of fiduciary decision-making.

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**CUPE questions whether the risks and current sky-high valuations of infrastructure privatization deals are always fully or adequately assessed by money managers.**

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It's important to consider financial management risks in order to reliably assess the value of an investment choice. CUPE and other defenders of public services have repeatedly shown that privatized infrastructure projects do not serve workers or the public interest. P3s and other privatization projects can directly or indirectly jeopardize the working conditions or employment of pension plan members. Investments in private, for-profit infrastructure have a well-documented track record of harming the communities where they are located.

CUPE questions whether the risks and current sky-high valuations of infrastructure privatization deals are always fully or adequately assessed by money managers. We anticipate damaging political liabilities for plans and plan members should their retirement dollars be used in ways that so clearly contradict the public interest. The well-known consequences of privatization, including rising costs, shrinking access, diminished quality, loss of good jobs and corporate profiteering at the public's expense, all mean the public may strike back in unpredictable ways.

## **Alternatives to privatized infrastructure**

Despite what some fund managers assert, pension funds are not running short of investment opportunities outside of infrastructure. Pension funds can invest in short term assets, government bonds, corporate bonds, a wide range of equities (Canadian, US, international), and less-traditional classes like private equity, real estate and hedge funds. But there needs to be caution here as well. These less traditional asset classes can also involve very aggressive, predatory investment patterns that are harmful to workers and communities in various ways.

If pension funds genuinely want to contribute to needed investments in public infrastructure, they can do so in the traditional way: by lending funds to governments (by buying government bonds) and earning interest. The federal and provincial governments could also create dedicated funds or crown agencies to pool government finance with pension fund investment to increase the money available for public infrastructure renewal. This is a model that the federal government should be pursuing as an alternative to its pro-privatization Canada Infrastructure Bank.

While the projected returns to investments in public infrastructure may not be as high as investing in for-profit private infrastructure, the risks are dramatically lower. CUPE believes there are other, higher-return asset classes available to pension trustees including publicly-traded stocks.

## Keep our pensions out of privatization

CUPE believes that pension funds should be helping build a stronger economy for all workers. Our pension funds can and should be used to finance public infrastructure renewal and investment. However, public policy has been moving in the opposite direction, selling off more and more of this infrastructure to private, for-profit investors. As large institutional investors, pension plans and the money managers that manage pension funds are becoming increasingly involved in this area despite it being highly contentious and involving significant risks.

These developments put union named pension trustees in a difficult position. Their role requires them to seek decent investment returns in order to secure the pension benefits that they are responsible to deliver. But they are also likely to face pressure to support investment policies and practices that they recognize will threaten the jobs, wages, and working conditions of public sector workers.

While there is no simple way to resolve this tension, pension trustees have a right and a responsibility to play an active role in investment policy development and oversight, guided by the principles and concerns outlined in this background.

### Resources for further reading:

Archer, Simon. "Fiduciary Law, ESG, and Financialization." *The Contradictions of Pension Fund Capitalism*, 2017, 155-179.

Gold, Murray, and Adrian Scotchmer. 2015. "Climate Change and the Fiduciary Duties of Pension Fund Trustees in Canada." [https://kmlaw.ca/wp-content/uploads/2015/10/KM\\_Climate\\_Change\\_Paper\\_06oct15.pdf](https://kmlaw.ca/wp-content/uploads/2015/10/KM_Climate_Change_Paper_06oct15.pdf)



# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

## Actions for CUPE trustees

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CUPE pension trustees are asked to play a very important and challenging role in the governance of a pension plan. Trustees are fiduciaries, and there is a broadly held view in the legal community that their responsibility when it comes to the investment of the plan's assets includes the goal of ensuring that they generate the best returns available, at an acceptable level of risk, to deliver on the pension plan's promise of retirement benefits for members.

As a union and an active supporter of public services and public investment, CUPE has identified the problem of our pension funds investing in P3s and privatized infrastructure projects that should remain publicly owned and managed. Our union has committed to challenging our own pension funds to resist these kinds of investments.

When trustees are told that investing in P3s, or public infrastructure, is an attractive, low-risk and high-return investment, is there anything they can do? As fiduciaries, are they obligated to pursue any investment that money managers or investment advisors say will generate attractive returns?

CUPE's experience shows there are important actions our trustees can take. Some pension plans have avoided most or all investment in privatization, while others have pursued privatization deals with no hesitation or limit. Well informed trustees can equip themselves with solid questions, proposals, and strategies for resisting and limiting these kinds of investments. All trustees also have access to support in this role from the pension specialists that work at the CUPE National Office.

### Making arguments as a fiduciary

CUPE recognizes that union nominees to fiduciary pension boards and committees must consider issues differently than strictly political bodies. As investment decision-makers, we may have strong views about infrastructure privatization and P3s being bad public policy, but as a fiduciary, we are given a primary mandate to invest with secure financial returns as a central objective. (See *Backgrounder on fiduciary duty* in this kit).

However, an entirely "secure" return is never guaranteed – virtually all asset classes and categories will perform poorly at some point. Some classes and categories will be shown to carry risks that were not always recognized or assessed. As with risky hedge funds and private equity type investments, pension fund investment in P3s and privatized infrastructure can involve significant risks that pension trustees should be concerned to understand, consider, and explicitly recognize. This is not just permitted; it is an obligation of a good trustee.



This is particularly true given the relatively recent development of the P3 model, and of public infrastructure as a recognized “asset class” for investors. More and more investors, including some pension funds, have experienced financial losses attributable to privatization-related investments. From the bankruptcy of the UK infrastructure specialist Carillion, to the bankruptcy of various toll highways in the US, to the corruption and resulting sanctions imposed on troubled Canadian infrastructure corporation SNC-Lavalin, investors are regularly discovering that this sector exposes pension fund investors to significant risks. These risks – many of which CUPE has been highlighting for many years – can and should be scrutinized, measured, and incorporated into any pension fund’s investment policies and risk assessments. Simply raising these questions can be an important way to inform and to limit consideration of privatization-related investments.

Fiduciaries have a duty of prudence, which means to exercise care, diligence and skill, and to apply the knowledge they have or ought to have. This also requires retaining specialized advice to bring to bear relevant information in order to make informed decisions. CUPE’s expertise on the impacts of and risks associated with P3s should be considered in this regard.

## EXAMPLES OF SUCCESS

### **CUPE trustees have already broken some ground in challenging and restricting investments in P3s and related privatization.**

- For decades, HOOPP, the Healthcare of Ontario Pension Plan, consistently avoided involvement in P3s and other infrastructure investments. CUPE and other union trustees have spoken against such practices, and the plan’s former CEO has publicly argued that these investments carry risks and costs that are often under-reported and unrecognized.
- The health care pension plan in Nova Scotia (NSHEPP) and the large public service pension plan of Newfoundland and Labrador (NLPSP) have both developed an approach to infrastructure investment that limits the extent to which their fund can invest in new P3s by establishing key restrictions in the contracts signed with their external money managers. The NSHEPP and NLPSP have adopted investment policies which require consideration that private investments should not result in a loss of Canadian public sector jobs. While this Statement of Investment Policies and Procedures (SIPP) language can be relied on as an important precedent, it could also be expanded upon by applying to public sector jobs globally and preventing investments in already-privatized infrastructure projects.
- BCI, the money management institution charged with investing the funds of the large, jointly-trusted BC public sector plans, has established restrictions on investment in P3s where doing so may negatively impact public sector jobs in British Columbia.



## WAYS TO TAKE ACTION

### 1. Determine how and where your fund is invested in privatized infrastructure or P3s

- Ask your fund's money managers or investment consultants, in writing, for a written report to the full board of trustees detailing if your fund directly or indirectly invests in private infrastructure projects or P3s (domestically or internationally).
- Review current holdings, looking for an infrastructure asset class or investments in private equity, real estate, project bonds or project management companies such as Brookfield Asset Management or SNC-Lavalin.
- Review your plan's Statement of Investment Policies and Procedures for any mention of infrastructure or P3s. Propose that the SIPP require consideration of the risks of any such investment and that due diligence be exercised with respect to these risks.
- If you discover your fund has invested in private infrastructure, consider a proposal to divest, supported where possible by a performance and risk analysis.

### 2. Propose regular reporting to trustees and plan members

- Propose that all fund investments in P3s and infrastructure be transparent, and that the board of trustees and plan members be regularly updated in writing on the status of these investments, including all losses or other risks. This should include any controversies that could affect the fund's reputation.

### 3. Ensure a full debate on future P3 and infrastructure investments

- Propose a policy change requiring that all infrastructure investments, including P3s, be brought to the full Board of Trustees for case-by-case approval.
- Be prepared to probe and question privatization investment proponents and money managers promoting this category; share critical perspectives on CUPE's experience and knowledge of P3 fiascos.

## 4. Ask questions about the risks associated with P3s and infrastructure investments

- In debates about future investments, or reviews of current holdings, trustees can and should raise concerns about the wide range of P3 risks. These are explored in CUPE's backgrounder on the risks of pension investment in infrastructure and P3s, and include:
  - fraud or corruption risk;
  - the political risk a project might be cancelled (due to a change of policy by a given participating government);
  - the risk to the pension fund's reputation if it invests in a project that fails or delivers poor or overpriced services;
  - the risk that regulators may change how user fees or other revenue streams are set for the project;
  - the risk of funds being tied up in investments that are higher-risk and not easily or quickly sold (known as "illiquidity risk");
  - the risk a project will fail, and expose the pension fund to losses; and
  - other unknown and unquantifiable risks that come with this relatively new field of investment that hasn't been tested over the long term, is less-regulated than other investment areas, and may be overvalued.
- Scrutinize risk analysis and risk management strategies your investment managers (or consulting advisors) are using and ask for comparisons with other funds and managers' strategies.

## 5. Ensure your fund does not support P3 advocacy

- Propose a full disclosure policy with respect to plan staff or service providers' involvement in public policy advocacy or lobbying, either directly or through industry associations, so that trustees know what is being done or said on behalf of the plan.
- Oppose pension fund or pension plan support for pro-privatization lobbying or advocacy groups (like the Canadian Council for Public-Private Partnerships, the Global Infrastructure Investor Association, or the Fraser Institute).
- Consider the development of a board policy that would prohibit any political donations or policy advocacy, or only permit it with the express approval of the board of trustees.

## 6. Use or develop ESG or Socially Responsible Investment (SRI) policies

- In some cases, existing SRI or “ESG” policies, which mandate consideration of “environmental, social, and governance” risk factors in investment policies, should identify the social or environmental impacts of certain P3s or investments in privatized infrastructure; reviewing these impacts can create opportunities to assess and consider more fully the risks associated with these kinds of investments.

# KEEP OUR PENSIONS OUT OF PRIVATIZATION:

## Actions for CUPE members

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CUPE's pension trustees and plan advisory committee members are our pension champions and guardians. They defend our plans. CUPE pension representatives can and do speak up when a plan is considering investing in privatization. But they need support. That's where CUPE members come in. It's up to all of us to demand details about where our plans are currently invested, to call for plan policies that rule out profiting from privatized infrastructure, and to take action if our pension plans consider investing in privatization.

Speaking up as plan members gives our trustees backup and strengthens the case they need to make at the board table. It ups the pressure and broadens the opposition. Even if your plan's governing body doesn't have union representation, you can still take action.

It's important to lay the groundwork and establish a solid foundation for opposing our pension plans investing in privatization. Understanding how your plan makes decisions and getting your local on board are the first steps. From there you can find out if your plan is already invested in privatization, work to change plan policy to prevent future investments, and get ahead of any future privatization investment plans with a strong campaign.

Individual decisions to invest in a P3 or other privatization project may not always come to a plan's governing body. That's why it's important to push for the strongest possible policy against privatization, as outlined in step three below. Even if your plan has already invested in privatization, we can still throw up roadblocks to new investments by demanding full disclosure and requiring that each new investment be decided on a case-by-case basis. These steps create opportunities for us to intervene, highlight the risks of this kind of investment, and stop the spread of pension plan-funded privatization.

Getting information about investments can be difficult and will take research. There isn't a single definition of infrastructure as an asset class. Infrastructure investments are sometimes listed as a component of private equity, real estate or alternative investments. Infrastructure investments can be traded on an exchange or can be privately dealt. Smaller pension funds may invest in infrastructure through pooled funds or consortiums. An important starting point is asking questions about where exactly your plan is invested.

## WAYS TO TAKE ACTION

### 1. Identify your target: who has power to decide?

- Get to know the governing structure of your plan, and which body holds legal authority over pension investment decisions.
  - Decision-making may be delegated to an investment sub-committee.
  - Large plans like OMERS or the BC Municipal Plan have different structures than smaller, single-employer plans.
  - Larger plans often build their own in-house investment capacities, while smaller funds will hire specialized investment managers on a third-party basis to do the investing for them.
- Regardless of structure, there will always be a single decision-making body that determines your fund's investment policies, often known as the Statement of Investment Policies and Procedures, or SIPP. If it is not clear, a CUPE National Representative or pension researcher can assist you.

### 2. Get your local on the record

- Pass a resolution or adopt a policy statement opposing your pension plan investing in P3s and privatized infrastructure, and committing to take action. You could pass a resolution that mirrors the content of CUPE National Resolution 250 (included in this kit). Encourage other unions in your plan to do this too.

### 3. Work to change your plan's investment policy

- Review your plan's SIPP, contracts with investment managers, and other investment policy documents, for any mention of infrastructure or P3s.
- Work with your CUPE local to pass a resolution at your pension committee or board calling for changes to your plan's investment policy. As a plan member, you can also write a letter asking the board of trustees and other decision makers to change your plan's investment policies on P3s and other privatization schemes. This list begins with the strongest language that locals and plan members can request be added to a plan's investment policy.
  - Fully prohibit investment in P3s or infrastructure projects.
  - Establish partial restrictions on investment in P3s and infrastructure projects (for example, in a specific country, region or sector).
  - Require that any allocations to infrastructure, whether formally labelled as P3s or not, come to the full fiduciary board for case-by-case approval.
  - Require disclosure to trustees, plan members and the general public of the fund's involvement in all P3 projects.

#### 4. Find out how and where your fund is invested

- CUPE members and locals can formally request that your trustee board (or fiduciary body) report to plan members and your local all details of any existing fund investments in public infrastructure, P3s, or other privatization-related investments. This can be done by sending a letter to the board or fiduciary body.
- Review current holdings, looking for an “infrastructure” asset class or investments in private equity, real estate, project bonds or companies such as Brookfield Asset Management or SNC-Lavalin.

#### 5. Demand regular reporting to plan members

- Your local can pass a resolution calling on the trustee board (or other fiduciary body) to not only disclose to the union all fund investments in P3s and infrastructure, but further, require that plan members be regularly updated on the status of these investments, including any losses and other identified risks. The same resolution can also require full and regular disclosure of your fund’s investments and involvement in infrastructure or P3s to the full board of trustees.

#### 6. Ensure your union will find out before your fund makes a new P3 investment

- Ask your plan’s board of trustees to push for a change to your plan’s investment policies, requiring that any investments in infrastructure, whether formally labelled as P3s or otherwise, be brought to the full fiduciary board for case-by-case approval.

#### 7. When your pension is considering a P3 investment, fight back

- Work with your local executive, national representative and other CUPE staff resources to develop a campaign plan.
- Communicate, in writing, directly to pension plan decision-makers (trustees, the plan CEO, or other decision-makers) asking that they reject the proposed investment and insist on a transparent and rigorous decision-making process.
- Show your employer and the plan’s governing body that there may be a political and public image price to pay in getting involved with certain projects or corporations.
- Challenge pension fund decision-makers directly as part of any campaign against P3s or privatization, up to and including street level political action targeting plan leadership (including trustees, executives, and union or employer bodies involved).
- Go public with fact-checked information about a proposed project and the corporations that are involved.



## **RESOLUTION NO. 250**

**(Covers resolution 262)**

### **CUPE NATIONAL WILL:**

1. Take a strong stand against the use of public pension funds in the development, building, ownership or operation of private infrastructure; and
2. Lobby municipal, provincial and federal governments and stakeholder organizations against the use of public pension funds for privatization; and
3. Ensure that the NDP at federal and provincial levels takes a strong stand against such policies; and
4. Engage in a public awareness campaign explaining CUPE's position on this complex issue.



# **PUBLIC-PRIVATE PARTNERSHIPS:**

## **False claims, hidden costs**

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Corporations, lobbyists, consultants, investment advisors and some Canadian governments are promoting privatizing public infrastructure and services through public-private partnerships, also known as P3s.

P3s are privatization, pure and simple. There are many reasons public works best to build and maintain long-term care facilities, hospitals, water and wastewater treatment facilities, schools, transit systems, roads, bridges and other vital assets.

### **P3s cost more than public projects**

P3s are like using a credit card instead of a low-cost mortgage to finance the construction of public facilities. P3s are more expensive than publicly financed and operated projects because governments and other public sector bodies can borrow money much more cheaply than the private sector.

Beyond expensive private financing, transaction costs are another reason for the high P3 price tag. This includes the cost of all the lawyers and consultants involved in brokering P3 deals, which are far more complex than public contracts to design and build infrastructure, as well as ongoing public sector monitoring and enforcement over the decades-long life of P3 contracts.

P3s download costs to future generations and limit policy options for future governments. Future generations that had no say in the decisions end up locked into paying the extra costs of privatization decades into the future, leaving less money for public services and other community priorities.

### **Auditors don't buy the financial case for P3s**

P3s are usually justified with secret reports from private consultants that place a dollar value on supposed risks being taken over by the private sector from the public sector. Consultants present the dollar value of risk being transferred as higher than the cost of privatization, and therefore worthwhile. But the numbers don't stand up to scrutiny.

Federal and provincial auditors general and other independent experts have called out these calculations as biased and one-sided. In Ontario, the provincial auditor found every single provincial P3 was justified by claims of risk transfer. But the audit found no evidence to back up the calculations assigning a dollar value to corporations assuming risks. The entire P3 industry is based on this flawed model, with pivotal decisions being made on unsubstantiated opinions, not facts.

## **P3s can fail**

Major P3s can – and do – fall apart. Ultimately, governments are responsible for infrastructure that’s providing an essential public service. When a corporation goes bankrupt and walks away from a contract, governments must pick up the pieces, leaving the public stuck with the bill. Whether or not corporations actually take responsibility for the risk of a project failing, P3 contracts always include hefty charges known as a “risk premium.”

## **P3s don’t deliver “on time and on budget”**

P3s may be delivered “on time” within the terms of a contract, but they take much longer to deliver than conventionally procured projects because of lengthy and complex legal work and contract negotiation. And virtually every P3 project has risen in cost substantially between the time of its announcement and the financial close of the project, making “on budget” claims questionable at best.

P3 projects can claim to be “on time and on budget” only because the completion date gets set after the lengthy lead time – usually years – it takes to reach the contract stage for P3s. Experience shows budget goalposts also shift to meet whatever the privatized contract costs.

## **P3s hurt workers**

P3 contracts often outsource good public sector jobs to for-profit operators. This can involve all jobs or some types of jobs such as cleaning, maintenance or food preparation. Corporations want to maximize profits by doing more work with fewer workers, which has led to environmental problems and workplace health and safety violations with some P3s. Privatization often leads to lower-paid jobs with fewer benefits, which has a harmful economic and social impact on communities.

There are no guarantees jobs will be protected over a 30-year P3, even if there are initial promises. Hundreds of jobs and dozens of beds have been cut since a P3 hospital in North Bay, Ontario, opened in 2011. CUPE members working in Regina’s P3 wastewater treatment facility have faced shrinking staff levels and rising workload since the operations transferred from public to private hands, as well as a struggle for fair wages.

## **P3s are secretive and unaccountable**

Privatization keeps details about financing and operations hidden from the public. P3 contracts involve lengthy and complex negotiations behind closed doors, and key financial and contract information is kept secret. Unlike governments, private corporations are not subject to freedom of information or access to information laws mandating disclosure.

The high degree of secrecy surrounding P3s leaves elected officials and residents in the dark, while corporations make key decisions about services and facilities. It's a significant loss of public control that blurs the lines of accountability and responsibility. Private corporations answer to shareholders – not residents and elected officials. The mandate of shareholders is to ensure profitable and growing businesses. Our governments answer to the public. Basic public services like health care, water and wastewater treatment should be controlled by public representatives and respond to the priorities of the people that rely on them, not the profit motives of shareholders.

## **P3s aren't good for local economies**

Governments have always relied on private, home-grown, companies to design and build public infrastructure. P3 contracts price small and medium-sized companies out of the game. Only large corporations can provide the up-front financial backing the deals demand, and engage in complex P3 negotiations. This means local design and construction firms can't bid on projects. It also means, in the long term, that many decisions about local services are being made in corporate head offices, not in communities.

Public services generate good, community-supporting jobs for local residents. The jobs provide opportunities to train and enhance the skills and experience of residents, and in turn strengthen the area's resiliency. This is crucial in tough

economic times. P3s rely on external investment and expertise, and often source materials from outside the community. Money that could be returned to the local economy and tax base goes elsewhere. In addition, a growing number of Canadian P3s are owned by companies that avoid taxes by being headquartered in tax havens, depriving governments of tax revenue that private operators should be paying.

## **P3s don't guarantee quality**

A 2016, a report from the University of Calgary School of Public Policy study found that "iconic architecture and design has not been a common feature of PPPs in Canada or globally. The evidence on the architecture of PPPs suggests that PPPs tend to deliver functional, if mediocre architecture, with very few PPP projects globally winning major awards for architectural merit." P3 schools in Alberta drew criticism from school officials for a cookie-cutter approach to design and construction.

Even basic design and construction has proven difficult to deliver with some P3s. The P3 Saskatchewan Hospital North Battleford and CHUM hospital in Montreal have had serious deficiencies. Ottawa's P3 light rail line has had serious system-wide problems that have caused chaos for transit users.

## P3s are bad public policy

The Calgary School of Public Policy report suggests that elected officials implement P3s for political reasons, not because they are good public policy or benefit society. This report by mainstream economists and policy experts underlines that the supposed benefits of P3s are non-existent or highly questionable, that P3s have significant disadvantages, and that the P3 model and policy framework used in Canada and elsewhere are deeply flawed.

Numerous other Canadian and international studies have documented the many problems with P3s. Fully public projects are a wise use of public funds, and are the most reliable, accountable and cost-effective way to deliver and operate the facilities and services we all depend on.

## LEARN MORE

CUPE has additional resources on the problems with P3s and the value of public services at [cupe.ca/privatization](http://cupe.ca/privatization), including:

- Asking the right questions: A guide for municipalities considering P3s
- Solid foundation: A COVID-19 recovery built on public infrastructure
- Backgrounder on P3 schools (English only)
- What provincial auditors have said about P3s
- CUPE news and analysis about the Canada Infrastructure Bank

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