Chapter 22

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SOBER SECOND THOUGHTS: COVID-19 AND WATER PRIVATIZATION IN CANADA

The Canadian government has long sought to attract private investment into municipal water and wastewater services, so far with little success. Prior to the Covid-19 pandemic and its accompanying economic crisis, the national infrastructure bank committed to funding a public-private partnership (P3) in a small Ontario municipality. However, this plan fell apart during the pandemic, despite the increased economic pressure on municipal budgets. The failure of the national infrastructure bank to finalize this project demonstrates the weaknesses of the P3 model for municipal public services and offers a counterpoint to the politics of disaster capitalism.

INTRODUCTION

The Canada Infrastructure Bank (CIB) was created in 2017 by the federal government as a way of attracting private investment capital to large, revenue-generating infrastructure projects. Designed as a successor to the now-defunct Crown agency PPP Canada, the CIB has, since its inception, announced only a handful of major investments, and the political pressure has been intense for the CIB to show some results.[1]

Beginning in 2018, through representations at industry conferences (Lavallée 2018), CIB leadership signalled an openness to small infrastructure projects that were not part of its original mandate. By mid-2019 the CIB had launched an aggressive campaign to privatize municipal and Indigenous water and wastewater systems across the country through public-private partnerships (P3s). Although only one project has been announced to date, in a small Ontario municipality, the CIB has stated it plans to replicate this example in other municipalities and in Indigenous communities across the country.

This has not happened. Rather, the bank's single proposed foray into the water and wastewater sector fell apart during the Covid-19 pandemic. More time will need to pass before a comprehensive review of the case can identify all the inflection points. However, what is clear now is that even the economic slowdown caused by a public health crisis was not enough to save the CIB's water and wastewater P3 plan from its own inherent weaknesses.

FINANCIAL PRESSURE

Austerity budgeting and the underfunding of infrastructure – historic and contemporary – have left Canadian municipalities struggling to find the funding necessary to build new water and wastewater facilities, or to upgrade existing facilities. When the Covid-19 pandemic began in early 2020, the quarantines and lockdowns imposed across Canada precipitated a massive financial crisis for municipalities, exacerbating an already sparse fiscal environment. The Federation of Canadian Municipalities (FCM) estimates that municipalities will face a C$10-15billion shortfall in operating funds (FCM

[1] For example, at a Finance Committee meeting on June 22, 2020, members of Parliament repeatedly pressed CIB officers for evidence of progress and whether the bank had completed any projects.

2020). Cities with transit systems were particularly hard hit, as these systems must continue to operate with drastically reduced ridership. These dire conditions led many public sector unions and civil society groups in the country to predict an increased openness on the part of small, cash-strapped municipalities to water and wastewater privatization via the CIB.

Currently, the vast majority of water and wastewater systems in Canada are publicly owned and operated. Data from the Canadian Union of Public Employees (CUPE) suggests that less than 2% of Canadian water and wastewater facilities are privately owned or operated, with another 1-2% operated by arms-length Crown corporations or provincial agencies. The data also indicates that public confidence in municipal water and wastewater systems is high, with approximately 90% of Canadian municipalities reporting no intention or interest in exploring private sector involvement. Canadian municipalities provide a high-quality service that suffers few failures, although issues with lead lines in older homes continue to pose a water-quality challenge in some urban neighbourhoods (IIJ 2019). In addition, clean water advisories in Indigenous communities remain a stubborn problem that the federal government has struggled to address (Gerster and Hessey 2019).

Municipalities have the primary responsibility for water service and delivery in Canada, and they do this through a combination of taxes, levies, and user fees, as well as provincial and federal government grants. Municipalities are permitted to take on debt to finance infrastructure improvements, but this capacity is limited. For example, municipalities in Ontario and Alberta cannot exceed 25% of their own revenue in annual debt servicing costs. In Manitoba, the debt servicing limit for municipalities is 20%, while in Nova Scotia, municipalities cannot exceed 30% of their own revenue in total annual debt.

Over time, the federal and provincial governments have asked municipalities to do more with less. Municipalities own and operate over 60% of the country's infrastructure but receive only 10 cents on the dollar in tax revenue from the federal government (Johal 2019). At the same time, municipalities have only a few tools by which they can raise revenue themselves, and their most lucrative tool – property taxes – are already high among peer nations, and property tax increases prove perennially unpopular with municipal voters. While the Trudeau-led Liberal government has made welcome efforts to boost infrastructure funding for municipalities – for example, by doubling the Gas Tax Fund in 2018-2019 – federal funding has been slow to flow, sparking criticism from the Parliamentary Budget Office as well as groups like the Canadian Centre for Economic Analysis (Haider and Moranis 2019).

Looking to take advantage of chronic underfunding by provincial and federal governments to municipalities and new opportunities for returns on investment, private sector capital in Canada has long sought to make inroads in infrastructure markets – including water and wastewater – and it has generally found the federal government to be a friendly partner (Harris 2007). In 2013, PPP Canada – a Harper-led Conservative government creation that is now defunct – released a report on the water and wastewater sector titled, "Improving the Delivery of Public Infrastructure by Achieving Better Value, Timeliness and Accountability to Tax Payers through Public-Private Partnerships" (PPP Canada 2013). The laughable presumption of the title notwithstanding, this report noted that "P3 delivery models have been used infrequently for water and wastewater projects in Canada," because – among other reasons – "private financing spreads exceed those of the public sector…ultimately making it more difficult for Design Build Finance Operate Maintain P3s to demonstrate Value for Money" (Ibid).

PPP Canada had little success in privatizing water and wastewater prior to its wrap-up, but this did not signal the federal government's disinterest in continuing its privatization agenda. On July 15, 2019, the CIB (PPP Canada's successor agency) announced a $20 million investment in a 20-year water and wastewater project in the Township of Mapleton, Ontario (CIB 2019). Unlike its financial commitments in other projects, the CIB investment was to be "in the form of a standardized debt financing package" to a private sector partner, which would "improve the cost of project financing" and ensure "appropriate risk transfer to the private sector" (Ibid).

After the announcement, the CIB and its agents, including the largest law firm in Canada,[2] engaged in significant outreach efforts to other municipalities and municipal organizations, such as the Association of Municipalities of Ontario (AMO) and the First Nations Major Projects Coalition (FNMPC), promoting this model as "innovative" and as "a pilot project to demonstrate new models for structuring and financing smaller municipal water and wastewater infrastructure projects" (Chattha 2019). They also presented to industry groups such as the Canadian Water Network, and they made contacts with provincial governments (Froese 2019).[3]

The Mapleton Model – A Wedge for the Rest of Canada?

Mapleton, Ontario, was a ripe target for the CIB because it had a well-documented history of unsuccessfully seeking provincial and federal grants and financing for the expansion of its water infrastructure. In 2012, the Township of Mapleton submitted a high-priority funding application to the Ontario government's Municipal Infrastructure Investment Initiative, to expand water system capacity to meet residential and industrial development; this application was denied (Wellington Advertiser a). Again in 2013, the Township applied for funding for a new water tower in its Drayton community through the provincial Small, Rural, and Northern Municipality Infrastructure Fund, and again it was denied (Ibid). The next year,

[2] Borden Ladner Gervais LLP (BLG), which has extensive experience in infrastructure P3s. The big accounting and financial advisory companies, such as PricewaterhouseCoopers LLP and KMPG, have also been active in promoting CIB projects.

[3] The provincial government in Manitoba included the following in its mandate letters to ministers accompanying its 2020 budget: "...working with other levels of government to explore the feasibility of utilizing a P3 delivery model and the Canada Infrastructure Bank to finance and deliver the necessary upgrades to the City of Winnipeg's North End Water Pollution Control Centre."

hoping for better luck at the federal level, the Township applied for the water tower funding through Infrastructure Canada's Small Communities Fund. This application was also turned down, apparently because the project was not deemed a significant health and safety issue, and because the town was in a good fiscal position and able to take on debt (Wellington Advertiser b).

It is unclear if the Township pursued provincial and/or federal funding options for the current water and wastewater project. But it is understandable that the town's leadership may have been frustrated by the lack of support from higher orders of government in the past and therefore open to the pitch for a P3. Town council minutes do not indicate exactly when the proposal for a CIB-subsidized P3 first came to the floor, but it was in late 2018 that discussion of the water project began, and on December 4, council directed city staff to retain law firm Borden Ladner Gervais LLP (BLG) to conduct the Request for Qualifications (RFQ) process. By May 28, 2019, six proponents had been chosen as responsive to the RFQ, and council authorized BLG to hire the accounting and financial consulting firm PricewaterhouseCoopers LLP (PwC) to prepare a Value for Money (VfM) report on various models for the water and wastewater project. This report was delivered and released publicly – with redactions – on July 11, 2019.

The PwC report to council compares three models for the water project: public procurement, a concession model, and a concession model with CIB financing. Unsurprisingly, the report concludes that the concession model with CIB financing provides the most value. As is typical of these reports, capital costs for the public option are accounted for during the construction period, which results in dramatic rate hikes for the first few years, after which rates would return to normal. In the two private models, capital costs are amortized over the life of the proposed contract (20 years), which allows for rate stability. This is presented as if municipalities cannot issue debt at all, which is not true. The PwC report also calculates Mapleton's retained risk in the public model at $6.3 million – between 21 and 42 percent of the total value of the project. Without this inexplicably astronomical risk calculation, the public option is less expensive than either private model. Indeed, this calculation of retained risk underlies the conclusions about VfM. CUPE has questioned the integrity of this calculation in other cases in the past, as have numerous auditors general.[4]

Notably, the PwC report neglects to include in its analysis any provincial or federal funding options. Granted, Mapleton had been stymied in its previous efforts to receive public infrastructure funding, but the Trudeau government has significantly increased the availability, if not the speed, of infrastructure funding over multiple budgets, and has indicated that water and wastewater is a priority area. The doubling of the Gas Tax Fund, which provides federal funding to municipalities either directly or through a municipal organization (e.g. AMO in Ontario), is a particularly relevant development for municipalities in similar situations as Mapleton, and yet the PwC report makes no mention of this option.

Still, the CIB began calling the Mapleton case a "pilot project" early in the process, and a model that can be replicated "across the country" (CIB 2019). Were this to happen, it could lead to widespread privatization of municipal water systems, something that has been rare in Canada so far, and a trend that many other countries are reversing (Kishimoto, Steinfort and Petitjean 2020).

Rather than being innovative, however, this "new model" from the CIB was in fact a standard Design Build Finance Operate Maintain public-private partnership, where the higher private sector borrowing costs would have been backed up with public money. Because of this, the private corporations involved bore very little financial risk associated with taking on debt. This was intended to encourage private corporations to pursue opportunities in water

[4] The federal auditor general, in examining the Champlain Bridge P3, criticized the VfM calculations as unclear, inaccurate, and biased toward a P3. The Ontario auditor general, in her 2014 review of 74 P3s, made a similar critique.

and wastewater, even in small communities.

For municipalities and Indigenous communities, this arrangement creates the illusion that there is no cost difference between public procurement and a P3. However, research has shown time and again that P3s are more expensive (particularly in terms of financing costs) and of a lower quality that public projects, and that the transfer of risk to the private sector is highly overstated (Boardman, Siemiatycki and Vining 2016).

SOBER SECOND THOUGHTS?

The township council was prepared to select one of the private sector proposals at its meeting in March 2020, but this meeting was delayed because of the coronavirus pandemic. At the same time, increased community awareness of the plan resulted in media scrutiny and questions from residents (Raftis 2020a). It was noted and acknowledged that the township had conducted all of its deliberations of the plan in camera with its lawyers, there had been no public consultation, and that parts of the VfM report had been redacted. Meanwhile, the CIB's premature promotional work raised red flags for public sector and water rights advocates, like the Council of Canadians (Bui 2019).

The decision was delayed for months, as other public health issues took priority. Then, in late July 2020, to the surprise of observers, the Mapleton township council decided to terminate the RFP process. "CAO Manny Baron said to council that after a long technical and financial review, his opinion was the town shouldn't go any further in the RFP process," reported the website GuelphToday.com (Kozolanka 2020). "Council was in agreement with the CAO and many felt there was too much risk involved in having a private company run water and wastewater." The township will now be looking at how best to move forward with the project on its own. In explaining the change in course, Mayor Gregg Davidson indicated that it would be more advantageous for the township to finance the project itself, rather than proceed with a P3, even one backed up by the CIB (Raftis 2020b).

While there is no direct evidence that the arrival of Covid-19 had a direct bearing on this decision, the arrival of a crisis in which safe and reliable water is so essential to the health and well-being of the community must have given pause for thought. It certainly provided additional time for Mapleton's Council to think about such a monumental decision. The delay also offered more time for opponents of the P3 to mobilize. After the CIB's initial announcement in the summer of 2019, a number of organizations coalesced around building a response to the proposal. CUPE, Canada's largest labour union with the largest membership of municipal employees in the country, immediately released an analysis of the proposal (CUPE 2019) and reached out to its members in the locality. The Council of Canadians, a social action organization that advocates for clean, public water (among other initiatives), worked through its local chapter to raise awareness of the town's deliberations. A local group of water activists organized a letter-writing campaign and a well-attended informational webinar (WWW 2020) that situated the Mapleton case in a global context of municipal de-privatization.

The attention was felt by the town leadership. In explaining the circumstances of the decision to cancel the CIB-funded P3 project, Mapleton mayor Gregg Davidson told the local newspaper, "When you get phone calls from England asking what's going on in Mapleton, Ontario, it's pretty significant and that's what we had going on during this RFP process" (Raftis 2020b). He also echoed the CAO's conclusion on risk transfer by stating that the "financial analysis indicated self-financing was more advantageous to the township than proceeding with the RFP."

CONCLUSION

Privatization of water and wastewater services subordinates quality public services to returns on investment. Municipalities lose the ability to maintain control over their facilities and service quality, often for long periods of time as they are locked into restrictive and expensive contracts. Public money that should be spent on direct funding of infrastructure in the public interest is instead channeled to private companies whose primary obligation is to shareholders. Efforts to privatize water and wastewater systems goes against the global trend, and for good reason: "Experiments with privatization have failed all over the world, and a growing trend in Europe, the United States and Latin America is toward remunicipalization (or de-privatization) of private and P3 water projects. Time and again, partial or full privatization of water systems has been a disaster; accountability disappears, water rates go up, workers are laid off, service levels decline" (CUPE 2010).

In an attempt to try and force the P3 model on Canadian municipalities, the CIB is aggressively encouraging private sector actors to pursue opportunities in water and wastewater. To wit, six private sector consortia responded to the request for proposals in Mapleton, including EPCOR, Stantec, Veolia, and ASI. What interest would these players have in Mapleton's small-scale water project if the CIB were not offering to guarantee their debt? Governments across Canada are increasingly demonstrating that they are willing to grease the wheels for the private sector. For example, the Ford-led Conservative government in Ontario is modernizing (read: weakening) its environmental assessment procedures for infrastructure projects and is taking on the risk of utility relocation for P3 transit projects. In Nova Scotia, the government is eliminating "red tape" in order to ensure "the balance of risk is not tipped toward the market players" (Durant 2019).

For municipalities, this arrangement creates the illusion that there is no difference between the cost of a P3 and the cost of public procurement. However, the CIB financing is not free, and the municipality will still pay for it, either directly through lease or operating payments, or indirectly through user fees. Indeed, the CEO of the CIB acknowledged that this arrangement will result in money flowing from the pockets of residents to big companies, telling a business magazine that "users will fund the bulk of the operations and of the returns to investors through user-fees and other revenue mechanisms" (PressProgress 2020). Municipalities may also be drawn to P3s in water and wastewater because the costs will be off-book, and therefore not affect their borrowing limits. Again, this is an accounting trick that disguises long-term liabilities and results in an "underestimation of the state burden that is, instead, presented as cost-neutral" (Cepparulo, Eusepi and Giuriato 2019).

The dissolution of the CIB plan in Mapleton does not signal the end of the CIB's ambitions in the water and wastewater sector. Indeed, Covid-19 may be seen by the CIB as an opportunity to expand their plans because of the municipal budget shortfalls caused by the economic lockdown. It will therefore be necessary for opponents of public service privatization, including labour unions and public sector advocacy groups, to remain vigilant as the CIB regroups in anticipation of playing a major role in the Covid-19 economic recovery project.

At the same time, the Covid-19 pandemic and its resulting economic disruption present an opportunity to expand resistance to such privatization efforts, serving as a reminder to Canadians that publicly owned and operated water and sanitation services are essential at times of crisis. To wit, a local group of water activists seized upon this event and mounted a virtual conference in September 2020 that used the momentum of the Mapleton story to define and advance a regional water justice agenda (Watershed 2020). As resistance to water privatization ripples further afield, Mapleton may serve as a timely and prophetic counterpoint to the logic of disaster capitalism.

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