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OCTOBER 2019

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CANADIAN INFRASTRUCTURE LAWYERS

Welcome to the Lexpert/ROB Infrastructure Special Edition. We bring you introductory biographical information on Lexpert-ranked lawyers; they would be pleased to tell you more directly. We also bring you articles on the latest in Infrastructure developments – including those outside of Smart Cities (see Federal Government Prioritizes Rural Economic Development – Including Infrastructure, p. 18). We can expect that these rural projects will become issues in the upcoming federal election.

Lexpert is pleased to partner with The Canadian Council for Public-Private Partnerships (CCPPP). Its advocacy, research and education on behalf of its members has been a driver in the vitality of the sector.

The Canadian Council for
Public-Private Partnerships




Jean Cumming
Editor-in-Chief

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fortuna favet fortibus

OCTOBER 2019

Special Edition on Infrastructure

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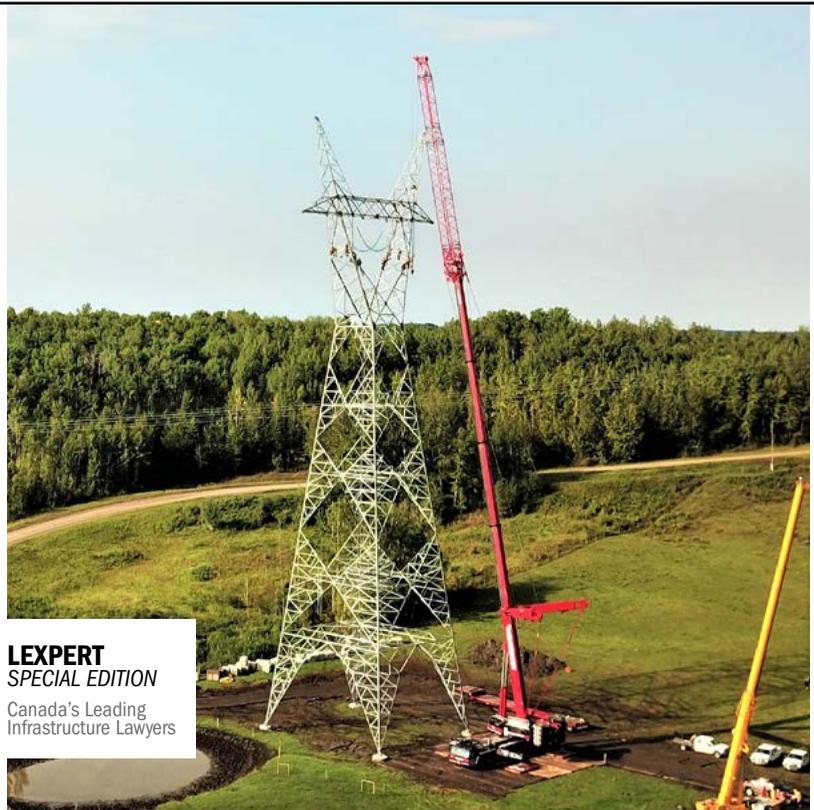
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SPECIAL EDITION

Canada's Leading
Infrastructure Lawyers

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Compiled by Elizabeth Raymer

Cover Photo Courtesy of the Fort McMurray West 500 kV Transmission Project.



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The future looks bright for Canadian public-private partnerships in the wake of recent elections

FOCUS ON P3S

By Julius Melnitzer

WHEN THE DUST settled on the spate of provincial elections held in the past two years, public-private partnerships appeared to be among the big winners.

Best cases in point? Premier Doug Ford's Conservative Party victory in Ontario in 2018 and Jason Kenney's United Conservative Party's follow-up in Alberta earlier this year.

"Very often, a change of government brings a little bit of uncertainty," says Mark Romoff, the Toronto-based President and CEO of The Canadian Council for Public-Private Partnerships. "But from the outset, Ford and Kenney announced that infrastructure was among their highest priorities and that they were both advocates of the P3 model."

Right-leaning governments also took power in Québec, where François Legault and his Coalition Avenir Québec triumphed in 2018; New Brunswick, where Blaine Higgs' Conservatives formed a minority govern-



“JASON KENNEY’S ELECTION SIGNIFICANTLY INCREASES THE LIKELIHOOD THAT INFRASTRUCTURE MODELS WILL BE DEVELOPED ALONG THE P3 MODEL.”

Geoff Stenger; Bennett Jones LLP

ment in 2018 after the Liberals fell on a non-confidence vote; and Prince Edward Island, where Dennis King emerged with a minority Conservative government earlier this year.

They joined Scott Moe’s centre-right Saskatchewan Party, now serving its third term, and Manitoba’s Progressive Conservatives, firmly ensconced under the leadership of Brian Pallister.

The outliers are Stephen McNeil’s Liberals in Nova Scotia, in power since 2017; Dwight Ball’s minority Liberal government, elected earlier this year in Newfoundland; and John Horgan’s minority NDP government in British Columbia.

With P3s recently on the rise in Atlantic Canada, BC may represent the only place in Canada where the outlook for P3s is not optimistic. But even with a federal election on the horizon, that’s not likely to change — barring an NDP or Green Party upset.

“Both Conservatives and Liberals are strong, vocal proponents of infrastructure and P3s,” Romoff says.

All of which is not to say that changes in government or in governing party leadership don’t create bumps in the road for P3s.

“Whenever there’s a change in leadership or party, there is a change in approach that at the very least can result in some delays in the pipeline,” says Tim Murphy in McMillan LLP’s Toronto office. “These delays, however, don’t necessarily reflect philosophical differences about the viability of P3s but rather differences in tweaking the process to suit the new government’s ideology.”

Justin Trudeau’s Liberals, for example, while remaining committed to infrastructure and P3s, put their own stamp on the process by replacing Stephen Harper’s P3 Canada Fund with the Canada Infrastructure Bank, a move that no doubt contributed to the funding delays for which the Liberals have been criticized.

Similarly, the Ontario pipeline remains sluggish as

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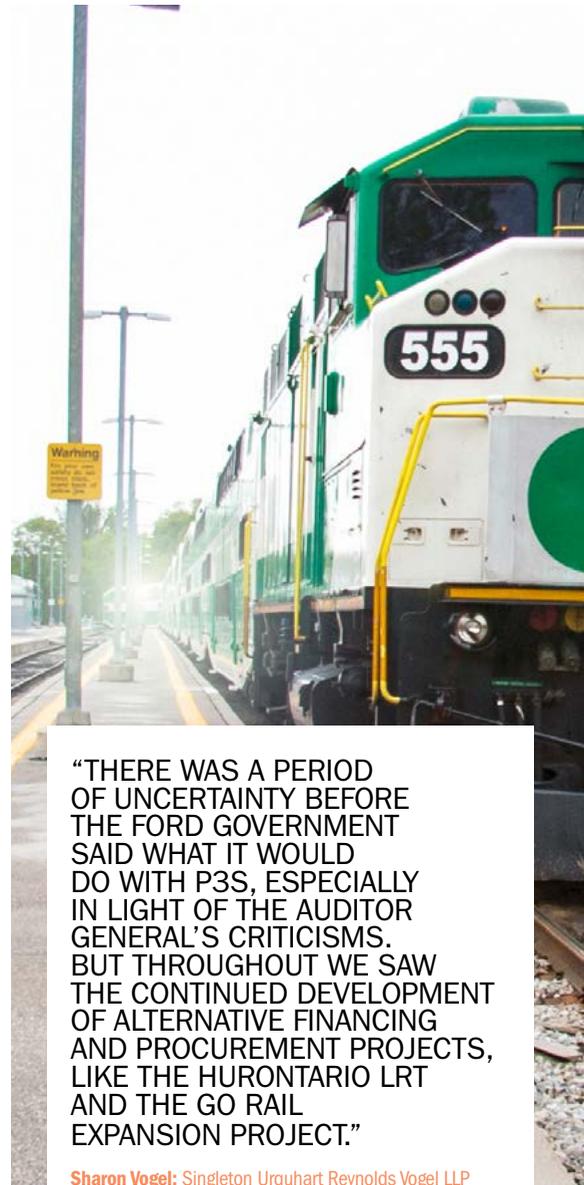
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“THERE WAS A PERIOD OF UNCERTAINTY BEFORE THE FORD GOVERNMENT SAID WHAT IT WOULD DO WITH P3S, ESPECIALLY IN LIGHT OF THE AUDITOR GENERAL'S CRITICISMS. BUT THROUGHOUT WE SAW THE CONTINUED DEVELOPMENT OF ALTERNATIVE FINANCING AND PROCUREMENT PROJECTS, LIKE THE HURONTARIO LRT AND THE GO RAIL EXPANSION PROJECT.”

Sharon Vogel; *Singleton Urquhart Reynolds Vogel LLP*

the Ford government gets its bearings.

“Apart from investment in rural areas and smaller projects, we're still waiting on the P3 pipeline in Ontario,” Murphy says. “But what that wait represents is a hiccup rather than a change in philosophy by the government.”

Sharon Vogel, a lawyer in Singleton Urquhart Reynolds Vogel LLP's Toronto office, is of similar mind.

“There was a period of uncertainty before the Ford government said what it would do with P3s, especially in light of the Auditor General's criticisms,” she says. “But throughout we saw the continued development of alternative financing and procurement projects, like the Hurontario LRT and the GO Rail Expansion project.”

As it turns out, Ontario has benefitted from a



long Liberal reign that allowed Infrastructure Ontario (IO) to become a global model for P3 procurement. “Over the past eight years, IO has been involved in more than 120 projects worth \$50 billion,” Romoff says.

Still, despite rallying to the P3 banner, Ford’s government is taking a hard look at the methodology. “The Conservatives are more ruthlessly focused on outcomes than the Liberals were,” Murphy says. “There’s also more of a focus on exporting our expertise internationally.”

Doubtless, some of the impetus for caution may have been the Ford government’s desire to avoid more criticism about Ontario’s P3 program from Auditor General Bonnie Lysyk, whose list of systemic problems included the higher costs associated with private financing, significant conflicts

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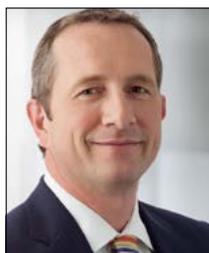
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over maintenance contracts and a lack of evidence to justify certain projects going ahead as P3s.

Arguably, however, Lysyk's comments were taken out of context by critics and many media outlets. "What the Auditor General said was that if the Ontario government could deliver its projects on time and on budget on its own, it would have saved \$8 billion," Romoff says. "But governments have shown they can't do that, and that's why you need P3s — in fact, the same report praised Infrastructure Ontario for its accomplishments as a world leader."

Murphy agrees that Lysyk's criticisms had little effect, politically or otherwise. "There was some backlash, but that subsided when the TD Bank and others issued scathing assessments of the report, describing it as an inaccurate summary of what's actually going on," he says.

The point, Romoff argues, is that P3s get into trouble when they're regarded as panaceas, proceeding without the value-for-money screen used by IO. "That's what happened in the United Kingdom, where the country has paid a price for the mandated use of P3s across the board, making it very difficult for the program to get traction going forward," he says. "But Canada has done much bet-

PHOTO: SHUTTERSTOCK



ter on that front.”

Indeed, the future of the P3 pipeline in Ontario crystallized when the Conservatives’ April 2019 budget committed \$144 billion to infrastructure over the next decade. Transit is clearly the focus of the plan, with \$66.7 billion allocated to public transit and \$22.1 billion to highways.

“Ontario’s commitment remains very clear, and we’re working closely with the government to move projects to the market,” Romoff says.

Alberta’s promising P3 future

The future for P3s looks equally promising in Alberta.

“Jason Kenney’s election significantly increases the likelihood that infrastructure models will be developed along the P3 model,” says Geoff Stenger in Bennett Jones LLP’s Calgary office. “The Premier is on record that his government will be very aggressive in pursuing P3 projects, which he believes represent the most efficient way to develop large infrastructure.”

P3s, of course, also help Kenney pursue another priority, namely the immediate reduction of the province’s debt while maintaining his commitment to infrastructure.

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To be sure, there was what Stenger calls a "P3 hiatus" under Rachel Notley's NDP rule. But previous Conservative governments did resort to P3s to build about 40 schools, the ring roads in Edmonton and Calgary, a wastewater treatment plant and a composting facility in Calgary, among other projects — and Stenger expects Kenney to pick up where his Conservative predecessors left off.

"The most immediate shift will likely be from the social housing developments to which the NDP committed to more development under P3 models," Stenger says.

Romoff is confident that the Kenney government's fall budget will feature a "significant role" for P3s, encouraged no doubt by a P3 consortium's recent completion of the \$1.6 billion Fort McMur-

"WHENEVER THERE'S A CHANGE IN LEADERSHIP OR PARTY, THERE IS A CHANGE IN APPROACH THAT AT THE VERY LEAST CAN RESULT IN SOME DELAYS IN THE PIPELINE."

Tim Murphy; McMillan LLP

ray to Edmonton transmission line. The consortium not only financed the project through the largest P3 bond in history, but completed the project on budget and three months ahead of schedule. Also on time and on budget was the Stoney CNG Bus Storage and Transit Facility in Calgary, a P3 project led by Plenary Infrastructure.

"When the Premier says he'll move on P3s, P3s will move," Romoff says.

Québec P3s flourish

So, it appears, will P3s continue to flourish in Québec.

"There's a history of P3s in the province and the recent budget continued to identify infrastructure as a high priority," Romoff says. "In fact, the Coalition Avenir has confirmed that it would procure the new dome on Montréal's Olympic Stadium as a P3."

And if there's any doubt that public-private partnerships are beacons of innovation, the emergence of Montréal's \$6.3-billion Réseau express métropolitain (REM), which brings a new P3 model to market, should silence the skeptics.

The model is the brainchild of the Caisse de dépôt et placement du Québec and its subsidiary CDPQ Infra. What makes the REM model unique is that CDPQ Infra is taking on the entire risk of the project, mitigating it only by hiving off interests to other investors. No portion of the project resides on government balance sheets. But

the government has an important role, serving as guardian of the public interest by identifying the public's infrastructure needs. Once the government does so, it is the private sector that does the initial planning and investigation to determine the project's commercial viability. It then proposes alternatives to government, which decides on the proposal that suits its purposes best.

Competing with the REM as Québec's star project for the time being is the recently completed Champlain Bridge reconstruction. Although it's a federal P3 endeavour, some of the REM transit traffic will pass over the bridge — demonstrating what collaboration between federal and provincial governments can achieve when properly executed.

Ambitious east coast projects

Elsewhere, both Nova Scotia and Newfoundland and Labrador have ambitious healthcare and highway projects on the go.

"Neither of these provinces have a strong history of P3s, so the latest developments are very encouraging," Romoff says.

And even in the far north, P3s are thriving. The Northwest Territories has brought several projects to market, including the Mackenzie Valley Fibre Link and the 97-kilometre Tlicho all-season road connecting Yellowknife to Whati, now for the most part a fly-in community.

Critical to the P3 scenario, of course, is the federal government's plan to invest \$180 billion in infrastructure over 12 years. Although critics have lamented what seems to be a slow flow for the funding since the program's announcement in 2016, it's perhaps understandable because the process required bilateral agreements with all the provinces, something that has now been achieved.

"Even after that, it's a two-way street because the provinces must identify the projects for which the funding will be used before the federal government will release the money," Romoff says. "But the alignment is now good with the feds ready to move the money out."

And the P3s in — except in BC, which seems to be parting ways with the rest of the country. "Premier Horgan and his cabinet are not particularly strong P3 supporters," Romoff says. "But they're still moving ahead with infrastructure, including a couple of design, build, finance projects that don't include a maintenance component, which they are reserving for the public sector."

Going forward, Romoff can best be described as wistful about the future of P3s under the NDP.

"We continue working with the BC government and trying to demonstrate how P3s are advantageous," he says. "But we're pragmatic as to the number of projects in the province that will come to fruition on a P3 model." 📍



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Canadian infrastructure projects attract international investors, as the market shifts from facilities and roads toward transportation and transit projects

FINANCING LONG-TERM PROJECTS

By Elizabeth Raymer

WITH AN INTERNATIONALLY recognized model for public-private partnerships and no shortage of projects, the Canadian infrastructure market is going strong with no signs of abating.

Making long-term projects possible is long-term finance and debt.

“It’s typical that the life insurance companies are engaged in providing long-term debt for these projects ... while long-term financing is also made available through institutional investors, private equity and so on,” says Mark Romoff, President and CEO of The Canadian Council for Public-Private Partnerships, from his Toronto office.

Public-private partnerships by their nature tend to be long-term, created for infrastructure projects such as public transit and hospitals, and “the private sector takes on responsibility for designing an asset like a hospital building and arranging for



some of the financing and maintaining the assets,” says Romoff. While the project agreement may last 30 years, the infrastructure itself is usually designed to live for much longer.

A major infrastructure project is the Gordie Howe International Bridge, which is currently under construction, and the only binational project that Canada has at present. That bridge is projected to have a lifespan of 125 years and cost \$5.7 billion to design, build, operate and maintain over 30 years. Healthcare facilities such as hospitals may have a shorter lifespan, “but the financing and the project agreements themselves are designed to last for around 30 to 35 years,” he says.

Investing in Canadian Infrastructure

There continues to be a strong appetite to invest in Canada, and there’s no shortage of capital, but investors naturally look for stable long-term returns. Canada has developed a good track record for investing in infrastructure, which has created

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"lots of confidence on the part of the international market," says Romoff. This includes building infrastructure through public-private partnerships (P3s), of which transportation and healthcare facilities account for the vast majority of P3 builds in Canada, he says.

"There's been a robust interest in Canadian infrastructure for a long time," says Ilan Dunsky, a Montréal-based partner in Dentons Canada LLP's global Transportation and Infrastructure practice. Over the past few years he has seen an increasing

"IT'S TYPICAL THAT THE LIFE INSURANCE COMPANIES ARE ENGAGED IN PROVIDING LONG-TERM DEBT FOR THESE PROJECTS ... WHILE LONG-TERM FINANCING IS ALSO MADE AVAILABLE THROUGH INSTITUTIONAL INVESTORS, PRIVATE EQUITY AND SO ON."

Mark Romoff; CEO, The Canadian Council for Public-Private Partnerships

amount of Canadian entrance into the market; internationally, Spanish companies have been involved for a long time, as well as German, American and British, among others, who invest as developers of a project.

More new foreign investors may be coming into the Canadian market because of the shift in the types of projects that are being undertaken in Canada, Dunsky adds, with the market shifting away recently from facilities and roads to transportation and transit projects, bringing in a variety of players who are experts in transportation and transit. Many companies are ahead of Canada in their use of concession agreements in P3s, for example, having been involved in these projects in many countries around the world, and have expertise in operating transit systems.

"P3 is a vibrant market," agrees Mark Bain, a partner in Torys LLP in Toronto who specializes in infrastructure and project finance. "We've seen the entire world land on the Canadian doorstep to get a piece of that market."

Canada currently has 286 P3 projects in operation or under construction valued at approximately \$140 billion, he notes. Many of Canada's infrastructure projects only proceed via a government sponsor, and governments have an enormous appetite for more and more infrastructure in Canada, says Bain; that runs across all political parties. "More and better infrastructure is a great

economic booster as well.”

Strategically, Bain says, Canada is seen as a springboard to the US markets, which have the opportunity to become much larger given that their need for infrastructure corresponds to their population size (approximately 10 times that of Canada). Although he is seeing P3 deals in the US, “we’re watching for it to become much more active.”

International investors are coming to Canada today, seeing the United States as being the market of tomorrow, he says; in the United States the market for P3 and other private participation is less robust because they don’t have the centralized procurement agencies that exist in Canada. “The political influence in the US tends to be more localized than in Canada.”

Financing

A traditional P3 approach to financing an infrastructure project is for the private sector to deliver the infrastructure, then arrange its own financing to pay for the construction costs and amortize that construction cost over the life of the asset, says Paul Blundy, a partner in Bennett Jones LLP in Toronto and leader of the firm’s public infrastructure projects practice.

“The project vehicle would finance that [cost] by issuing bonds or any long-term debt. And there’s a very healthy market for that long-term debt.”

The Fort McMurray West 500-kV Transmission Line, which now runs from Fort McMurray to southwest of Edmonton in Alberta, produced Canada’s biggest infrastructure bond offering to date, Blundy says: a \$1.4-billion bond offering, for an estimated project cost of \$1.6 billion. “The [financing] structure there was that the project vehicle went out and borrowed all the money they needed to build the project, and are paying it back over a period of 25 years to ... bondholders. That’s more the traditional model for P3.”

But in Ontario, at least, the pricing of that long-term debt by the design-builders has been perceived as too high relative to the cost for the province to raise the money independently, says Blundy; this has led to a model in which the government pays most of the capital cost as the construction proceeds. Infrastructure Ontario’s Highway 401 Expansion Project, for example, has been set up to have three “milestone payments” to the piece, he says, “so that basically the project vehicle just does short-term construction financing, and the bulk of the financing is done directly by the province.”

Projects costing more than \$200 million were traditionally financed by bonds rather than bank debt, but more recently the new Canada Infrastructure Bank has been financing a subset of these projects, Dunsky says. Last year a \$1.28-billion in-



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vestment by the Infrastructure Bank and CDPQ Infra completed the \$6.3-billion financing of the Réseau express métropolitain (REM) light rail in the Montréal area through an “ultra-low interest-rate loan.”

The Bank's mandate is to provide grants or loans to finance large public infrastructure projects, helping to attract investors by absorbing some of the financial risk. In June, the federal government announced that the Bank would help to develop Via Rail's multibillion-dollar high-frequency rail

“P3 IS A VIBRANT MARKET. WE'VE SEEN THE ENTIRE WORLD LAND ON THE CANADIAN DOORSTEP TO GET A PIECE OF THAT MARKET.”

Mark Bain; Torys LLP

project between Toronto and Montréal, at least in financing further studies for the project.

And a discussion is starting as to who is the appropriate payor for infrastructure, says Bain. Traditionally the payor would pay for facilities such as hospitals, and users of infrastructure such as toll roads, power and water systems. There may be a little more user-pay in future, he says, in part as consumers expect to pay something for their transit and utilities.

“We had a long run of projects that were financed purely by government, such as power plants, and then other projects that were largely privately financed on the back of government's commitment to pay,” such as hospital projects, he says. Canada has now gone from this binary model to a hybrid one, blending private and government finance. This includes telecommunications projects in ex-urban areas, which are underpinned by a public policy imperative “to make sure everyone has good internet.”

“Those sorts of projects have some revenue associated with them, but the Bells and the Teluses of the world aren't going to build their own systems,” Bain points out. “The solution to those kinds of projects is some kind of government subsidy or contribution” to make the project viable financially, particularly, for example, in more remote regions with a smaller pool of users.

The government-funded model may be less popular for shorter-term projects, where in British Columbia, at least, there has been a slight shift in the market towards the design-build, or build-finance model where there is no long-term component to the infrastructure projects, says

Samantha Cunliffe of McCarthy Tétrault LLP in Vancouver. In this model a single contractor with design, construction and facilities management expertise funds, designs and builds the project and then operates it for a period of time. The project is then leased to the client over an agreed number of years.

Creating community equity

In June, when Canadian Utilities Limited (CU) and its partner Quanta Services Inc. sold its interest in Alberta PowerLine (APL) – the design-builder of the Fort McMurray West 500-kV Transmission Project – CU offered an opportunity for Indigenous communities along the transmission line route to obtain up to a 40-per-cent equity interest in APL. “This model will provide a long-term stable investment and further enable economic development in the local communities,” CU said in a press release.

The final ownership mix of APL will be determined upon close of the purchase option for Indigenous communities, says Blundy. “It’s an opportunity for them for a high-returning equity” on the powerline that runs through their communities.

Bain also describes the 97-kilometre Tliche All-Season Road (TASR) project in the Northwest Territories that will improve urban access for members of the Whati, Gamètì and Wekweètì communities, which have relied on a winter ice road to leave the region -- made all the harder with climate change shortening the winter season.

A plan was developed to build an all-season gravel road, which would give residents year-round access to other destinations in the Northwest Territories and Alberta, and provide access to mines to the north. The First Nations piece of the project is multifold, says Bain -- whose firm acted for the government of the Northwest Territories in the deal – including creating local jobs, obligations to hire local trades, and economic participation requirements

“The [Whati] First Nations community was allowed to invest up to 20 per cent equity in the project; they are partners, so they share in all the ups and downs in the project,” says Bain.

“That, I think, is a bellwether [for] things that you’ll see coming along. ... Trans Mountain, every [infrastructure project] that goes ahead, there’s clearly a strong desire to have some indigenous participation – not just to accommodate the project, but to have some economic participation in the project.

“I’m not an optimist generally,” he says, “but I’m certainly an optimist in [the infrastructure] space. We’ve got a good thing going, and I think there’s more to come.”



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The government has created a new economic development strategy that focuses on rural Canada, as well as a connectivity strategy that provides high-speed access for all Canadians

FEDERAL GOVERNMENT PRIORITIZES RURAL ECONOMIC DEVELOPMENT — INCLUDING INFRASTRUCTURE

By Lexpert



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“SMART CITIES” are all over the Canadian Infrastructure scene. However, the federal government launched a new Minister and a new strategy this year. Why do we hear less about rural projects than urban, and is this set to change?

Brian Kelsall of Fasken Martineau DuMoulin LLP in Toronto puts rural Infrastructure in context: “There are two dynamic tensions” in this sector: first, projects “tend to be smaller and often municipally focused, albeit with provincial or federal support.”

Second, says Kelsall, they often have inherent complexities as a result of where they are, including, “short construction season, difficult access



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and supply, vagaries of ice roads and permafrost, and heightened environmental sensitivities.”

Also First Nations are often involved, which brings in another level of government.

In short, says Kelsall, rural Infrastructure projects “can be hard to do, small and a bit risky, making them harder to finance and attract big players.”

Having said that, Fasken as well as Torsys LLP and other firms are working on some very large rural projects, often in the Energy sector.

Torsys LLP is acting as counsel to Watayni-

“[RURAL INFRASTRUCTURE PROJECTS] CAN BE HARD TO DO, SMALL AND A BIT RISKY, MAKING THEM HARDER TO FINANCE AND ATTRACT BIG PLAYERS.”

Brian Kelsall; *Fasken Martineau DuMoulin LLP*

kanyap Power, a partnership between 24 First Nation Communities and FortisOntario Inc., in connection with the Wataynikanyap Transmission Project in northwestern Ontario. According to the firm's website, “Torsys acted for Wataynikanyap Power in the selection of a transmission partner and in the negotiation of the related partnership arrangements with FortisOntario, and continues to provide ongoing advice to the partnership on all commercial and regulatory matters related to the project's development and financing.”

Fasken represented the Ontario government on the Wataynikanyap project.

The federal government has made significant overtures into the rural Infrastructure sector in 2019. In January, Prime Minister Justin Trudeau appointed the Honourable Bernadette Jordan as Canada's first Minister of Rural Economic Development. Infrastructure Canada's website says “The Minister provides rural Canadians with a dedicated voice at the Cabinet table, representing rural perspectives and championing economic opportunity and quality of life in rural Canada. Minister Jordan is also leading the roll-out of broadband and infrastructure investments in rural Canada.”

By the end of June, Minister Jordan released a new federal strategy: “Rural Opportunity, National Prosperity: An Economic Development Strategy for Rural Canada,” which “is based on consultations with the people living and working in rural communities — like forestry workers, entrepreneurs, and farmers — as well as community leaders, associations, businesses, academics, municipalities, Indigenous groups, and provincial and territorial governments. It directly responds to the input we received and puts people,

places, and partnerships at the centre of rural economic development.”

Launched concurrently and most would say necessarily, the government released its “High-Speed Access for All: Canada’s Connectivity Strategy” with a plan to ensure that “all Canadians have access to affordable, high-speed internet, no matter where they live. It also commits to improve cellular access where Canadians live and work, and along major highways and roads.”

According to the Strategy, it “was designed to address the priorities of rural Canada. This grass-roots Strategy was built on ideas submitted by rural Canadians from across the country. Minister Jordan and Parliamentary Secretary Marc Serré toured the country and met with hundreds of rural Canadians to hear first-hand about their local needs. They spoke with people living and working in rural communities — like forestry workers, entrepreneurs, and farmers — as well as community leaders, associations, businesses, academics, municipalities, Indigenous groups, and provincial and territorial Ministers.

“Canadians were also invited to submit their ideas directly to the new Centre for Rural Economic Development at Infrastructure Canada. We heard that rural Canada is facing rapid and unprecedented changes, but more importantly, it has a solid foundation for building a prosperous future. While every community’s ideas were different and specific to their needs, common themes and challenges emerged: the need for reliable and affordable high-speed Internet and mobile connectivity; a desire to maintain vibrant local economies; the need to attract and retain talent (including through skills development and immigration); the need for affordable and attainable housing; the need for new or improved Infrastructure where people live and work that is resilient to climate change; a need for community capacity to plan and implement improvements and change.”

A key part of the Strategy is to extend high-speed internet and wireless connectivity to all Canadians. “Access to reliable, high-speed Internet is essential for success. It’s needed for business growth, skills training, public safety, access to services, and participation in the democratic process. Rural and remote communities are particularly hard to connect, given their low population density, remoteness, and often challenging terrain. As a result, as of 2018, 4.9 million Canadians lacked access to the government’s target speeds of 50 megabits per second download (Mbps) and 10 Mbps upload (“50/10”). In fact, only 37 percent of rural households are currently able to access these speeds, compared to 97 percent of households in urban areas. Cellular coverage is also an issue. As of 2017, 14 percent of major Canadian roads and highways still lacked mobile wireless coverage.



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Mr. MacKay-Dunn has over 30 years of practice experience providing legal advice to high-growth public and private companies over a broad range of industry sectors including infrastructure, energy, mining, life sciences, health and technology, advising on corporate domestic and cross-border public and private securities offerings, M&A and international partnering and corporate governance.



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Ms. MacKenzie is Head of the Banking & Finance Group in Toronto. Her practice focuses on banking, project finance, restructurings and insolvency. She acts for financial institutions and borrowers in domestic and cross-border banking, leveraged acquisition, project finance and restructuring transactions. She was an adjunct professor at the University of Western Ontario.



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Mr. MacWilliam is Canada lead for the global Environment and Natural Resources, and Climate Change Strategies groups. He advises on regulatory approvals, compliance, contaminated land, climate change, transportation of dangerous goods, dealing with regulatory agencies, responses to government policies, and development of internal environmental practices and systems.



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Mr. Maguire's practice spans all areas of commercial energy law including energy project and infrastructure development, joint ventures, asset and share sales and project financing. Most recently, he has been particularly active in connection with the development, sale and use of pipelines, gas plants and related energy infrastructure.



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Mr. Mantini practises public infrastructure, commercial real estate, project finance, corporate/commercial (with an emphasis on lending and secured transactions) and gaming law. His experience encompasses some of Canada's largest P3 projects, including Toronto Waterfront Revitalization, Niagara Fallsview Casino, MaRS Discovery District, Humber River Hospital and the Rail Deck Park Development.



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Mr. Margie has extensive experience and expertise in strategically resolving complex construction disputes regarding all types of construction claims conducted in the courts and in domestic and international arbitrations. His experience ranges across a wide variety of projects from infrastructure projects, institutional, industrial and commercial projects to condominium projects.



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Ms. Martin practises in the areas of construction, infrastructure and PPP. She provides strategic advice to minimize legal risk during procurement and construction. She advises on the preparation of contracts to avoid disputes, and develops proactive solutions to project issues. She negotiates resolutions, and acts as counsel in the mediation, arbitration and litigation of construction claims.

This gap in coverage poses safety concerns for motorists and travellers”

Renewing Rural Infrastructure is specifically called out: “Strong and modern infrastructure is an essential building block for Canada’s competitiveness and the long-term prosperity of Canadians, whether they live in large cities or small communities. Canada, which is the most trade-dependent nation among the G7, re-

“WE HEARD THAT RURAL CANADA IS FACING RAPID AND UNPRECEDENTED CHANGES, BUT MORE IMPORTANTLY, IT HAS A SOLID FOUNDATION FOR BUILDING A PROSPEROUS FUTURE. WHILE EVERY COMMUNITY’S IDEAS WERE DIFFERENT AND SPECIFIC TO THEIR NEEDS, COMMON THEMES AND CHALLENGES EMERGED.”

Honourable Bernadette Jordan;
Canada’s Minister of Rural Economic Development

lies on its transportation network and supporting infrastructure to get goods to market. Together, population and economic growth are putting increasing pressure on Canada’s public infrastructure. The need to upgrade and replace Canada’s infrastructure is becoming urgent. Better infrastructure planning and construction can reduce the impact of human activity, help protect and improve the environment, and contribute to the health and prosperity of Canadians.”

Minister Jordan and Parliamentary Secretary Serré heard from rural community representatives and business leaders who “frequently spoke about the challenges related to maintaining aging public Infrastructure. Leaders spoke about having to delay or cancel business park expansions or housing development projects due to inadequate infrastructure, and how that has slowed economic growth. Community Infrastructure, like recreation and cultural centres, was also cited as important to attracting new workers and immigrants, and creating places where existing residents want to stay.

“Yet many noted that the terms for accessing government funding programs are often beyond a small community’s capacity or financing ability. The capacity of small communities to effectively plan for, manage, and renew Infrastructure assets is a concern. The Federation of Canadian Mu-





nicipalities estimates that 60 percent of Canadian municipalities have five staff members or fewer. These rural municipalities are less likely to have asset management plans, yet rural municipalities own up to 49 percent of Infrastructure assets. Rural municipalities also typically have an extensive Infrastructure network and a limited tax base to fund the maintenance and renewal of their Infrastructure assets.”

In the “What We’re Doing” section of the Report, the government outlined that it is “providing significant investments in infrastructure through the Investing in Canada plan and initiatives such as the National Trade Corridors Fund. The Investing in Canada plan is investing over \$180 billion in funding across the country, in five priority areas: rural and northern communities’ Infrastructure; public transit infrastructure; green Infrastructure; social Infrastructure; and trade and transportation Infrastructure.

“As of May 2019, the Government of Canada has approved more than 48,000 Infrastructure projects, and nearly all are underway or completed. Cost-sharing for rural and northern Infrastructure projects is the most flexible in recognition of rural needs, with the Government of Canada able to contribute up to 60 percent of eligible project costs in small communities with populations under 5,000. In addition, Budget 2019 provided a one-time top-up of \$2.2 billion through the federal Gas Tax Fund to address short-term priorities in municipalities and First Nations communities.”

LEXPERT-RANKED LAWYERS



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Mr. Massé’s practice focuses on domestic and cross-border public and private M&A, debt and equity offerings and corporate finance transactions. He also has significant experience in energy and mining-related M&A, corporate finance, joint ventures, royalty and streaming transactions, and project development.



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Mr. Massicotte has extensive experience in project financing and P3s. In addition to advising on major projects that include the Markham Stouffville Hospital redevelopment project; the CHUM hospital complex and the CHUM Research Center project, he has counseled many foreign governments with respect to infrastructure projects and P3s (concessions, delegated management of utilities).



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Mr. McCormick is a partner practising corporate and securities law. He has extensive experience in commercial and corporate finance matters, including initial public offerings, restructurings, reorganizations, joint ventures, and debt and equity financings. He has set up Canadian operations of multi-national corporations, and the incorporation and shareholders’ agreements for domestic start-ups.



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Mr. McInerney advises clients in the energy sector on a broad range of domestic and international commercial transactions. He has considerable experience in energy-based acquisitions and divestitures, with a particular expertise in energy project development involving oil sands, pipelines, electrical power transmission and generation including solar, wind and biomass renewable energy projects.



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Mr. McIver is instrumental in structuring and assisting clients through the real property and major project development processes including public-private partnerships. Working closely with vendors, purchasers and developers, he is a trusted advisor in connection with property and development projects spanning a wide variety of commercial, residential, industrial, resort and financing matters.



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Ms. McKenzie advises the public and private sectors and lenders on all aspects of the planning, development, procurement and implementation of infrastructure and construction projects, including public-private partnerships. She also advises on other commercial transactions, and other financing transactions for both lenders and borrowers.



Significant
corporate
transactions

BIG DEALS

Compiled by Elizabeth Raymer

Digital Colony completes \$720M purchase of Cogeco Peer 1

On May 1, 2019, Digital Colony, a global investment firm dedicated to strategic opportunities in digital infrastructure, announced the completion of their purchase of Cogeco Peer 1, a leading provider of colocation, network connectivity and managed services, from Cogeco Communications Inc. (TSX: CCA) for \$720 million to create a standalone business under a new brand.

Cogeco Peer 1's portfolio includes over 3,300 route kilometres of owned, dense metro fibre in greater Toronto and Montréal, as well as several data centres across North America and Europe which serve a global blue-chip customer base. The new entity will include a fibre division which will be Canada's first independent neutral-host provider of small cell and 5G infrastructure and en-



PHOTO: SHUTTERSTOCK

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Mr. Merrick is the Chair of the Blakes national Infrastructure Group. He has expertise in P3s and AFPs, including all aspects of major design, build, finance and operate projects working with private partners and governments to deliver infrastructure assets using private financing. His clients include PE funds, Canadian pension funds and their advisors, private investors and significant developers.



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Mr. Michael's practice is focused on corporate and securities law with an emphasis on infrastructure consortia, particularly in the aviation industry, M&A involving public companies, private-equity investments and corporate finance. He also works extensively with Asian companies in connection with their Canadian investments and acquisitions.



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Mr. Mitchell is a partner in the Banking & Finance Group with a practice focus on restructurings and workouts. He has expertise in private acquisition financings, take-over bid financings, debtor-in-possession financings, asset-based lending and mezzanine lending. He counsels both lenders and borrowers on domestic and cross-border financings internationally.



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Mr. Morency is Managing Partner of Dentons' Montréal office. His practice focuses on corporate, commercial and construction litigation. He has extensive experience in managing and conducting large-scale litigation before arbitral or judicial courts. He has represented parties where hundreds of millions of dollars were at stake and very complex technical evidence issues were involved.



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Mr. Murphy's practice focuses on transactions comprising a public component and involving project finance, infrastructure, energy and construction law. He acts for authorities, concession companies and lenders in structuring P3 arrangements. His public-sector experience includes serving as Chief of Staff to Canada's Prime Minister, Chief of Staff to Canada's Finance Minister and as an Ontario MPP.



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Mr. Naccarato's practice focuses on P3 and alternative financing projects, where he brings his 35 years of experience in commercial real estate and construction law to infrastructure redevelopment. He has also been involved in many merger and acquisition, asset-based lending, corporate and commercial, banking, development, leasing and project finance transactions over the course of his career.





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Mr. Nordick is Co-head of the Capital Markets and Public Mergers & Acquisitions Groups in Toronto. He is a member of various internal and external groups focused on infrastructure and the financing thereof. He advises clients on mergers and acquisitions (public and private), corporate finance, securities, licensing and joint ventures, project development and general corporate and commercial law.



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Mr. O'Leary's practice focuses on corporate and commercial law, with an emphasis on energy and infrastructure matters. He regularly advises public utilities on a range of issues, including power supply arrangements and capital expenditure projects. He also advises government and private-industry clients on public-private partnerships, land use, expropriation and other real property matters.



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Mr. Ouimet's corporate, real estate, and private and institutional financing practice includes experience with P3s and infrastructure projects, capitalizations, syndications, commercial contracts, leasing, securities and securitizations.



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Mr. Parappally is a partner in the Banking & Finance Group at the Toronto office. He has expertise in acquisition financing, gold streaming transactions, mining debt finance, project finance, debtor-in-possession financing, and asset-based lending transactions. He acts for financial institutions, non-bank lenders and borrowers in domestic, cross-border, and international banking transactions.



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Mr. Paura is Head of the Toronto Real Estate Group and Co-head of the National Group specializing in commercial real estate and leasing, financing and M&A for private and public companies and REITs. He advises on privatization of public real estate companies, capital market transactions, purchases and divestitures of businesses by way of share and asset purchases, partnerships and joint-ventures.



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Mr. Perrin is a partner who practises in the areas of corporate lending, construction financing, acquisition financing, and public-private partnership (P3) financing. He acts for lenders or borrowers in connection with all aspects of loan financings and other secured transactions.

terprise and wholesale fibre connectivity, as well as a data centre division, which will concentrate on enabling multi-cloud services for enterprises while reinforcing its role as a leading hybrid-solutions managed service provider.

Miller Thomson LLP acted on behalf of the purchaser, Digital Colony, with a team led by Andrew Cohen (Corporate/M&A), Andrew Etcovitch (Corporate Tax), John Israel Galambos (Relationship Partner and Corporate Tax), and including Philippe St-Louis, Philipp Park, Lawrence Wilder, Louis-Philippe Borduas, Jean Bernard Ricard, Elissa Brock, Grégory Morin-Maltais, Julien Morier and Jamie Eichenbaum (Corporate/M&A), Keyvan Nassiry, Nora Osbaldeston, Ethan Campbell and Jean-Charles Panzini (Financial Services), Chantal Joubert, Alexandre Hébert, Ali Baniyasi, Danielle Parry, Nadia Guizani and Stuart Chaimberg (Real Estate & Leasing), Eric Dufour and Robyn Burns (Competition), Lisa Goodfellow, Daphnée Beauchamp, Greg Bush and Kim Ozubko (Labour & Employment), Ron Choudhury (Sales Tax), Anne-Frédérique Bourret and Claire Durocher (Environmental and Regulatory) and Lonnie-Brodtkin Schneider, Alexandre Ajami and Karen Durell (Intellectual Property).

Cogeco Communications Inc., the seller, was led in-house by Christian Jolivet and supported by a team from **Stikeman Elliott LLP** led by Warren Katz and including Olivier Godbout, Barbara Sheng, Jordan Altman and Jules Dumas-Richard (M&A and Corporate), Neil Bindman, Stefan Fewes, Andrew Elliott and Amelia Mounsey (Real Estate), Luc Bernier and Nathaniel Lacasse (Tax), Maxime Jacquin and Marie-Claude David (Banking), Jeff Brown, Susan Hutton, David Elder and Michael Rosenstock (Regulatory), Michel Legendre (Pension and Benefits), Justine Whitehead and Jonathan Auerbach (IP), Myriam Fortin (Environmental), Stephanie Weschler and Stephanie Pasternyk (Labour), Liliana Raffo (Paralegal) and Candace Cerone and Philippe St-Hilaire (Students).

The syndicate of lenders to Cogeco Communications Inc., led by CIBC, was advised by **McCarthy Tétrault LLP** with a team consisting of Mathieu Dubord (Financial Services), Eve Tessier and Marjolaine Hémond Hotte (Business Law).

Inter Pipeline completes \$200M bought deal financing

On November 7, 2018, Inter Pipeline Ltd. ("Inter Pipeline") closed its previously announced equity offering of 9,620,000 common shares at \$20.80 per share for gross proceeds of \$200,096,000. The offering was made on a bought deal basis through a syndicate of underwriters co-led by TD Securities Inc. and BMO Capital Markets.

The net proceeds will be used to partially fund the acquisition of NuStar Energy L.P.'s European bulk liquid storage business by Inter Terminals Ltd., a European subsidiary of Inter Pipeline, and for general corporate purposes.

Burnet, Duckworth & Palmer LLP were counsel to Inter Pipeline with a team that included Bill Maslechko, James Kidd and Jessica Brown (Corporate) and Heather DiGregorio (Tax).

Norton Rose Fulbright Canada LLP acted as counsel to the underwriters with a team that included Marcus Archer, Peter Allegretto, Eric Malysa, Katherine MacPhail and Caitlin Jenkins (Corporate) and Dion Legge (Tax).

Gordie Howe International Bridge Project achieves financial close

On September 28, 2018, Windsor-Detroit Bridge Authority, a Crown corporation of the Government of Canada, reached financial close with Bridging North America General Partnership (a partnership indirectly held by ACS Infrastructure Canada Inc., Fluor Canada Ltd. and Aecon Concessions, a division of Aecon Construction Group Inc.) for the design, construction, financing, operations, maintenance and rehabilitation of the Gordie Howe International Bridge Project, a new publicly owned international bridge crossing between Windsor, Ont., and Detroit, Michigan.

The Gordie Howe International Bridge Project is the largest and most ambitious bi-national infrastructure project along the Canada-United States border.

The fixed-price contract for the project, which includes the longest cable-stayed bridge span in North America (and one of the longest in the world), two port of entry facilities on each side of the Canada-United States border and the Highway I-75 interchange in Detroit, is valued at \$5.7 billion (nominal value). The project is being constructed by BNA Constructors Canada GP, the partners of which are Dragados Canada, Inc., Fluor Canada Ltd. and Aecon Infrastructure Management Inc. Once completed it will be operated and maintained by BNA O&M General Partnership, a partnership indirectly held by ACS Infrastructure Canada Inc., Fluor Canada Ltd. and Aecon Concessions, a division of Aecon Construction Group Inc. The project is also being designed by AECOM Canada Limited.

Construction on the project began on October 5, 2018, with the bridge expected to be in service by the end of 2024. Financing for the project is being provided through the issuance of medium and long-term bonds underwritten by RBC Dominion Securities Inc. and HSBC Securities (Canada) Inc., as well as a short-term credit facility and hedg-



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Mr. Picco's practice focuses on contract disputes, construction, risk management and insurance. He is an experienced arbitrator who represents various companies in the construction industry, including architects and engineers in professional liability disputes, and counsels clients in the areas of intellectual property, commercial and contractual disputes.



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Mr. Plater is Head of the Real Estate Group in Vancouver, Co-head of the National Real Estate Group, and a member of the Project Development & Finance Group. He advises governments, Crown corporations and private-sector clients on development projects, infrastructure projects, renewable energy projects, joint ventures, construction arrangements and project-related environmental law in BC and AB.



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Ms. Plotkin is the Leader of the firm's Global Infrastructure & Projects Group. Her practice focuses on project finance and development, banking, corporate finance and public-private partnerships. With considerable experience in infrastructure development and finance, her expertise spans Canada and the US as well as emerging markets.



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Ms. Prete advises oil & gas and power clients on corporate commercial law, M&A, joint ventures and other energy-related matters. She advises on a variety of aspects pertaining to energy project development, including joint ventures, operation and maintenance, transportation, processing and marketing arrangements as they relate to LNG, oil sands, shale gas, power and petrochemical projects.



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Mr. Pritchard practises corporate and commercial law with an emphasis on energy-related projects including real estate, land use and development and regulatory matters. He has extensive experience in acquisitions, dispositions, financings and development of energy projects, including the structuring of ownership and management projects.



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Mr. Rajpal is a partner in Toronto. His practice focuses on M&A, corporate finance, corporate governance, restructuring and compliance matters, with an emphasis on cross-border and international transactions. He advises dealers, institutional shareholders, investment funds, private-equity investments and boards of directors. He is also the leader of the firm's India initiative.



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Mr. Reynolds is Co-chair of the International Projects Group at Singleton Reynolds. He represents Canadian and International clients in the litigation, arbitration and mediation of disputes and advises on contract development for major infrastructure and construction projects including public-private partnerships. He was recently named Who's Who Legal's Construction Lawyer of the Year.



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Mr. Ricard is the Canadian head of the transport team. He has represented all levels of stakeholders in local, national and multijurisdictional transactions regarding a wide variety of projects and project financings. He has acted as lead counsel for various clients, including CDPQ Infra on the \$6.3B automated light-rail transportation project for the greater Montréal area.



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Mr. Richer La Flèche's practice in Canada and abroad extends to project finance, social infrastructure, rail, ports, roads, energy and mining. He has completed mandates in more than 35 countries and is a member of the Ontario and Québec Bars.



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Mr. Rimer leads Dentons' Real Estate, Project Development, and Banking and Finance practice groups in Ottawa, and has distinguished himself as one of the country's most valuable lawyers and respected dealmakers in all areas of commercial real estate and infrastructure projects. He advises diverse clients, including institutional stakeholders such as pension funds, banks and public-sector entities.



ing program provided by Fédération des caisses Desjardins du Québec, HSBC Bank Canada, Mizuho Bank, Ltd., Royal Bank of Canada and The Toronto-Dominion Bank.

Windsor-Detroit Bridge Authority and Her Majesty the Queen in Right of Canada were represented by **Fasken Martineau DuMoulin LLP** with a team led by Tom Barlow and Brian Kelsall, that included Doug R. Scott, Barbara Miller, Ella Plotkin, Sean Morley, Kathleen Butterfield, Marc Lefler, Louise Kennedy and Zackary Burashko, together with Alison Lacy, Clifford Sosnow, Neil Smiley, Rosalind Cooper, Christopher Steeves, Sean Stevens, Paul Casuccio, Daniel Fabiano, Gordon Hunter, Scott Ma and others. Windsor-Detroit Bridge Authority was led in-house by Vicky Tuquero and Kathleen Roberts. Advice on US law matters was provided by **Warner Norcross + Judd LLP** with a team that included Timothy Horner and Charlie Goode.

Bridging North America General Partnership and BNA O&M General Partnership were led in-house by Marc Aron, Chief Legal Officer, Mark Platteel, General Counsel, Greg Walters, Vice President, Legal and Meno Tessema, Associate Vice President, Legal for ACS, by Steven Pascoe, VP Law for Fluor and by Yonni Fushman, Executive Vice President & Chief Legal Officer for Aecon.

Blake, Cassels & Graydon LLP acted as counsel to Project Co with a team that included Catherine Doyle, Mark Johnson, Aaron Palmer, Kathleen Penny, Samantha Rossman and Catherine Youdan, together with Christine Ferguson, Chris Flood, Robert Frazer, Laura Gagnon, Megan Shaw, Aletha Utley, Jon Viner and Joe Zed. Advice as to US securities law matters was provided by **Skadden, Arps, Slate, Meagher & Flom LLP** with a team that included Riccardo Leofanti and Annabelle Gardere.

BNA Constructors Canada GP was represented in house by Adam Brody, General Counsel for Dragados Canada Inc., Jonathan van Ginhoven, Senior Counsel for Fluor and Patricia Skringer,



Director, Operations Legal – East for Aecon, with support from **DLA Piper (Canada) LLP** with a team that included Andrew Burton, Elizabeth Mayer and Natasha Rana.

The underwriters, lenders and hedge providers were represented by **McCarthy Tétrault LLP** with a team that included Linda Brown, Morgan Troke, Samantha Cunliffe, Liezl Behm, Ailbish Skinner and Brianne Paulin.

Brookfield Infrastructure acquires Enercare Inc. for \$4.3B

On October 16, 2018, Brookfield Infrastructure and its institutional partners (collectively, “Brookfield Infrastructure”) completed the acquisition of all the issued and outstanding common shares of Enercare Inc. for \$29.00 per common share or, in the case of certain electing Canadian resident shareholders, 0.5509 of an exchangeable limited partnership unit (“Exchangeable LP Unit”) for each common share elected. The Exchangeable LP Units are exchangeable, on a one-for-one basis for non-voting limited partnership units of Brookfield Infrastructure Partners L.P. (“BIP”). The transaction was valued at \$4.3 billion, including debt. Enercare’s common shares were subsequently delisted from the Toronto Stock Exchange and Enercare has ceased to be a reporting issuer under applicable Canadian securities laws.

The acquisition leverages Brookfield Infrastructure’s substantial presence in the utility, home building and multi-residential sectors in North America, and provides significant opportunities for growth and value creation.

BIP is a global infrastructure company that owns and operates high-quality, long-life assets in the utilities, transport, energy and data infrastructure sectors across North and South America, Asia Pacific and Europe. BIP is focused on assets that generate stable cash flows and require minimal maintenance capital expenditures. BIP is the flagship listed infrastructure company of Brookfield

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Mr. Roth advises clients on mergers and acquisitions, project development (including P3s), corporate finance, corporate structuring and governance and commercial transactions. With more than 25 years of experience, his practice is focused on planning, structuring and implementing transactions, drafting complex commercial agreements, and advising Boards on matters of governance and policy.



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Ms. Sallée practises in the area of infrastructure, project finance, construction and procurement law. She advises on the development and preparation of tenders, drafting and negotiation of partnership and other commercial agreements on infrastructure projects and clean energy ventures, as well as on the administration of the design, construction and/or operational phases of such projects.



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Mr. Sandrin’s practice includes real estate components of, and major governmental approval processes in, PPP infrastructure projects. These have included several of British Columbia’s most prominent transportation, healthcare, educational, utility and community recreational projects.



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Ms. Schyven is a partner in the Real Estate, Energy-Power and Banking & Finance Groups. Her practice focuses on commercial real estate as well as a variety of banking transactions with an emphasis on project and acquisition finance. She also acts for developers and lenders with respect to power generation matters including renewable energy.



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Mr. Singleton is the founding member and managing partner of Singleton Reynolds. He has concentrated his practice in the areas of construction, insurance, professional liability and environmental matters, on behalf of property owners, architects, engineers, contractors, regulatory agencies and insurers, and has acted as counsel in many precedent-setting cases for clients in these areas.



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Mr. Skelton is a partner in Bennett Jones' Calgary office and a member of the firm's Oil & Gas and Private Equity groups. His practice relates primarily to commercial transactions, with a focus on private investments and acquisitions, and project joint ventures, construction and procurement.



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Mr. Smith acts for utilities, pipeline/LNG/offshore projects before federal and provincial regulators and has appeared before federal and provincial appellate courts and the SCC. He is former counsel to the National Energy Board; a former federal ministerial policy advisor; and has testified as an expert witness in a NAFTA Chapter 11 arbitration and before the California Energy Commission.



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Ms. Smith's practice encompasses public procurement, infrastructure and public-private partnerships. She advises clients on the development, preparation and ongoing administration of public tenders and procurement processes, and the development and negotiation of commercial agreements for the design, construction, financing and maintenance of infrastructure projects.



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Mr. Stenger's practice is focused on the development of infrastructure projects, including in the oil & gas, industrial, transmission, renewable, pipeline, LNG, and government infrastructure industries, both in Canada and internationally. His experience includes assistance on EPC, EPCM, DB(FM), OEM, O&M and JV agreements as well as RFP, lien and performance security (LC, PCG, bonds) matters.



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Mr. Stuber is the Co-lead of Dentons' Renewable Energy team in Canada. His practice focuses on the development and financing of projects and major commercial transactions, particularly in the energy and infrastructure sectors. He has extensive international experience advising proponents, lenders and others involved in major projects and transactions.

Asset Management Inc., a global alternative asset manager with approximately US\$285 billion of assets under management.

Enercare Inc. is one of North America's largest home and commercial services and energy solutions companies, as well as the largest non-utility sub-metre provider in Canada.

McCarthy Tétrault LLP advised Brookfield Infrastructure with a core team led by Jonathan See, Jake Irwin and Isabel Henkelman that included Cameron Belsher, Robert Richardson, Scott Bergen and Nicole Chiarelli, and including Patrick McCay and Yaroslava Nosikova (Tax), Ian Mak and Noel Chow (Financial Services), Sarit Pandya and Andrejs Mistiuk (Real Property and Planning), Catherine Samuel, Andrew Armstrong, Shauvik Shah, Paulina Bogdanova and Andrea Schneider (Corporate), Oliver Borgers and Jonathan Bitran (Competition/Antitrust), George Vegh and Heloise Apestéguy-Reux (Energy Regulatory), Joanna Rosengarten (Environmental), Adam Ship and Paul Kunynetz (Franchise and Distribution), Nancy Carroll (Insurance), Trevor Lawson, Patrick Pengelly and Matthew Demeo (Labour and Employment), Ana Badour (Regulatory), Eric Block and Kosta Kalogiros (Litigation), Deron Waldock and Kelleher Lynch (Pensions and Benefits), John Boscaroli and Robert Glasgow (Trade) and Ryan Prescott (Technology and Intellectual Property). **White & Case LLP** advised Brookfield Infrastructure in the US with a team that included Oliver Brahmst, Samuel Raboy and Adam Cieply (Corporate), and Binoy Dharia and Shana White (Financial Services).

Enercare was led in-house by John Toffoletto, Senior Vice-President, Chief Legal Officer and Corporate Secretary with a team that included Chelsea Provencher, Senior Legal Counsel and Monique Lampard, Legal Counsel. Enercare was advised by **Davies Ward Phillips & Vineberg LLP** with a team that included Bill Ainley, Brett Seifred, Ha Nguyen, and Todd Wierenga (Corporate/M&A), Anita Banicevic and David Feldman (Competition) and Paul Lamarre (Tax).

The acquisition was financed, in part, through a new credit facility entered into between Brookfield Infrastructure and a syndicate of lenders and the Toronto-Dominion Bank ("TD Bank"), as administrative agent and as issuing bank. TD Bank was advised by **Stikeman Elliott LLP** with a team that included Craig Mitchell, Kelly Niebergall and Laura Von Heynitz.

Veridian Corporation and Whitby Hydro Complete Merger

On April 1, 2019, Veridian Corporation and Whitby Hydro Energy Corporation amalgamated to form Elexicon Corporation, and their

subsidiaries amalgamated to form a single regulated electricity distribution subsidiary, Elxicon Energy Inc., and a non-regulated subsidiary, Elxicon Group Inc.

Elxicon Energy is a local distribution company regulated by the Ontario Energy Board (“OEB”) and is the successor to Veridian Connections Inc. and Whitby Hydro Electric Corporation. It will provide more than 162,000 residential and business customers with reliable, affordable energy services in parts of Durham Region and beyond. Elxicon Energy is the fourth-largest municipally owned electricity distributor in Ontario.

Elxicon Group is not regulated by the OEB and will provide a wide range of energy solutions to customers.

Elxicon Corporation will operate primarily as a holding company. Its board of directors comprises six independent directors and the mayors, or their designates, of the five municipalities (Whitby, Pickering, Ajax, Clarington and Belleville) that hold shares in the Corporation.

Veridian Corporation is a holding company that owns Veridian Connections Inc., an OEB-regulated utility that distributes electricity to more than 121,000 residential and business customers in nine communities east and north of Toronto.

Whitby Hydro Energy Corporation is a holding company owned by The Town of Whitby, and containing two subsidiaries: Whitby Hydro Electric Corporation and Whitby Hydro Energy Services.

Aird & Berlis LLP acted as joint legal counsel to Veridian and Whitby Hydro in relation to the merger and to the Mergers, Acquisitions, Amalgamations and Divestitures application to the Ontario Energy Board, with a team comprised of Ron Clark, Jeremy Burke, Stephen Crawford and Sarah Newman (Corporate), Dennis O’Leary (Energy), Barbara Worndl (Tax), Lorenzo Lisi and Barbra Miller (Labour & Employment), and Jill Fraser and Alyssa Gebert (Financial Services).

Suzanne Murphy (Corporate), Kimberly Howard (Corporate), Chris Zawadzki (Corporate) and Bill McCullough (Real Property) of **McCarthy Tétrault LLP** were Independent Counsel to Whitby Hydro and Counsel to the Town of Whitby.

Borden Ladner Gervais LLP acted as independent counsel to Veridian and counsel to The Corporation of the City of Belleville, The Corporation of the City of Pickering and The Corporation of the Municipality of Clarington, with a team comprised of Bernadette Corpuz (Corporate, Energy), Jessica-Ann Buchta (Corporate, Energy), Rick Coburn (Environmental), Tamila Ivanov (Real Estate) and James Fu (Labour & Employment).

Thomas J. Timmins of **Gowling WLG** was counsel to the Town of Ajax. 



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Mr. Torrey has a practice focused exclusively on lending transactions. With experience in all areas of lending, he has particular expertise in project and acquisition financings and in all aspects of mine finance. He acts on behalf of both borrowers and lenders and has extensive experience with a broad range of financings in a broad range of industries.



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Ms. Tosto’s practice focuses on corporate financing for the technology and transportation sectors. She regularly assists clients on asset-based finance as well as mergers, acquisitions, reorganizations and large contract negotiations. A leader in the international transportation community, she serves as Canadian counsel on financing transactions to many of North America’s Class 1 railways.



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Mr. Turcotte focuses on corporate finance, private and public M&A, P3 sponsor work and infrastructure & energy M&A. He also has extensive experience in the energy industry, in particular with respect to wind power and hydro projects. In 2018, he was included in *The Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada*.



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Mr. Vilder specializes in bank financing, project financing and asset-based financing. He has been involved in numerous bank and project financings in Canada, Europe, Africa and Asia. Other areas of expertise include energy and infrastructure projects. He acts for financial institutions, investment funds, development banks, sponsors and companies.



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Ms. Vogel is a partner at Singleton Reynolds and co-chairs the firm’s Construction and Infrastructure practice group. She specializes in infrastructure and industrial project dispute resolution and contract negotiation in relation to highways, railways, tunnels, pipelines, hospitals and mines. She was recently named one of the top 25 women in litigation by Benchmark Canada.



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Mr. Voore is a senior partner in the Capital Markets and M&A Groups in the Toronto office. His corporate and securities law practice includes specializations in M&A, corporate finance (infrastructure and P3 projects), corporate governance and contested shareholder meetings. He has been involved in a number of innovative transactions including bond and hybrid bank/bond financing structures.

Other Lexpert-Ranked Lawyers

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Mr. Waitzer is a senior partner in Toronto. His practice focuses on complex business transactions and advising clients in respect of public policy and governance matters. He is the former Chair of the OSC and of the firm. He is a Professor (endowed Chair) and Director of the Hennick Centre for Business and Law at Osgoode Hall Law School and the Schulich School of Business, York University.



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Mr. Whitlock focuses on restructuring and workouts of real estate loans, real estate lending and zoning and development approvals and the purchase and sale of condominiums, commercial and retail projects and real estate joint ventures and partnerships. His clients include land development projects, shopping centres, offices, hotels, golf course resorts, entertainment centres and condominiums.



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Co-chair of the firm's Infrastructure and Energy group, Mr. Willis advises clients on matters relating to corporate finance and construction, with an emphasis on project finance and public-private partnerships. His practice includes advising consortia, arrangers, lenders and other P3 participants; and assisting developers and equity participants involved in renewable energy projects.



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Ms. Wilson is a leading practitioner in the field of alternative finance and procurement projects and infrastructure development projects. She has extensive experience in contracts to engage the private sector in the provision of traditional government services. She has developed and implemented procurement and contract documentation to support a wide range of public-private partnerships.



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Mr. Wise's practice includes trial and appellate work as well as mediation and arbitration of construction disputes. He also advises on P3, DBFM and EPC contracts. He regularly acts for owners, contractors and sub-contractors. Author of the *Manual of Construction Law* and co-author of *Construction, Builders' and Mechanics' Liens in Canada* (7th ed.), Carswell. Certified Specialist in Construction law.



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Mr. Younger is Chair of the Aird & Berlis Infrastructure Group. He has advised on P3 projects since their inception in Canada, including some of the largest transactions in the country. With domestic and international experience, he provides sound advice to governments, equity sponsors, funders and subcontractors on a wide variety of civil, transportation and accommodation projects.



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Mr. Zacher is a partner in the Litigation group and Co-head of the Energy Group. His practice focuses on complex commercial disputes in the energy sector and on energy regulatory matters. He represents clients before courts and tribunals (including the OEB and NEB) in regulatory and appeal proceedings, including in regards to the approval and permitting of major infrastructure projects.

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