

# Delivery Matters:

## INFRASTRUCTURE PRIVATIZATION AND ACCOUNTABILITY



This fact sheet examines the rapid expansion of private contracts to manage the operation and maintenance of public infrastructure in Alberta. These Total Property Management (TPM) contracts are replacing government managers and staff who directly oversee public buildings. The buildings include core public infrastructure, ranging from government buildings, such as courthouses, to rehabilitation and tourist centres.

Alberta's 2012 provincial budget cited the Ministry of Infrastructure's budget allocation at \$1.36 billion, with

\$17.6 billion in new capital over its three-year plan.<sup>1</sup> Clearly, the operation and management of public infrastructure involves assuming responsibility for a significant amount of public spending and a large and growing inventory of public assets. Beyond the financial risks associated with this level of business, managing public buildings also involves taking responsibility for the safety of the employees working in those buildings and the safety of the public who access them.

### BACKGROUND

The outsourcing of maintenance work for government-owned facilities to private “property management” companies has grown exponentially in recent years. Three companies — BLJC, Edon, and SNC Lavalin — have dominated these contracts. In 2009, the top five companies alone received nearly \$64 million in maintenance and operation payments from Alberta Infrastructure, a dramatic rise from the \$6.3 million they received in 2006 (Figure 1).<sup>2</sup>

Given the value of Alberta's public assets and the cost of the contracts being awarded to private operators, the Parkland Institute undertook to conduct a cost-benefit analysis of the approach compared to managing the facilities in-house. Unfortunately, this investigation was severely hampered by the lack of transparency with regard to Alberta government property management contracts with private firms.

### ALBERTA RANKS LOWEST FOR TRANSPARENCY

Alberta's historic emphasis on privatization has been matched by its willingness to ensure the confidentiality of companies involved. The result is that privatized delivery is less transparent than public delivery. Alberta's lack of transparency in this regard was highlighted by a recent national comparative study of information legislation. When rated in comparison with legislation in British Columbia,

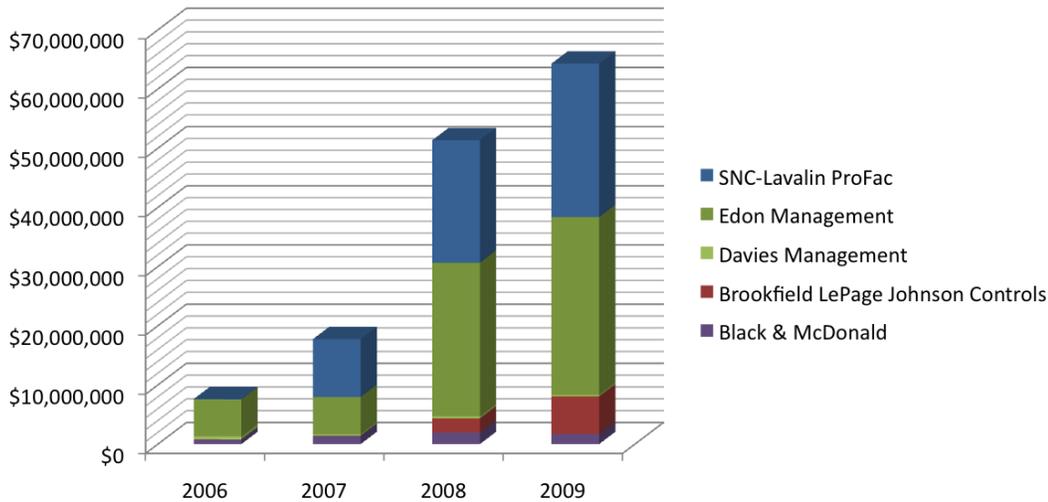
This fact sheet is the third release in a series of Parkland Institute publications that examine the implications of different approaches to public services delivery. The first publication in the *Delivery Matters* series, *Delivery Matters: The impacts of for-profit ownership in long-term care*, provided evidence that private, for-profit facilities deliver significantly poorer quality services. The second report, *Delivery Matters: The high costs of for-profit health services in Alberta*, looked at the cost impacts of delivery of clinical health services, specifically hip and knee replacements, through private, for-profit clinics. It reported on previously unreleased evidence of higher cost in the private for-profit clinics. This fact sheet looks at the transparency and accountability risks of public-private contracts for delivering public services.



1 Government of Alberta. 2012. “Budget 2012: Fiscal Plan Tables.” March 2012, p. 112 and 116.

2 Government of Alberta, Treasury Board and Enterprise. 2010. “Blue Book: General Revenue Fund, Details of Grants, Supplies, Services, Tangible Capital Assets and Other Payments, by Payee.”

FIGURE 1 | Alberta Infrastructure Maintenance Outsourcing Contracts



Ontario and Nova Scotia, and Nova Scotia, Alberta's Freedom of Information and Protection of Privacy Act (FOIP Act) placed last among the provinces studied.<sup>3</sup> The study was conducted by the Centre for Law and Democracy (CLD), an international human rights organization based in Halifax, Nova Scotia specializing in the right to information.

The CLD study is part of a broader international rating project, which includes a comparative assessment of 89 national right to information laws, released in September 2011. Canada came in 40th place worldwide with a score of 85. Based on its score, Alberta would have placed 51st on that survey, just behind Angola, Colombia and Niger.

One of the measures of transparency on which Alberta compares particularly poorly is the right of access to a) private, third-party bodies that perform a public function and b) private bodies that receive significant public funding. Alberta ranks a zero due to exemptions of numerous bodies and agencies. The report identified specific sections of Alberta's FOIP Act that are particularly egregious in denying public access to information and undermining transparency. These included section 19(1) because it exempts information used in awarding contracts, and section 16(1)(a)(ii) because it exempts commercial information of a third party.

## ACCESS DENIED

When the Parkland Institute requested details of the TPM contracts, section 16(1) of the FOIP Act was one of the clauses used by the Information and Privacy Commissioner's Office to deny Parkland's request. The denial letter from the Ministry of Infrastructure stated quite specifically: "Disclosure harmful to business interests of a third party."<sup>4</sup>

3 Centre for Law and Democracy, 2012. "Alberta Ranks Last in Transparency Study," April 9, 2012. <http://www.law-democracy.org/?p=1875>

4 Freedom of Information and Privacy Manager, private correspondence, Ministry of Infrastructure, September 12, 2011.

In response to its freedom of information requests, Parkland was provided a set of spreadsheets that set out the total cost of the TPM contracts by company, total amount, and date of the contract. The breakdowns of actual costs within the contracts were not provided. Had this been public delivery of operation and maintenance, the costs would be available at the facility level with detailed cost breakdowns. However, because the

private contracts are multi-year and deal with multiple facilities, the aggregated information provided does not allow for effective cost comparisons between private and public delivery models. Without this basic information, a meaningful cost-benefit analysis is not possible.

## LACK OF TRANSPARENCY AND ACCOUNTABILITY FOR THE CONDITION OF PUBLIC BUILDINGS

Alberta Infrastructure surveys the condition of publicly owned infrastructure and rates it in good, fair or poor condition. The Ministry has, as one of its stated goals, "Excellence in the planning, delivery and operation of government-owned properties and facilities" and measures its performance using a "facility condition index" (FCI).<sup>5</sup>

However, once buildings are outsourced, they are exempt from FCI measures these regular assessments of their condition. The Ministry's Annual Report states that, "To optimize evaluation funds ... facilities owned by the provincial government but leased or operated by a third party are also excluded from this measure."<sup>6</sup>

Given the potential financial liability and longer-term costs associated with infrastructure deficits, including buildings that are falling into disrepair, the lack of public data on the condition of contracted-out facilities is significant. Albertans have good reason to be concerned about the lack of accountability for the condition of publicly owned buildings. This is especially the case given that the government made it clear that service levels would be cut: according to the 2010–2013 Infrastructure Business Plan,

5 Government of Alberta, Ministry of Infrastructure, "Infrastructure Annual Report 2009-2010," p. 22.

6 Government of Alberta, Infrastructure Annual Report 2008-2009, Methodology and Data Source, September 2009, p. 44.

“the ministry will be required to reduce service levels under its property management contracts that will impact areas of building operations and maintenance.”<sup>7</sup>

## DOES PRIVATE DELIVERY COST LESS OR MORE?

The Alberta government has consistently used cost savings as the justification for outsourcing. In his overview of outsourcing in Alberta, the province’s Information and Privacy Commissioner noted the outsourcing that has taken place since the early 1990s “focused on cost-effectiveness” and that “The concept of achieving savings was ever present.”<sup>8</sup> Accordingly, “public bodies have entered into an increasing number of agreements” that “involve the transfer to the private sector of certain functions that have traditionally been carried out in the public sector.”<sup>9</sup>

It is critical to good public policy and governance, as well as to political accountability, that the public be able to verify whether the government’s claims of cost savings are true. This is especially important given that Alberta’s government has, since the early 1990s, repeatedly demonstrated an ideological commitment to privatization. How is the public to know whether government decision-making based on that ideology is supported by evidence-based financial management?

Unfortunately, there has been no public accounting as to the actual cost comparisons of public versus private service delivery in many areas. Specifically with regards to infrastructure maintenance, no such costing report has been made public and there is no indication that any such accounting is forthcoming. Albertans have not been provided the information required to assess the financial costs of public versus private delivery of infrastructure maintenance.

## LOOKING BEHIND THE CURTAIN

Though the details of the cost of services within the contracts and the status of the buildings have not been made available to the public, there are a number of ways to pull back that curtain and get a glimpse behind it. One is to look at a sample blank TPM agreement that the government uses for developing new contracts. Though the details of costs for work within the contract are not accessible, the sample contract does reference costs of “extra work” that is in addition to the regular work under the contract. According to the blank TPM agreement, for all “extra work”

7 “Infrastructure Business Plan 2010-13” in Government of Alberta, *Budget 2010: Striking the right balance*, February 2010, p. 173.

8 Alberta Office of the Information and Privacy Commissioner, “Public-sector outsourcing and risks to privacy,” February 2006, p. 5.

9 Access and Privacy, Service Alberta, “Managing contracts under the FOIP Act: A guide for Government of Alberta contract managers and FOIP coordinators,” Revised March 2008, pp. 1, i.

*“The Parkland Institute’s intended cost-benefit analysis of private vs. public management of Alberta’s public facilities was severely hampered by the lack of transparency for these private contracts.”*

the contractor can charge an additional 10 per cent. The agreement states:

*For Extra Work approved by the Minister and performed by the Property Manager’s own personnel, or by Subcontractors, the Property Manager shall be entitled to a 10% markup. (Clause 1.13.3.5, P.8, TPM 007, 2008-08-05.)<sup>10</sup>*

This 10 per cent is not for overhead, as the labour costs charged already include overhead.

In the absence of data on costs and public payments, it is impossible to say how funds may be being extracted from the public in TPM deals. If it were about 10 per cent, as it is for “extra work,” then the public loss in 2009 would have been \$6.4 million in public services, public money or both — for the TPM deals referenced in Figure 1 alone.

## WHO IS GETTING THE CONTRACTS?

Another indication of the quality and accountability of the contracts can be found by examining the parties that obtain them. The two companies getting the bulk of the contracts — Edon Management and SNC-Lavalin — are examined below; both have been shrouded in controversy. Disreputable behaviour by company executives raises significant questions as to the security of the public funds and assets being transferred to those corporations.

### *Edon Management*

Edward Lazdowski, president of Edon Management Corporation, was investigated by the Real Estate Council of Alberta after a scheduled RECA audit revealed unauthorized transactions from brokerage trust accounts.<sup>11</sup> On April 26, 2001, Lazdowski settled with a withdrawal from the Real Estate Association, accepting a lifetime industry member license prohibition.<sup>12</sup> On July 31, 2002, the Institute of Chartered Accountants of Alberta also gave Lazdowski a two-

10 Alberta Infrastructure, Government of Alberta, August 5, 2008. TPM 007. P. 8.

11 Institute of Chartered Accountants of Alberta. 2012. Summary of Sanction Agreement. <http://www.albertacas.ca/ProtectingServingthePublic/DisciplineHearings/DisciplineHistory.aspx>

12 Real Estate Council of Alberta, Correspondence with Edward Lazdowski. May 11, 2001. <http://www.reca.ca/consumers/content/complaints-discipline/lifetime-withdrawals-industry.htm>

year suspension and placed limitations on his handling of trust funds. According to the Institute, Lazdowski admitted he was guilty of unprofessional conduct between the years 1999 and 2000 in having made unauthorized transactions from the trust bank accounts of Shawn and Associates Management Ltd., operating as Edon Management.<sup>13</sup> Edon Management was also named in a significant lawsuit as a private landlord for lack of maintenance resulting in a ceiling collapse that allegedly injured a tenant.<sup>14</sup> This matter was settled privately.

#### *SNC-Lavalin*

SNC-Lavalin has been involved in a series of high-profile international scandals over the past year alone. In March 2012, the chief executive of SNC-Lavalin Group Inc. resigned abruptly over \$56-million in missing company funds.<sup>15</sup> The company's Canadian offices have undergone two RCMP searches related to the missing payments. According to Toronto Star sources, the firm also faces a class-action lawsuit by shareholders seeking \$250 million in damages in relation to the payments scandal. SNC denies all liability in respect of the claims alleged in the proposed class-action.<sup>16</sup>

The Toronto Star also reports that SNC parted ways with another executive, former company controller Stéphane Roy, who travelled to Mexico City last fall to meet with Ontario consultant Cynthia Vanier, who was at the same moment arrested by Mexican police in connection with an alleged attempt to spirit Muammar Gadhafi's son Saadi out of Libya and into Mexico. Vanier had been previously hired by SNC executives to complete a "fact finding" mission in Libya to determine, among other things, how the company could securely re-establish its business interests there.<sup>17</sup>

Media sources also report that SNC was being investigated for irregularities, including alleged bribes of government officials in a bridge project in Bangladesh. The World Bank recently banned SNC from bidding on bank projects until the allegations are cleared up.<sup>18</sup>

The track records of the executives in these two companies open significant questions as to the proper security of the tens of millions in Alberta public funds and assets being transferred to these private corporations. It also raises questions as to their suitability to manage critical

infrastructure with public access and workers who may be put at risk.

## CONCLUSIONS

This fact sheet illustrates that in the matter of public infrastructure, delivery matters; it matters who is managing and maintaining our public buildings and infrastructure. Using private contractors reduces transparency and accountability and the evidence regarding the cost implications is unclear for Albertans. Given the amount of public spending and the volume of assets in question, these are important concerns. To rely on private delivery of infrastructure maintenance, is to risk the mismanagement of infrastructure funds and capital assets.

Parkland's *Delivery Matters* series has shown overall that using private for-profit companies to deliver public services not only reduces transparency and accountability, but is associated with higher costs and lower quality services. Given the lack of proper cost-benefit analyses of those public-private infrastructure contracts, a moratorium should be placed on further expansion until such a cost-benefit analysis has been made public, with full details of true costs of these contracts to Albertans.

13 Institute of Chartered Accountants of Alberta. 2012. Op. cit.

14 Court of Queen's Bench of Alberta, Between: Her Majesty the Queen in right of Alberta, as represented by the Minister of Health and Wellness, Fern Tesfamarian-Tewelde and Kifle Tesfamarian-Twelde and 768837 Alberta Limited and Shawn & Associates Management Ltd. Carrying on business under the tradename of Edon Management. No 000313655, "Statement of Claim," July 17, 2000. "Discontinuance of Action," May 28, 2003.

15 Paul Waldie and Sean Silicoff, "SNC-Lavalin CEO forced out as scandal over missing funds probed." Globe and Mail Monday, Mar. 26, 2012. <http://www.theglobeandmail.com/globe-investor/snc-lavalin-ceo-resigns/article2381181/>

16 Andrew Chung "RCMP raids SNC-Lavalin's Montreal headquarters." April 13, 2012 <http://www.thestar.com/news/canada/article/1161146--rcmp-raids-snc-lavalin-s-montreal-headquarters?bn=1>

17 Chung. 2012. op. cit.

18 Chung op. cit.; Campbell Clark, "SNC-Lavalin's murky affair shows need to tighten bribery law." Globe and Mail, Wednesday, Mar. 28, 2012.