

# Public-Private Partnerships - Canadian Experience and Best Practices: Legal

Douglas J. S. Younger

# Background

- Canada's population: 34,482,800
  - Ontario's population: 13,373,000
  - British Columbia's population: 4,573,300
  - Alberta's population: 3,779,400
  - Quebec's population: 7,979,700
- Canada has a federal constitutional structure
  - federal government
  - 10 provincial governments
  - 3 territorial governments

# Background (continued)

Government	Jurisdiction
<b>Federal</b>	<ul style="list-style-type: none"><li>• Banking</li><li>• Defence</li><li>• Foreign policy</li><li>• Criminal Law</li><li>• Federal police force</li><li>• Federal courts and prisons</li><li>• Interprovincial commerce</li></ul>
<b>Provincial</b>	<ul style="list-style-type: none"><li>• Health</li><li>• Education</li><li>• Roads</li><li>• Provincial courts and prisons</li><li>• Provincial police forces</li><li>• Municipalities</li></ul>

# Canadian PPP Successes and Best Practices

- Favourable environment for PPPs
  - Political will:
    - recognize infrastructure gap
    - endorse new infrastructure procurement model, using private sector finance to complement public sector infrastructure expenditure
  - Establishment of specialist PPP agencies (Infrastructure Ontario, Partnerships B.C., Infrastructure Quebec):
    - repositories of expertise
    - employees drawn from private sector (to take advantage of private sector perspective/expertise)
    - review infrastructure proposals and make recommendations

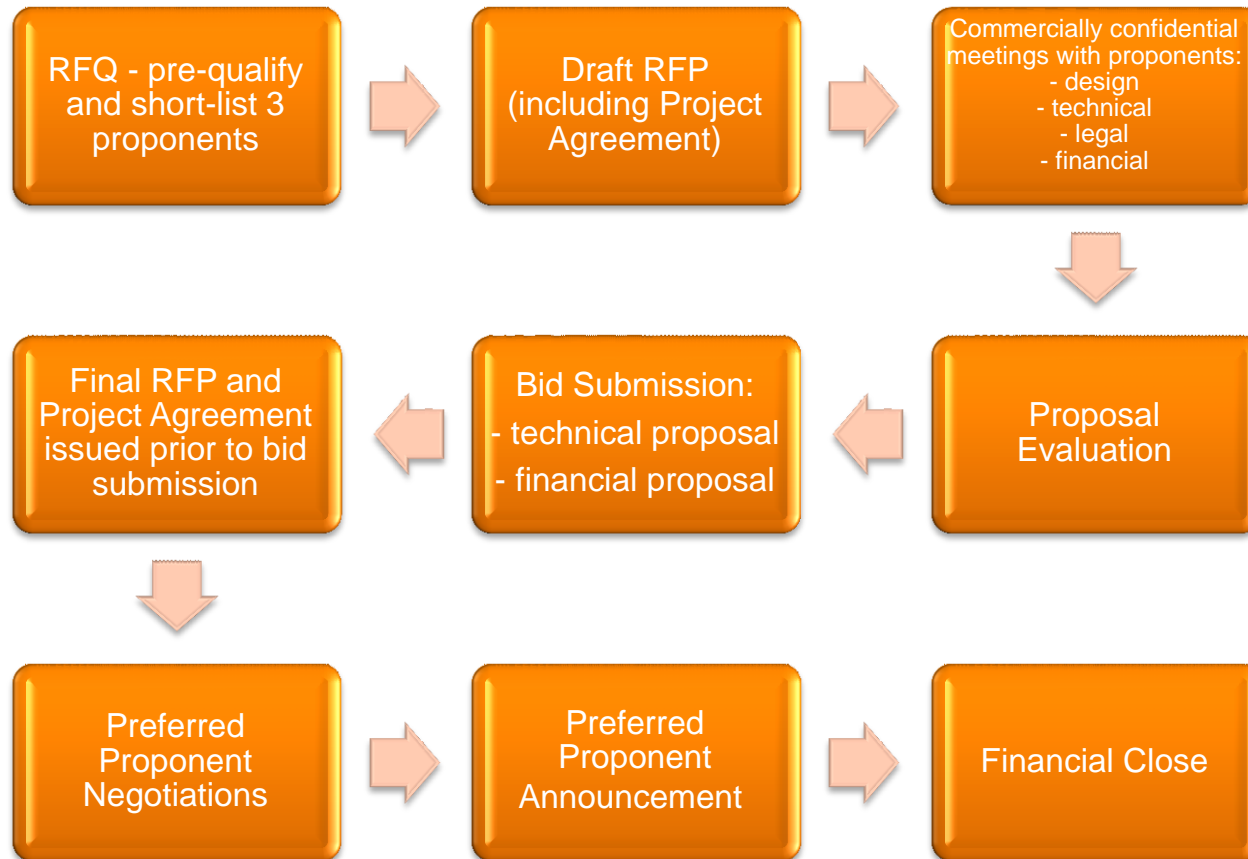
# Canadian PPP Successes and Best Practices (continued)

- Favourable legislative environment for PPPs
  - Westminster-style parliamentary democracy
  - No separation of powers between executive and legislature; executive controls legislative branch
  - Simpler approval processes and limited appropriations risk

# Canadian PPP Successes and Best Practices (continued)

- Standardization within provincial markets and coordination across markets:
  - of PPP procurement documentation and processes
  - of Project Agreements

# PPP Procurement Process



# PPP Procurement Process (continued)

- Efficient process; abbreviated timelines
  - RFP to Preferred Proponent Selection: six to nine months
  - Preferred Proponent Selection to Financial Close: 30 to 90 days
- Efficiencies enabled by:
  - PPP agency expertise and experience
  - Market certainty regarding process and risk allocation
  - Document standardization

# PPP Procurement Process (continued)

- Project Agreement standardization
  - Market certainty/acceptance of risk allocation model
  - Bid certainty (due to issuance of final form of Project Agreement prior to bid submission)
  - Limited changes following Preferred Proponent selection (thus accelerating financial close)

# PPP Procurement Process (continued)

- Form of Project Agreement in most Canadian jurisdictions follows UK PFI model BUT adapted to reflect Canadian market and experience:
  - more compensation events
  - compensation for uninsurable Relief Events
  - compensation (in Ontario) for force majeure events
  - indemnification of public sector for delays in completing construction
  - termination for relief events
  - sharing of excess equity gains resulting from changes in ownership of SPV

# PPP Procurement Process (continued)

- Request for Proposals
  - standardized form and approach
  - evaluation generally combines design, price and financial elements

# Financial Improvements/Advances

- Credit spread lock-in process (provides flexibility in wake of GFC)
- Wide equity model in British Columbia
- Partial government project funding reduces cost without sacrificing benefits of private sector risk transfer:
  - progress/milestone payments (B.C.)
  - substantial completion payment (Ontario)
- Active bond, private placement and short-term bank markets

# Financial Improvements/Advances

(continued)

- European banks, actively engaged in Canadian PPP market, though threatened by:
  - Euro crisis/pricing volatility
  - Some European banks exiting project finance
- Shorter terms and mini-perms
  - refinancing risk

# Aird & Berlis LLP

- Major full-service Bay Street law firm solely operating out of Toronto, Canada
- More than 135 of Canada's most respected lawyers
- Partners are among the most highly rated in the country
  - Ranked #1 Ontario Regional Law Firm by *Canadian Lawyer*
  - Twenty-one listed in *The Best Lawyers in Canada 2012*
  - Fifteen listed in *The Canadian Legal Lexpert® Directory 2011*
  - Seven recognized in the 2011 edition of *Chambers Global: The World's Leading Lawyers for Business*

# Aird & Berlis LLP (continued)

- Our services are comprehensive, practical and highly-specialized to our clients
- Cross-functional teams are built according to individual client needs

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## Industry Teams

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Energy  
Entertainment, Media, Sports and  
Communications  
First Nations  
Franchising  
Gaming  
Licensing  
Technology  
Transportation

# Aird & Berlis LLP (continued)

## PPP Experience

- A&B lawyers have advised all levels of government and government agencies, sponsors and financiers on major PPP and infrastructure transactions, both nationally and internationally
- Recognized as having a leading Canadian PPP practice

# Aird & Berlis LLP

## PPP Experience - Public Sector

- Infrastructure Ontario
  - Higher education AFP project
  - Review of PPP template agreements and documents
- Puerto Rico Public-Private Partnerships Authority
  - Greenfield social infrastructure DBFM project
- Partnerships B.C.
  - Sea-to-Sky Highway Improvement Project
  - Kicking Horse Canyon Highway Improvement Project

# Aird & Berlis LLP

## PPP Experience - Private Sector

- Lenders
  - Billy Bishop International Airport Pedestrian Tunnel
  - Southwest Detention Centre
- Bidders (equity sponsors)
  - Halton Healthcare Services New Oakville Hospital and Integrated Energy projects
  - St. Joseph's Regional Mental Health Centre
  - Thunder Bay Consolidated Courthouse in Ontario
  - Surrey Memorial Hospital (B.C.)
  - Royal Jubilee Hospital (B.C.)
  - Fort St. John Hospital (B.C.)

# Douglas J. S. Younger



Douglas J. S. Younger is a partner and Chair of the firm's Infrastructure Group. Douglas practises in the area of project finance, focusing on public-private partnerships (PPP) and infrastructure transactions.

Douglas brings a wealth of PPP and project finance experience, having advised governments, equity sponsors and funders on a wide variety of transportation and accommodation projects including roads, hospitals, schools, universities, mass transit and social housing.

Douglas also has extensive experience in the structuring, negotiation and documentation of corporate finance and M&A transactions as well as international and domestic project and structured financings. His experience as an advisor to governments and private sector participants in PPP transactions, both domestically and internationally, has given him significant insights into the issues confronting participants in the evolving Canadian PPP market.

# David R. Miller



David R. Miller is Counsel, International Business and Sustainability with Aird & Berlis LLP. In that role, David assists in the development of the firm's international clean tech and renewable energy practices.

David is a leading advocate for the creation of sustainable urban economies. In addition to being a strong and forceful champion for the next generation of jobs through sustainability, David advises companies - and governments - on practical measures to make this happen. In addition to his work at Aird & Berlis LLP, David also works with The World Bank, the OECD, the Club de Madrid and is the Future of Cities Global Fellow at Polytechnic Institute of New York University (NYU-Poly). He is also a member of the David Suzuki Foundation Board, is an Honorary Director of Canadian Association of Physicians for the Environment (CAPE) and is Chair of the Board of Directors for Cape Farewell North America.

David was Mayor of Toronto from 2003-2010, and was Chair of the C40 Cities Climate Leadership Group from 2008-2010. He is a Harvard trained economist.

# Thank You



**Douglas J. S. Younger**  
**Partner**

T 1.416.865.4140

F 1.416.863.1515

E [dyounger@airdberlis.com](mailto:dyounger@airdberlis.com)



**David R. Miller**  
**Counsel**

T 1.416.865.4622

F 1.416.863.1515

E [drmiller@airdberlis.com](mailto:drmiller@airdberlis.com)

**Aird & Berlis LLP**

**Brookfield Place, 181 Bay Street**

**Suite 1800, Box 754, Toronto, ON · M5J 2T9 · Canada**

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[www.airdberlis.com](http://www.airdberlis.com)



**Any questions?**