

**Submission
to the
Senate Committee on Banking, Trade and
Commerce
regarding Division 18 – An Act to establish the
Canada Infrastructure Bank of Bill C-44, An Act
to implement certain provisions of the budget
tabled in Parliament on March 22, 2017 and other
measures**

Canadian Union of Public Employees

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The Canadian Union of Public Employees (CUPE) would like to take the opportunity to comment on Division 18 of Part 4 of Bill C-44, *An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures*, which would establish the Canada Infrastructure Bank (CIB). CUPE is concerned about a number of issues related to the bank, including the higher cost of private infrastructure financing, its role in promoting privatization and the bank's lack of transparency and accountability.

CUPE is Canada's largest union with 643,000 workers across Canada. CUPE members work in health care, education, municipalities, libraries, universities, social services, public utilities, emergency services, transportation, and airlines. CUPE members will be affected by the CIB as members of the public who use and pay for public infrastructure as well as workers who are employed in some sectors where infrastructure will be developed through the CIB such as public utilities and transportation.

The legislation to create the CIB was introduced April 11, 2017 as part of the omnibus *Budget Implementation Act*. Including this legislation in an omnibus bill has limited opportunities to provide input and engage in debate regarding the CIB. The bank would be a major new institution that should receive thorough exploration by all affected parties. There already appears to be significant confusion and lack of clarity about how the proposed bank would operate and what role cabinet and ministers could exercise in relation to it. For instance, Finance Minister Bill Morneau stated that Cabinet would have the final word on approval of projects, but this does not appear to be what the legislation states.ⁱ Given this confusion about such a key issue and other concerns, it is essential that the *Canada Infrastructure Bank Act* receive adequate review and potential amendment independent from the larger *Budget Implementation Act*.

Recommendation:

Separate the *Canada Infrastructure Bank Act* from the omnibus budget bill so it can be studied and evaluated properly.

Mandate of the bank

The purpose of the bank has undergone a significant shift from being a source of low-cost financing for public infrastructure to attracting investment from private sector investors for revenue-generating infrastructure projects. CIB financing will not in fact be low-cost, given that it will come in large part from private investors with expectations of higher returns.

Both the Liberal platform and Minister's mandate letter state that the purpose of the bank will be to provide low-cost financing to build new infrastructure projects. Yet, the *Canada Infrastructure Bank Act* indicates that the mandate has shifted to "*invest, and seek to attract investment from private sector investors and institutional investors, in infrastructure projects in Canada or partly in Canada that will generate revenue and that will be in the public interest...*" (emphasis added).ⁱⁱ There is no longer a mention of low-cost financing for municipal infrastructure projects. This is unfortunate, given municipalities are in need of affordable infrastructure financing options.

A second shift in the purpose of the CIB is that infrastructure projects are now expected to generate revenue through tolls, user fees and other mechanisms such as land value capture. It is likely that private sector investors will be seeking to maximize these revenues, which Canadians will have to pay for—often with little or no choice as many public services are

monopolies. A finance department document notes, “Typically, user fees are regarded as regressive since the same fee is charged to all users regardless of their income.” The document notes as an example that the regressive nature of user fees on roads would be particularly acute in areas with fewer alternative methods of transportation.ⁱⁱⁱ These tolls and user fees, which are a central feature of the CIB, will disproportionately affect working and middle-class Canadians.

Recommendation:

- The purpose of the bank under Section 6 should revert to providing low-cost financing for new municipal infrastructure projects in priority investment areas that will be in the public interest.
- The expectation that infrastructure projects funded through the CIB generate revenue should be eliminated.

Private financing is more expensive

The bank will be seeded with \$35 billion from the federal government with the remainder coming from both Canadian and foreign private sources. This private financing will result in infrastructure projects being more costly. The federal government can borrow at extremely low interest rates, whereas private investors will expect “relatively high returns”^{iv} according to a government document accessed through an access to information request.

One survey of 100 European pension funds listed an expectation of a nine per cent annualized return.^v The CEO of the Caisse de dépôt et placement du Québec, which manages the funds of Quebec’s public pension plan along with several other public sector plans and has invested in infrastructure, indicated that private investors would expect returns of seven to nine per cent.^{vi} Prequin, an investment data company, specified that infrastructure was delivering an average 10 per cent return in any given year.^{vii} These rates can go up to 12-18 per cent returns for telecommunication infrastructure and 14-20 per cent for merchant power generation according to J.P. Morgan Asset Management.^{viii}

At nine per cent, the cost of public infrastructure will double, as illustrated in the graph below. Financing costs at nine per cent would be five times higher than public financing at 2.5 per cent.^{ix} The public will pay for this more costly infrastructure directly through new or higher user fees and tolls, government funding and fewer infrastructure projects overall.

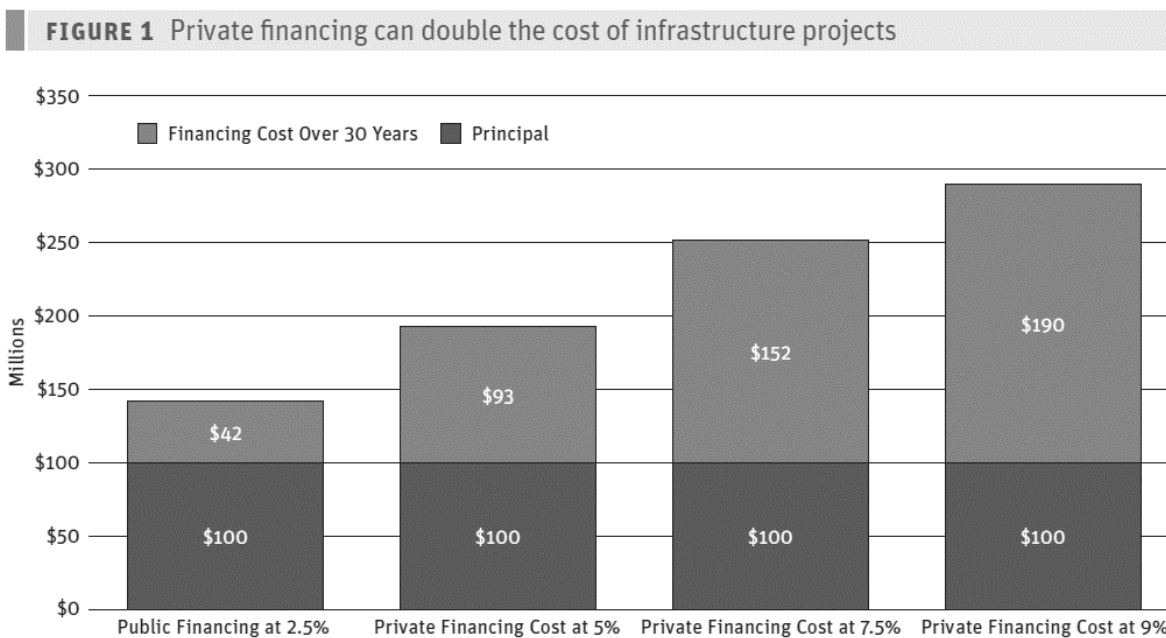
The government has been advised of these issues: “Financing mechanisms can increase the cost of infrastructure with potential for debt to be serviced either by the tax payer / user”.^x CUPE sees no reason why the CIB would use higher cost private financing when the government can borrow and finance infrastructure at such low, cost-effective rates.

There are other options for funding our much needed infrastructure. The government could follow-through on its original proposal to create a public bank with low-cost financing to fund our infrastructure needs. There are many examples of public infrastructure and public investment banks in Canada and around the world that make use of lower cost public borrowing. The Canadian government already has banks that provide loans, financing and credit for entrepreneurs and exporters, while the Canada Mortgage and Housing Corporation (CMHC) also provides loan guarantees and financing for housing projects. It makes little sense for the federal government to use higher-cost private financing for public infrastructure investments while it simultaneously uses lower cost public financing to support private investments through

the Export Development Bank, Business Development Bank of Canada and CMHC. After an initial capital contribution from the federal government, a public bank could leverage its assets and borrow on financial markets directly, just as the CMHC and other public financial institutions established as Crown corporations do. This would involve slightly higher financing costs than direct borrowing by the federal government but it would be significantly below the cost of private finance.^{xi} And this alternative would have no further negative impact on the federal government's deficit and net debt situation than the current proposal.

Recommendation:

The government should capitalize the CIB with public rather than private sector financing in order to provide low-cost public financing for new infrastructure projects.



Source: *Creating a Canadian infrastructure bank in the public interest – Toby Sanger*

Privatization

CUPE is concerned the powers of the CIB laid out in section 18 of the Act would promote the privatization of public infrastructure. The Act allows the bank to make equity investments, acquire derivatives, trade debt and own property. This means the bank itself could become directly involved in infrastructure privatization.

Even if the CIB is not a direct stakeholder in a privatization contract, deals structured by the bank will likely involve a great deal of privatization whether through full or partial asset sales or through public-private partnerships (P3s). Investors are going to be looking for long-term revenue from infrastructure projects through ongoing user fees and tolls in addition to possible government funding for operating or maintenance contracts.

The private sector will not only act as investors. The very development of the CIB has occurred with one-sided advice that comes almost exclusively from the corporations and private investors, including pension funds, that will profit from it. The corporate-heavy Advisory Council

on Economic Growth worked directly with cabinet ministers, senior officials and political staff on the 2017 budget and plans for the CIB according to a recent Globe and Mail article. Furthermore, investment firm BlackRock worked with the Prime Minister and cabinet ministers on messaging for a closed-door event with BlackRock clients.^{xii} Potential conflicts like this are sure to be even more glaring with the extensive private sector role in setting infrastructure priorities and developing project structures that benefit private investors through the CIB.

The CIB will also result in a privatization of how infrastructure projects are developed. Private investors will be able to pitch infrastructure projects to the bank through unsolicited bids. Media reports of a Finance Department briefing note show officials have been warned that unsolicited bids come with many problems, including “a lack of transparency in the selection and implementation of projects, avoidance of competitive and due-diligence processes and the acceptance of poor quality bids – either in design or execution.”^{xiii}

Private investors will also be able to work with the bank to design major infrastructure projects from the ground up, taking over an important role traditionally played by the public sector. These infrastructure projects will likely be tailored to profit the private investors, not the public interest. This is already happening with the privately-designed \$6 billion [Réseau électrique métropolitain](#) (REM) light rail project in Montreal, which fails to integrate properly with the overall public transit system.

The particular model of privatization will depend on the sector. For example, public transit systems could be subject to long-term contracting or P3 arrangements with regular payments from transit fares and government funding being funneled to private sector operators.^{xiv} Airports would more likely be fully privatized. A representative from Brookfield Asset Management was reported as saying “there would be a “feeding frenzy” among institutional investors if Canadian airports were put up for sale.”^{xv}

Privatization will allow our public infrastructure to be traded internationally on the open market. Equity and debt ownership in infrastructure can and does change hands on the open market, if we take the example of P3s. Researcher Heather Whiteside writes, “Public assets become equity cards, changing ownership hands multiple times.”^{xvi} There are already a total of 258 P3s^{xvii} across Canada committing governments’ to years of debt financing and liabilities. The CIB will likely result in an increase in the trade of ownership in our public infrastructure damaging the quality and accountability of public services.

In addition to the higher or new tolls and fees, privatization hurts the middle and working classes by putting downward pressure on wages and working conditions. Contract flipping and low-waged precarious work are key ways private corporations can profit from infrastructure. This hurts workers but it also affects public services, which shift from serving the public good to supporting private profit.

Recommendation:

- Priorities for public infrastructure should be developed by bodies accountable to the public in a direct and significant way, rather than the proposed CIB that is arms-length and without elected representation or adequate Auditor General oversight. This includes removing any reference to unsolicited proposals from the Functions of the Bank under Section 7(1)c. The public interest should be the decisive factor in determining infrastructure priorities.
- The CIB should prevent increased privatization of our public infrastructure through structures and processes such as P3s, asset sales and equity or debt trading.

Transparency and accountability

The CIB as currently proposed will have many transparency and accountability gaps that limit the public's right to know and influence decision-making on infrastructure investment. Most details regarding infrastructure deals will remain secret, the bank's board of directors will include no government representation, and the Auditor General will have limited audit powers. This lack of public oversight will further ensure the public interest takes a backseat to investor rates of return.

Secrecy

Though the CIB is covered under Access to Information legislation, it was unfortunate to see extensive exemptions under Section 28(1) of the *Canada Infrastructure Bank Act*. This specifies that all information relating to project advocates or private sector or institutional investors must be kept secret, except in exceptional circumstances such as prosecuting an offence. Details of how our infrastructure is being funded, who is involved, how much investors are profiting will remain secret. This is problematic as the public has a right to know where our public funding is going and how our public infrastructure is being built.

These exemptions go even further than the commercial confidentiality, economic interest of government or policy advice exemptions that already exist in the *Access to Information Act*. Already, it is difficult to access documentation regarding public-private partnerships under current legislation due to the commercial nature of the contracts. In fact, key information from these projects is almost never made public including the value for money and risk analyses that are used to justify the higher costs of P3 privatization. When 74 P3 projects were analyzed by the Ontario Auditor General in 2014, they were found to have cost \$8 billion more than if they had been procured publicly.^{xviii} The public would not have been able to access documentation to perform a similar analysis. Given the 'Privileged information' exemptions in the new legislation are even more restrictive than those under access to information legislation, it will be difficult, if not impossible, to assess whether the bank is acting in the public interest. Furthermore, there is no time limit on the privileged information restrictions or process to challenge Section 28 exemptions outlined in the legislation.

The offence for those who disclose information about the bank's infrastructure deals could be a \$10,000 fine or six months in jail—a severe penalty for disclosing information about how public money is spent. It is interesting to note this penalty does not exist in the legislation creating the Export Development Bank, a similar institution.

Oversight

CUPE is concerned the lack of Auditor General oversight and involvement of public officials will severely hinder the bank's objective of acting in the public interest. The CIB has been set up to maximize the role of private sector investors in the identification, planning and structuring of infrastructure deals, with few mechanisms to protect the public interest.

Municipal, provincial and federal government representatives are explicitly barred from appointment to the board of directors. It is likely the majority of the board and the CEO will be from the finance and banking sectors, the very sectors that will profit from the CIB.

Requirements to submit a corporate plan and operating budget provide no day-to-day oversight over an institution, which will be provided with \$35 billion in public funding.

Minister Morneau has indicated recently that Cabinet will have the final say on what gets built,^{xix} however, a process for government involvement at this level does not appear to exist in the current legislation. Even if this process was included in legislation, it would only appear to apply to the selection of projects, not the structure of infrastructure deals. This is when infrastructure funded by the CIB will involve charging tolls and user fees on public infrastructure often in monopoly or near-monopoly situations.

The CIB will be subject to audits by the Auditor General. However, this will be at a lower standard and with less transparency than the Auditor General has over direct government departments. Furthermore, the Auditor General may not be able to review specific projects to judge whether they provide value for money to the public.

Recommendation:

- Ensure stronger accountability and oversight of the bank and its projects by auditors general and public officials, including full public disclosure of all business deals, value for money assessments, and contracts.
- Remove Section 28 on privileged information exemptions.

Infrastructure planning and evidence-based decision-making

Canadian infrastructure priorities and financing decisions should only be established following sufficient data collection and long-term public infrastructure planning. Unfortunately, infrastructure decisions have often been made with inaccurate or non-existent data. The Institute of Fiscal Studies and Democracy has highlighted that information regarding infrastructure including “credible and consistent estimates of the current stock, its useful life, and the future needs” is lacking in Canada.^{xx}

Bill C-44 specifies that a function of the CIB will be to collect and disseminate data on infrastructure in Canada.^{xxi} However, this data collection should in fact happen prior to any new infrastructure priority setting and financing structures being developed such as the CIB. Furthermore, CUPE is concerned this data collection role places the CIB in a conflict given the incentive to demonstrate positive outcomes of infrastructure funded through the bank. CUPE strongly encourages the collection of data on infrastructure projects across jurisdictions but in an independent and appropriate manner prior to any new priority-setting and financing structures being set up.

To maintain data quality and independence, the data collection function should be incorporated into Infrastructure Canada or Statistics Canada’s mandate or as a joint initiative of both departments. This would be appropriate given the expertise and independence of both established departments.

Following data collection, CUPE encourages the federal government to develop a long-term infrastructure plan with input from the public, various levels of government and stakeholders. This planning process would enable the government to set infrastructure priorities with a solid evidence-base to ensure investments are in the public interest. This process should not involve the private investors and corporations who could skew infrastructure priorities toward higher-cost and more profitable public infrastructure.

An infrastructure bank driven by objectives to maximize private sector returns will put a priority on different infrastructure projects than those that maximize the public interest. Not only would the proposed infrastructure bank result in higher cost projects, but they are likely to select the wrong type of projects that prioritize investor returns over the public interest. This is a serious and fundamental problem with the design of the bank that is compounded by its responsibility for infrastructure analysis and planning. It is made worse by the fact that most public infrastructure has some degree of natural monopoly making it much more easily exploited for private profit. This is why it is so important that public infrastructure remain under public ownership and control and operate in the broader public interest.

Recommendation:

- The government should hold off on any new infrastructure financing initiatives until a long-term infrastructure plan has been established with input from the public, various levels of government and stakeholders. Private investors who are seeking profits should not play a role in infrastructure planning.
- The government should establish an independent infrastructure data initiative based in Infrastructure Canada and/or Statistics Canada prior to any new structures for priority-setting and financing being established.

Conclusion

In conclusion, CUPE urges the government to reorient to the original purpose of the CIB as proposed during the last election and in the Minister's mandate letter: to provide low-cost financing to municipalities. Here is a summary of CUPE's recommendations regarding the *Canada Infrastructure Bank Act*.

1. Separate the Canada Infrastructure Bank Act from the omnibus budget bill so it can be studied and evaluated properly.
2. The purpose of the bank under Section 6 should revert to providing low-cost financing for new municipal infrastructure projects in priority investment areas that will be in the public interest.
3. The expectation that infrastructure projects funded through the CIB generate revenue should be eliminated.
4. The government should capitalize the CIB with public rather than private sector financing in order to provide low-cost public financing to municipalities for new infrastructure projects.
5. Priorities for public infrastructure should be developed by bodies accountable to the public in a direct and significant way, rather than the proposed CIB that is arms-length and without elected representation or adequate Auditor General oversight. This includes removing any reference to unsolicited proposals from the Functions of the Bank under Section 7(1.a). The public interest should be the decisive factor in determining infrastructure priorities.
6. The CIB should prevent increased privatization of our public infrastructure through structures and processes such as P3s, asset sales and equity or debt trading.
7. Ensure stronger accountability and oversight of the bank and its projects by auditors general and public officials, including full public disclosure of all business deals, value for money assessments, and contracts.
8. Remove Section 28 on privileged information exemptions.
9. The government should hold off on any new infrastructure financing initiatives until a long-term infrastructure plan has been established with input from the public, various levels of

government and stakeholders. Private investors who are seeking profits should not play a role in infrastructure planning.

10. The government should establish an independent infrastructure data initiative based in Infrastructure Canada and/or Statistics Canada prior to any new structures for priority-setting and financing being established.

The bank as currently structured will result in higher and regressive user fees and tolls for the public, reduced transparency and oversight of public infrastructure, and will require higher public payments over the long term to fund the larger returns demanded by private finance. The CIB will result in the loss of ownership and control of vital public assets. CUPE encourages the government to return to their previous commitments to establish a bank providing low-cost financing.

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ⁱ Curry, B. Cabinet to have final word on infrastructure bank projects, Morneau says, *Globe and Mail*, May 16, 2017

ⁱⁱ Budget Implementation Act, 2017, Canada Infrastructure Bank Act, Part 4, Division 18 (6)

ⁱⁱⁱ Memorandum, The efficiency and equity implications of charging user fees to access public infrastructure, From Nick Leswick to Paul Rochon, February 4, 2016, Accessed through ATIP 2016-00058

^{iv} Infrastructure Canada, Infrastructure Internal Advisory Committee: Workstream 3, Accessed through ATIP 2016-027

^v Survey of 100 European pension schemes undertaken by Richard Davies Investor Relations for Financial News, 10.12.2007.

^{vi} Caisse de depot et placement du Quebec, Getting to growth, Speech delivered by Michael Sabia to the Toronto Region Board of trade on March 3, 2016.

^{vii} Prequin, Prequin Quarterly Update: Infrastructure Q1 2017, Insight on the quarter from the leading provider of alternative assets

^{viii} J.P. Morgan Asset Management, Illustrative returns for infrastructure assets, March 31, 2015

^{ix} Sanger, Toby, Creating a Canadian infrastructure bank in the public interest, CCPA, March 2017

^x Infrastructure Canada, Advice: Infrastructure, July 2015, Accessed through ATIP 2015-067

^{xi} Sanger, Toby, Creating a Canadian infrastructure bank in the public interest, CCPA, March 2017

^{xii} Curry, B. Private-sector role in Canada Infrastructure Bank raises conflict issues, *Globe and Mail*, May 5, 2017

^{xiii} Blatchford, A., Handle unsolicited, private infrastructure proposals with care, feds advised, *Canadian Press*, May 5, 2017

^{xiv} Dachis, B. Commentary No. 473, New and Improved: How Institutional Investment in Public Infrastructure can Benefit Taxpayers and Consumers, C.D. Howe Institute, March 2017.

^{xv} Wingrove, J., Devau, S, Toronto Airport Said Worth \$3.7 Billion in Possible Sale, *Bloomberg*, May 5, 2017.

^{xvi} Whiteside, H., New Canada infrastructure bank plays poker with public assets, *Toronto Star*, March 17, 2017.

^{xvii} Canadian Council for Public-Private Partnerships, Canadian PPP Project Database, May 19, 2017.

^{xviii} Auditor General of Ontario, Infrastructure Ontario—Alternative Financing and Procurement, 2014.

^{xix} Curry, B. Cabinet to have final word on infrastructure bank projects, Morneau says, *Globe and Mail*, May 16, 2017

^{xx} Ali Khan, A., Bartlett, R. “Where Were They Going Without Ever Knowing the Way?” Assessing the Risks and Opportunities of the Canada Infrastructure Bank, IFSD, May 4, 2017

^{xxi} Budget Implementation Act, 2017, Canada Infrastructure Bank Act, Part 4, Division 18 (7.1.e.g)