

A paper model of a city is shown in the background. It features numerous small, white, textured spheres representing trees, and several small, orange, rectangular blocks representing houses. The model is set against a light, neutral background with faint, grey lines suggesting roads or paths. The text is overlaid on a semi-transparent white rectangular area in the upper center of the image.

TRANSPARENCY AND THE RIGHT TO KNOW HOW OUR MONEY IS SPENT

This document was produced with the advice and input of CUPE staff.

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Welcome to CUPE Nova Scotia's call to establish transparency in disclosure and reporting of public-private partnerships (P3) contracts through legislation.

For too long, P3 contracts have been a black hole for accountability and transparency, with generally negligible disclosure by the provincial government. Meanwhile, the use of P3 deals has accelerated, while providing sweet deals to corporations and private investors.

We need to stop the drain on our finances, and one of the first steps we can take is to legislate disclosure and reporting of how our money is spent in P3 deals. There should be no secrets when public money is spent on public infrastructure and services. We have the right to know.

We've paid a high price by not keeping an eye on the details in P3 contracts, most recently when the 20-year old deals for the construction of 39 schools in Nova Scotia was made public. The province recently bought back the leases for 37 of the schools. The alternative was to walk away empty handed, while developers pocket the money spent over the years and keep the buildings.

Nova Scotians lost nearly \$1 billion dollars, including lease buy-outs, principal and interest payments. Think of all the public services we could have today with that much lost revenue – hospitals, doctors, long-term care beds, teachers, child care, mental health services, and more kilometres of safe highways.

Good public policy requires the best information

It is essential that legislators, policy-makers and members of the public know more to gain better knowledge of our existing and future fiscal state, but also to better inform and influence our current public policy-making.

“Debt bombs” are being created by P3 projects whose costs are largely hidden up front. These deals are usually locked in for 20 to 30 years. Decades later, Nova Scotians discover the size of these debts, reducing the revenue we need for valuable public services.

In Nova Scotia we have no way of knowing the magnitude of P3 liabilities and long-term obligations. What are Nova Scotians on the hook for? How much debt are we carrying from P3 deals? It’s almost impossible to know since we do not have access to the information contained in the contracts – negotiated through secret backroom deals.

We also have no knowledge of the much larger obligations associated with P3s, such as the cost of buying back leases or the operations and maintenance costs that have also been handed over to these private companies.

Canada has one of the most active and largest markets in the world for P3 projects, but we also have one of the weakest legislative, accountability and transparency regimes for P3s in the world.

Bias and influence-peddling must be reduced. Legislation should put a requirement on consultants and decision-makers to prove that the option they support,

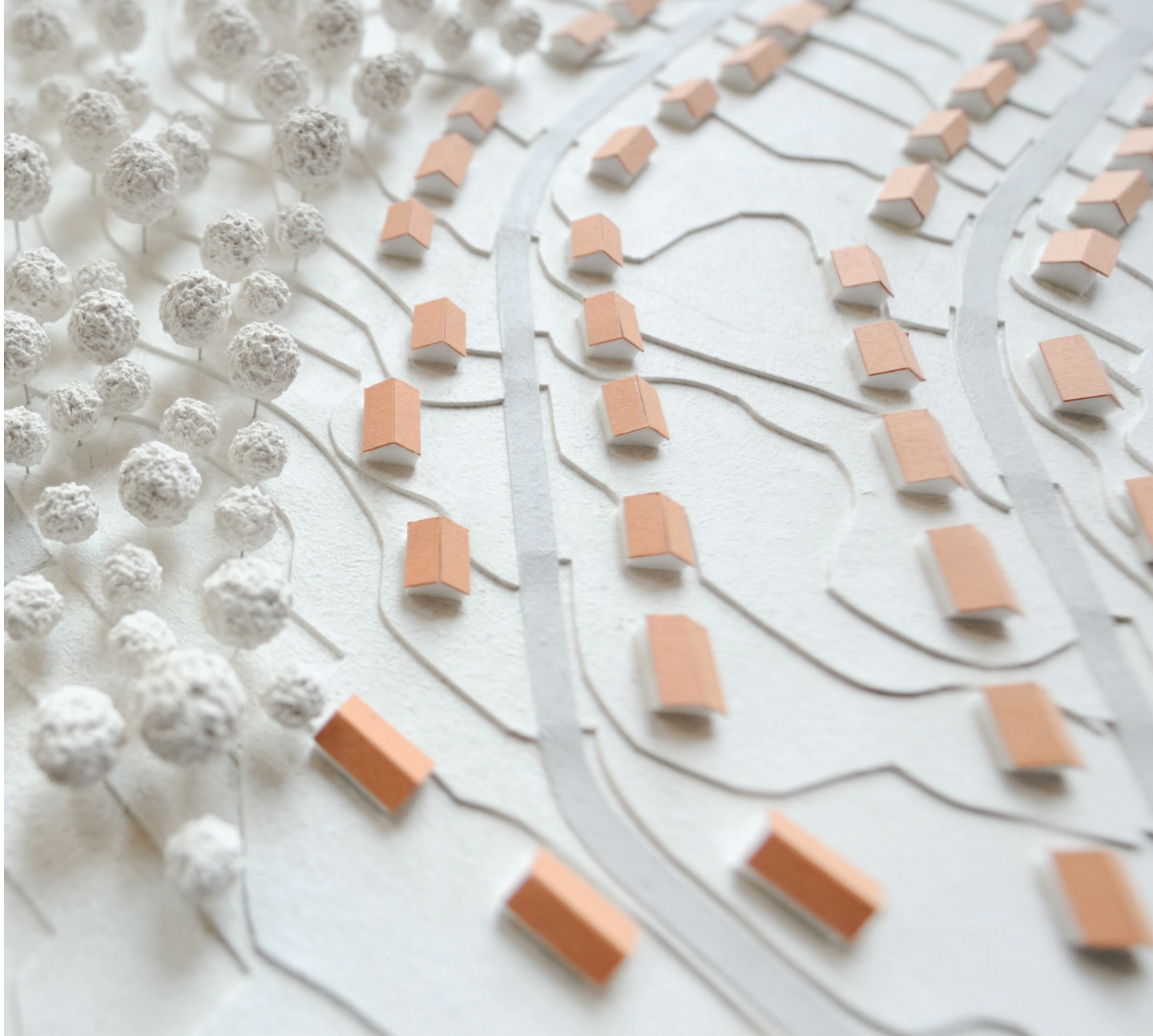
whether public or private, is in fact in the public interest.

Reporting standards also need to apply to other operational arrangements for delivering public services beyond these more strictly-defined as P3s. For example, the growing interest in and use of social impact bonds and private financing for public infrastructure through the Canada Infrastructure Bank. This will create additional obligations and liabilities that should be adequately reflected in public sector financial statements.

CUPE opposes public-private partnerships and believes that we can count on public services to be accountable, accessible, locally-controlled and a wise investment of tax dollars. Privatization is risky and expensive for provinces and citizens. Costs rise, quality suffers, and local control is weakened. Public funds are diverted from core services to corporate profits.

CUPE strongly supports more detailed and comprehensive disclosure and reporting requirements both in general and in relation to public-private partnerships. We also strongly support the requirement that operating and maintenance payments, as well as any other payments, or minimum revenue guarantees, also be required to be itemized.

We note that the International Public Sector Accounting Standards include significant disclosure obligations and hope that Nova Scotia’s public sector accounting at least meets these standards. While these accounting principles apply to financial decisions that have already been taken, we would



also like to see them applied to the business case development upon which the decision is made whether to opt for a P3 or traditional procurement. This would ensure decision-makers and the public receive relevant information in a timely manner to ensure greater accountability and transparency in the development of public infrastructure.

It makes sense to recognize the value of engaging the provincial auditor general in the review of contracts for public infrastructure and services. Legislation should

require that the auditor general be granted complete access to information and adequate resources to analyze and report back on each project.

Transparent disclosure and reporting standards should apply to all public or private operations that provide public services and receive public funding, regardless of their particular operational structure. Legislation will ensure that disclosure and reporting for them cannot fall through the cracks.



WE HAVE THE RIGHT TO KNOW HOW OUR MONEY IS SPENT

Join the call for legislation for transparency in
disclosure and reporting of public-private partnerships.

Sign the petition at ns.cupe.ca/right-to-know.

A STRONGER, MORE TRANSPARENT SYSTEM

Included in this booklet for discussion, the Right to Know Coalition's report "What is Open Contracting?" includes a set of recommendations for how the province's procurement system should be improved to bring it into line with international open contracting standards. All references can be found in the Endnotes section of this booklet.

"Nova Scotians have a democratic right to know how the government is spending their money," said Michael Karanicolas, president of the Right to Know Coalition. "However, there is also evidence that open contracting can save governments money, by making procurement more efficient and competitive."

WHAT IS OPEN CONTRACTING?¹

Procurement spending lies at the core of virtually everything the government does, from road repair to the purchase of school and medical supplies. Every Nova Scotian has a common interest in ensuring that the province spends its money wisely and efficiently, since the people of Nova Scotia are ultimately the ones who pay for these goods and services, and for whose benefit they are being procured.

The most important component of a strong public procurement system is transparency. As a matter of principle, the people of Nova Scotia have a fundamental right to monitor where their money is going. This

level of oversight is critical to a democratic system, by providing the public with an accurate window into what their representatives are up to and generating trust and confidence in public authorities. However, beyond these broad social benefits, there is increasing evidence that transparency can actually lower the costs of procurement.² Transparent processes are more efficient and competitive, since they are less impacted by corruption and mismanagement. Open contracting can even be a source of business intelligence, enabling unsuccessful bidders to make their tenders more competitive in future processes. The implementation of a robust open contracting system in Ukraine led to savings of nearly USD 1.5 billion between 2015-2017,³ while Virginia's eVA procurement system has reduced costs by around USD 450 million.⁴

These benefits are a major driver of why governments around the world are increasingly embracing open contracting. However, while the global trend is unmistakably in favour of greater access to procurement information, Nova Scotia remains stuck in the past, with systems that trend towards secrecy, or provide only a bare minimum of information. This Report examines Nova Scotia's procurement system and contrasts the information which is made available against international better practice standards to develop a set of concrete recommendations for how things could be improved.

International Standards for Transparency in Procurement

The enormous importance of procurement to public administration has led to a robust

body of international standards for how to create an effective and transparent system. The basic approach underlying this work is that all procurement information should

be open by default, and that governments should, at a minimum, publish the following:

Publications Categories for a Strong Open Contracting System

Information to be published at the outset of a contracting process:

- Budget allocations
 - Needs assessments
 - Risk assessments
 - Procurement plans
 - Dispute resolution mechanisms and procedures
-

Information to be published alongside the contract:

- Technical specifications
 - Selection criteria
-

Information to be published when a decision is made:

- Justifications and reasoning
 - Information about all bids received (including beneficial ownership information)
 - Any conflicts of interest uncovered
-

Information to be published about the contract itself:

- Performance, delivery and payment schedules
 - Specific pricing
 - Information about any subcontracting arrangements
-

Information to be published upon the contract's conclusion:

- Final financial information (including regarding cost-overruns, if there have been any)
 - Performance evaluations.
-

This material should ideally be published in open and machine-readable formats, and in a manner which is easily searchable and accessible.

Nova Scotia's Procurement System

Public procurement in Nova Scotia is governed by the *Public Procurement Act*, which applies to all public sector entities acquiring and suppliers providing goods, service, construction and facilities.⁵ This law includes a requirement to publicly tender for all goods, services, construction and facilities, and to post limited amounts of information about contracts on their web portal, including announcements for open tenders and the ultimate contract amount awarded. The level of process and transparency required for different types of acquisitions depends mainly on the size of the contract, but in general the *Public Procurement Act* only requires entities to post the name of the successful bidder and the contract amount awarded, along with basic information about their procurement policies.

For most of the entries on Nova Scotia's procurement web portal that we examined in the course of our research, the published information is in line with these minimum standards, but is limited to the name of the successful bidder, the contract amount awarded, the tendering department, and the opening and closing dates of the tender.⁶ This falls far short of what is seen in better practice jurisdictions. It is also worth noting that the web portal is capable of delivering more data points, including spaces for original tender documents, contact information for the individual responsible for the tender, and information about unsuccessful bidders and their bid amounts. These spaces are often left blank.⁷

Nova Scotia can do better and, at the very least, the government should be making full use of the public procurement tools available to it by filling out all of the data points on the web portal. Information about unsuccessful bidders would be a particularly useful place to start, since this is crucial to public oversight of the process. One particularly valuable improvement could be to publish bid tabulations for competitive contracts, spelling out exactly how the bids were evaluated and why a particular one was chosen. This practice is routine in many jurisdictions, as it provides an increased amount of transparency and justification for contract awards, allowing individuals to dig more deeply into the decision-making process and understand the economics underlying successful bids.

One example of how this is done elsewhere is Manitoba's Infrastructure Department, which maintains a Bid Results Library containing tabulations and granular information on each vendor's bid, as well as disclosure on which vendor was awarded the contract.⁸ Virginia has a similar but more expansive model where bid results, tabulations, and breakdowns are provided for all public entities.⁹

Another useful area for greater transparency is in the granular costing of the contracts themselves, such as information on labour hours and wages, unit costs for supplies, costs of building materials, etc. This type of information can be helpful to the public at large, in order to understand whether the government is getting good value for its money, as well as for potential future bidders who can assess the competition and decide whether it might be worthwhile to enter future processes.

NOVA SCOTIA SHOULD substantially expand the amount of procurement information it publishes, starting with routine publication of information about unsuccessful bidders, bid tabulations, and costing breakdowns for contracts.

Information is open, except when it isn't

There are two types of procurement in Nova Scotia where significantly less information is available: standing offers and sole-source contracting. Standing offers are tender or procurement offers made by a pre-approved supplier with predetermined terms and conditions. Sole-source contracts are awarded without competitive bidding. While both types of procurement can have a place in a robust procurement system, they should be subject to even more rigorous standards for transparency. Unfortunately, in Nova Scotia, the reverse is typically true.

According to the Nova Scotia Sustainable Procurement Policy, standing offers require only the name of the successful bidder to be published. It is understandable that no financial information would be published at the time of the awarding of the standing offer contract as it is likely that no goods or services are supplied immediately. However, we could find no disclosure as to the reasons for selecting a particular bidder for the standing contract. Further, we could find no requirements to disclose the use by a public entity of an established standing offer. While the use of standing offers themselves is not necessarily antithetical

to a robust procurement system, at least the same obligations of transparency should apply to these processes as to every other contract.

Sole-source contracts are entered into without a competitive process. Again, this can be legitimate, with the typical justification that there is only one known source or that only one supplier is able to fulfill the requirements.¹⁰ But although public entities in Nova Scotia using non-competitive procurement processes must abide by specific policies, we could not find any disclosure specifically for sole-source/non-competitive contracts. As a comparator, Alberta maintains a database exclusively cataloguing sole-source contracts, including information on all sole-source contracts of \$10,000 or more purchased by Alberta government departments.¹¹

Since 2004, the federal government has required public notice of any contract over \$10,000. Additionally, the current Guideline on the Proactive Disclosure of Contracts requires annual reporting¹² and disclosure from all departments and agencies on a contract when its value is \$10,000 or less, and a positive or negative amendment when its value is \$10,000 and under. The Government of Canada posts its procurement and tendering information through a central online portal, the Open Government Portal, under which all departments must report their contracting data.¹⁴

NOVA SCOTIA SHOULD publish information about standing offers, including the reasons why a particular bidder was chosen.

NOVA SCOTIA SHOULD establish a database of sole-source contracts.

Accessibility challenges

Accessibility is among the greatest challenges of any transparency system. As increasing amounts of information are placed online by public bodies, users may find it more and more difficult to locate the specific information they are seeking. Nonetheless, developing a website which is intuitive and accessible is critically important. There is little utility in putting information out there if the public will not be able to find it.

Our researchers found that Nova Scotia's procurement web portal is fairly easy to access and navigate.¹⁵ Tenders can be searched based on whether they are open, closed, or awarded. Through the use of a drop-down menu, searches for projects can be refined to specific government departments and public-sector entities. Users can also refine their search to specify procurement related to goods, services, or construction, and by tender category, which can be sorted to a high degree of granularity. Some examples of these categories include office supplies, industrial equipment, vehicles, and property maintenance services.

Although the categorization is relatively user-friendly, the search function is far less so. It is difficult to use effectively since it relies on using the exact keywords in the "Description" section of each entry. If a user cannot guess this exact wording, the correct results will not appear. This creates inconsistency since these keywords may not be intuitive to all users. For example, a call for tenders by the provincial Waterfront Development Corporation for a waterfront beer garden is listed as "Halifax Waterfront Business Opportunity".¹⁶

Our researchers also found several cases where important information about bids and awarded contracts was inaccessible due to the portal links being broken. Other reports, such as those that detail the Halifax Regional School Board's (HRSB) contracts, do not provide an accessible hyperlink to the HRSB's external website. Instead, users must copy and paste a link into a new browser and then complete an online form on an external page in order to access basic tender information. The compounded effect of dealing with broken links, a web of external websites, and the added barrier of filling out personal information to access tender documents presents a serious problem for user accessibility.

Additionally, most of the information on Nova Scotia's web portal is made available via pdfs and web pages which must be individually accessed, making the information far more difficult to aggregate and process. Ideally, this information should be distributed in open and machine-readable formats, such as csv files.

NOVA SCOTIA SHOULD improve the search functionality of its web portal.

NOVA SCOTIA SHOULD review its web portal to correct broken links and, as far as possible, should centralize relevant information on the portal itself rather than forcing users to access external websites to obtain basic tender information.

Under no circumstances should users have to enter personal information to obtain basic tendering information.

NOVA SCOTIA SHOULD publish all of its contracting information in open and machine-readable formats.

Procurement Reporting

A strong open contracting system should include not only information about individual contracts, but also consolidated or aggregated information about the contracting system. An important way to achieve this is through the publication of annual reports. For example, Vancouver publishes an Annual Procurement Report with full documentation of its procurement activities.¹⁷ It provides information on supply chain management including departmental data on activities and savings, contract approvals, contracts awarded, surplus asset disposals, warehouse inventory, sustainable and ethical procurement information, contract transactions by value range, and contract transactions by vendor location. It also lists all contracts \$75,000 or greater and sole-source contracts with reference numbers, descriptions, names of successful vendors, contract awarded values, and departments.

Nova Scotia currently has no comparable reporting requirement. Although the online document library on the Nova Scotia procurement page includes dispute settlement logs, guides, processes and quick reference documents, sustainable procurement documents, and trade agreements,¹⁸ there is no evaluative component to this information. Nova Scotia's open data portal contains consolidated information about government contracts, which can be downloaded in machine readable formats, but there is no breakdown for this raw data.¹⁹ An annual procurement report could be a mechanism for government accountability which allows for informed engagement between the government, suppliers, and the general public.

An annual report could represent information that is impossible to infer by looking at individual contracts, such as cumulative data and general spending trends. It also allows for easy comparison between different years. The following is a list of valuable information that could be included in a report:

- Geographic distribution of tenders submitted
- Geographic distribution of successful tenders
- Total number of contracts submitted
- Total number of successful contracts
- Total number of standing offers
- Total number of sole-source contracts
- Total value of successful contracts
- Value range of contracts



- Individual values for successful contracts
- Evaluations of government departments or agencies
- Evaluations of categories listed on online portal
- Achievements
- Complaints
- Improvements

NOVA SCOTIA **SHOULD** produce an annual procurement report.

Consolidated Recommendations

1. Substantially expand the amount of procurement information published, starting with routine publication of information about unsuccessful bidders, bid tabulations, and costing breakdowns for contracts.
2. Publish information about standing offers, including the reasons why a particular bidder was chosen.
3. Establish a database of sole-source contracts.
4. Improve the search functionality of the web portal.
5. Review the web portal to correct broken links and, as far as possible, centralize relevant information on the portal itself rather than forcing users to access external websites to obtain basic tender information.
6. Eliminate any requirement for users to enter personal information to obtain tendering information.
7. Publish all contracting information in open and machine-readable formats.
8. Introduce annual procurement reports.

LESSONS IN PUBLIC-PRIVATE PARTNERSHIPS

Time and time again provincial governments are forced to admit they were wrong to use P3 deals to deliver public infrastructure and services, costing taxpayers billions of dollars more than they would spend if those hospitals were publicly owned and constructed. Auditor Generals, researchers and journalists across Canada continue to report on P3 failures and unnecessary waste of taxpayers' money.

In November 2015, the Canadian Centre for Policy Alternatives – Saskatchewan (CCPA) published a report entitled “Privatization Nation: The Canada-wide Failure of Privatization, Outsourcing and Public-Private Partnerships”. Here are examples from the report that demonstrate that a more transparent system would have resulted in better value, and cost-savings, for taxpayers.

New Brunswick AG savages P3 process

New Brunswick Auditor General Kim MacPherson's report found no evidence the Department of Supply and Services performed a formal preliminary analysis before moving forward with a private-public partnership (P3) to build the Eleanor W. Graham Middle School and the Moncton North School.²⁰

“We found no evidence, however, that any kind of formal preliminary analysis was performed to support the P3 decision made by the cabinet,” the report said.

The AG also raised concerns about the compensation and the process of hiring two advisors. A “process advisor” was paid \$107,000 and a financial advisor was paid \$565,000 for their services.²¹ However, both advisors were hired without a public competition. “In our opinion, due process was not followed in engaging these advisors,” the report said.

Nova Scotia P3 schools neglect student safety

In a scathing report on the state of compliance of P3 developers with their contracts, the Nova Scotia Auditor General identified instances in which child abuse registry and criminal record checks, fire safety inspections, and emergency first aid and CPR training were not completed by the developers as required under the service contracts. The report concluded that, “individuals working in schools who have not been appropriately screened pose an unacceptable risk to students.”

Moreover, the auditor found multiple instances of developers failing to pass along cost savings to school districts. In one case, the contractor did not pass on a cost-of-living increase from the province to the Strait Regional School Board. This went undetected until the auditor General's staff pointed out the \$700,000 gap.

In another case, the Cape Breton-Victoria Regional School Board had higher cost overruns in operating the schools. The \$251,000 shortfall was essentially paid by taxpayers twice, the report notes, as it was given to the contractor but also had to be made

up from other areas of the board. The auditor's report examined 31 P3 schools in total and deemed safeguards to ensure contract standards were met as "wholly inadequate".^{22 23}

Outsourcing snow removal in Halifax leads to a pile of problems

A 2013 decision by the Halifax Regional Municipality (HRM) to outsource sidewalk snow removal to private contractors resulted in a 75 per cent increase in complaints over property damage.^{24 25} Gordon Hayward, the city's winter works superintendent, said they've had over 4,000 calls about snow damage.

*"Most of it is sidewalk snow plowing/clearing. That's up 50 to 75 per cent more than we would receive in other years."*²⁶

Residents complained about splintered steps and garden boxes along with damaged curbs and grass. Residents were concerned with "hasty snow plow drivers and snow-clearing equipment ill-fitted for narrow peninsula sidewalks." Halifax residents most recently charged a private snow contractor with neglecting sidewalks in favour of plowing driveways for cash.

The HRM was forced to terminate the contracts of two private contractors and fine several others for failing to meet service standards.

Indeed, according to Halifax-based investigative reporter Tim Bousquet, putting the service out to bid "meant that competing contractors would try to low-ball the cost of the service, sacrificing adequate service in pursuit of lower costs, which is exactly what City Hall wanted."²⁷

Quebec's super-hospital a super-disaster

In a series of reports investigating the P3 build model for Quebec's "super-hospital" project, Quebec's Auditor General concluded that the decision to build them as public-private partnerships was based on "false and incomplete information."²⁸ Citing "major inaccuracies" in the cost analyses used to justify building the McGill University teaching hospital and Université de Montréal research centre, Auditor General Renaud Lachance dismissed government claims that the P3 model would save the province

\$33.8 million. Rather Lachance calculated that using the traditional public procurement model would be "more economical by at least \$10.4 million."

The project has been plagued by controversy almost since the outset. Barely a year into the project, prominent architect Moshe Safdie resigned deriding the P3 model for "cutting corners" and stifling innovation in favour of the "cheapest possible solution."²⁹ In 2012, SNC-Lavalin's former CEO Pierre Duhaime was charged with fraud in relation to the \$1.3 billion contract to build and maintain the McGill P3 hospital.³⁰

Most recently, even after cost over-runs of \$172 million, the McGill University hospital was found to have inadequate wiring installed in new operating rooms. Operating room staff recently discovered that the heart-lung perfusion machines—which are used during coronary bypass surgery—require 20 amps of electricity, but the wiring that was installed in the operating rooms is not the correct gauge. The problem may force the hospital to reduce the number of planned surgeries until the problem is fixed.³¹

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ENDNOTES

¹ This work was drafted by Michael Karanicolas, Paul Conrod, Jeremy Ryant, Basia Sowinski, and Keith Johnson of the Right to Know Coalition of Nova Scotia. It is licensed under the Creative Commons Attribution- NonCommercial-ShareAlike 3.0 Unported Licence. You are free to copy, distribute and display this work and to make derivative works, provided you give credit to the Right to Know Coalition of Nova Scotia and distribute any works derived from this publication under a licence identical to this one. To view a copy of this licence, visit: <http://creativecommons.org/licenses/by-nc-sa/3.0/>.

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