

THE OSGOODE CERTIFICATE IN PUBLIC-PRIVATE PARTNERSHIP (P3) LAW AND PRACTICE IN CANADA

Project delivery is changing but the classic P3 model remains integral to infrastructure delivery in Canada.

Learn how to better manage the perplexing risks, challenges and disputes that commonly arise within the complex P3 structure and explore how the dynamic aspects of P3s are evolving and changing to suit the risks and concerns of project participants.

Focusing on real-world examples and case studies, you will engage in problem-solving exercises and group discussions with industry experts.

- Practice troubleshooting key risks, issues and challenges at all stages of a classic P3, including communication and record-keeping tips
- Learn how and why the Value for Money Analysis, commercial and financial terms and considerations, drive P3 projects – and disputes – for up to 30 years
- Review the various P3 models, their associated risks and benefits, and how they differ from traditional project models
- Unpack a classic P3 project (Design-Build-Finance-Maintain), including key stakeholders, documents and challenges
- Explore proven methods to avoid or resolve project disputes

PROGRAM DIRECTORS

Chris Bennett
Osler Hoskin & Harcourt LLP

Rick Shaban
Senior Counsel, Borden
Ladner Gervais LLP

Divya Shah
Managing Director, Investments,
Canada Infrastructure Bank

REGISTRATION DETAILS

**September 27, October 4, 11,
18 and 25, 2023**
9:00 a.m. – 4:30 p.m. ET

Online Only

All online; combination of live and asynchronous learning.

Can't make the date?

Registration includes 120-day unlimited, online access to the recorded program.

Register today at:

osgoodepd.ca/p3



The Osgoode Certificate in Public-Private Partnership (P3) Law and Practice in Canada

Benefits of the program:

- Reinforce key concepts using case studies and a unique fact scenario
- Interactive and solutions-oriented instruction, discussion and activities
- Access to program content for 120-days
- Network and engage with a national faculty and professionals
- Obtain an Osgoode certificate upon completion of program requirements

Designed by Canada's leading legal, finance and industry experts for legal, commercial and technical professionals, this Osgoode certificate will provide you with the most up-to-date knowledge, strategies and tactics in P3 law and practice that you need to support the creation of suitable legal risk management and dispute resolution practices, processes and procedures.

Focusing on real-world examples and case studies, you will engage in problem-solving and group discussions with industry experts. You will also take part in a series of interactive exercises where you will be able to apply what you have learned and gain insights into working with the next generation of P3 models.

Program includes access to three (3) online primers that cover core concepts and principles. Designed for those who are newer to the area, or for professionals who would benefit from a succinct refresher, all primers will be released prior to the start date of the program.

Register today at:

osgoodepd.ca/p3



You will develop crucial knowledge and strategies, including:

- A practical understanding of why classic P3s are still being employed to deliver new infrastructure projects in Canada
- Strategies for implementing a dispute avoidance approach throughout the project and resolving disputes using the various mechanisms
- Methods for predicting risk along the classic P3 project trajectory, including how and why they can escalate quickly if not properly managed
- Tools for managing important contractual rights, entitlements and dispute mechanisms – including what to do if the contract seems to be against you
- How and why P3s are evolving to become more collaborative – including Progressive-Design-Build, Progressive P3, Integrated Project Delivery and Alliancing
- Tactics for managing relationships and communications in real-time, including tips to clarify uncertainty, reduce delay, address conflict and escalation and improve the timing of decision-making
- Techniques for overcoming project administration challenges, including proper documentation and notices, quantifying and expressing cost/loss, and changes to scope and pricing
- Negotiation techniques to solve problems early and to avoid ‘nasty letters’, including what to do internally and externally, tips for record-keeping and producing documents, and when to involve lawyers

Who Should Attend

- Lawyers in private practice or in-house counsel
- Litigators
- Business, finance, technical/operations and risk management professionals
- Contractors, subcontractors, subtrades, service and other providers
- Arbitrators and dispute resolution professionals
- Insurers, consultants, advisors and stakeholders involved with infrastructure projects/improvements

Register today at:

osgoodepd.ca/p3

Drawing on the expertise and experience of leading lawyers, developers and professionals, including:

Program Directors



Chris Bennett
Osler Hoskin & Harcourt LLP



Rick Shaban
Senior Counsel,
Borden Ladner Gervais LLP



Divya Shah
Managing Director, Investments,
Canada Infrastructure Bank

Register today at:

osgoodepd.ca/p3

Advisory Board

Jason Annibale
McMillan LLP

Jody Becker
Chief Strategy Officer, EVP Infrastructure
Services & Technology, EllisDon

Ed Ng
Senior Vice President and Partner,
Strategy and Transactions, Ernst & Young LLP

Marcia Oliver
General Counsel and VP Legal,
Bennett Group of Companies

Vickie Turnbull
Managing Director & Head, Infrastructure
Finance, RBC Capital Markets

Agnes von dem Hagen
Senior Vice President (Legal Services),
Infrastructure Ontario

Andrew Wong
Osler Hoskin & Harcourt LLP

Program Faculty

Glenn Ackerley
WeirFoulds LLP

Mark Bain
Torys LLP, and former Chair, Canadian Council
for Public Private Partnerships

Catherine Gleason-Mercier
Singleton Reynolds LLP

Julie Han
McMillan LLP

Sonny Ingram
Managing Director and Counsel, Bond and
Specialty Insurance, Travelers Canada

Bruce Karn
Director, Legal Services, EllisDon Group of
Companies

Marissa Kirsh
Osler, Hoskin & Harcourt LLP

Charetina Loughheed
Director, Legal Services, Metrolinx

Paul Martin
Group Co-Head, Project Structuring &
Investment (East), Plenary Americas

Karen Mill
AVP, Legal, Infrastructure BC

Lisa Mitchell
President & CEO, Canadian Council for
Public Private Partnerships

Ahsan Mirza
McMillan LLP

Chris Moran
General Counsel, Maple Reinders Group Ltd.

Trish Morrison
Borden Ladner Gervais LLP

Tristan Musgrave
McCarthy Tétrault LLP

Robert Pattison
Senior Vice President, Commercial Resolutions,
Infrastructure Ontario

Mark Platteel
Partner, Gowling WLG

Laith Qamheiah
Managing Director, BMO Capital Markets

Lampros Stougiannos
Dentons Canada LLP

Hillary Thatcher
Senior Director, Project Development,
Indigenous Infrastructure, Canada
Infrastructure Bank

Sharon Vogel
Singleton Reynolds LLP

Bing Bing Wang
Partner, Infrastructure and Capital Projects,
Deloitte Canada, and Director, Canadian Council
for Public Private Partnerships

Agenda

MODULE ONE

September 27, 2023
9:00 a.m. – 4:30 p.m. ET

Unpacking a Classic P3 Project from Start to Commercial Close

Procurement Process and the Key Players

- Procurement process and the business case
- RFQ, RFP and the negotiation phase
- Commercial/financial close
- Understanding the contractual relationships and stakeholders and what each one does

Show Me the Money: Understanding the Finance Prerogative

Often misunderstood, you will learn key short- and long- term finance perspectives for all project stakeholders along with how and why the ‘finance imperative’ is critical to the project – and disputes – throughout the project. You will also discuss how to avoid common misunderstandings and to help things run smoothly.

A Classic P3 Agreement and Key Documents

- Unpack the classic P3 – Design-Build-Finance-Maintain (DBFM) project agreement along with other key RFP documents
- Anatomy and mechanics of key documents, how they relate and where things often go wrong
- How the project documents relate to the project trajectory, including which documents are used at different phases
- Examine the classic P3 structure and risk profile, which will serve as a basis for the unique fact scenario and the ‘survival skills’ covered during much of the program

Interactive Activity: Working Through the Project Agreement*

You will review the unique fact scenario (classic P3/ DBFM) that will be used during the program. Acting as Projectco or a public entity, you will work through the structuring and development of the project agreement and the decision-making process, with regard to the different stakeholders. You will breakout into small groups to analyze issues, discuss risk allocation and risk management and share findings with the class. The session will conclude with a group debrief, and a checklist of considerations.

*Note: breakouts will not be recorded.

MODULE TWO

October 4, 2023
9:00 a.m. – 4:30 p.m. ET

Construction Phase Through to Operations

Understanding Risk During the Construction Phase

- Where do people stumble/go wrong?
- Risk management process – analysis, allocation and troubleshooting and dealing with stakeholders
- Processes and procedures – substantial completion, certification, revenue service, long stop
- Major risks – geotechnical, utility, partner, schedule, budget, counterparty, project sponsor
- Risk factors – partnership vs. strict interpretation, competition, workforce/labour, supply chain, the economy

Committees, Variations and Supervening Events

- Treatment under the DBFM project agreement
 - Why are these areas so difficult to navigate?
 - How are others dealing with this risk?
- Complexity of the works committee structure and project oversight by multiple stakeholders
- Managing variations and changes to the project
- Practical insights and proven troubleshooting tools

Managing Finance Risks and the Flow of Funds

- Payment process and flow of funds, mechanisms, structure
- Understanding finance and the related documents
 - Short- vs. long-term perspectives and implications
- Strategies to create a framework to keep funds flowing and overcome common ‘pain points’

Dealing with Performance Security and Insurance

- Key risks, stumbling points and missteps
- Strategies for ensuring suitable DBFM performance security, including surety bonding
 - What to look for
 - Who does what and when
 - Trigger points and major steps
- Managing associated challenges, gaps and risks

Interactive Activity: Managing Construction Risk*

Acting as a project contractor, you will work through the factors involved with submitting a claim when faced with overrun, delay and going beyond the long stop. You will breakout into small groups to analyze issues, discuss the various documents and considerations and share findings with the class. The session will conclude with a group debrief and a checklist of risk management and drafting tips.

*Note: breakouts will not be recorded.

MODULE THREE

October 11, 2023
9:00 a.m. – 4:30 p.m. ET

Operations Phase Through to Handback and Expiry

Understanding Risk During the Operations Phase

- Why do we select the 30-year term? Was it simpler ‘back then’ to forecast technology change? What’s the impact of rapidly changing technology?
- Key risks including scope split and the unique impacts of technology
- Managing project stakeholders – navigating the roles, interactions and communications, key risks
- Respecting the role of finance during operations

Managing Interface and Integration Risks

- Bridge between construction and operations
- Handback and associated process strategies
- Managing availability and performance risks
- Warranty management, latent defect risk, systems integration, changes in technology
- Managing risks involving external impacting events (the current pandemic will not be the last)
- Forward-looking strategies for addressing sustainability and climate risk/impacts

Tools for Navigating Money Risk and Issues

- Why is this area so challenging for stakeholders, resulting in conflicts, disputes and claims?
- Common money pitfalls and how to address them
- Tools for navigating payments and flow of funds
 - Deductions
 - Service level failure credit
 - Payment mechanism
- Tips to keep the funds and goodwill flowing

Overcoming Handback and Default Challenges

- Examining key issues and why they still occur
- Overcoming handback challenges, plus a template review for practical/tactical guidance
- Examining default and the ramifications
- How to prevent, manage or mitigate challenges

Interactive Activity: Managing Operations Risk*

Acting as Projectco, you will analyze the factors involved when the Owner has advised you that deductions have led to a default. You will breakout into small groups to work through issues, discuss the various documents and risks and share findings with the class. The session will conclude with a group debrief, a checklist of risk management and drafting tips.

*Note: breakouts will not be recorded.

MODULE FOUR

October 18, 2023

9:00 a.m. – 4:30 p.m. ET

Resolving Disputes: *What Have I Gotten into Over the Next 20 Years?*

What Have I Gotten into Over the Next 20 Years?

- Overview of each approach, what each seeks to achieve and important project impacts
- Understanding the intricate web of relationships and key points of intersection in disputes
- The pivotal role of lenders and why it matters
- Employing a dispute avoidance mindset
- How disputes are used to influence developments in law and in process improvement

Resolving P3 Disputes: From Early Stages Through to Formal Proceedings

In a series of practical sessions, you will explore the available processes and prescribed mechanisms for dealing with P3 disputes, including:

- **Early Problem-Solving: Letters, Notices, Petitioning, Meetings and Negotiations**
- **Interim Steps: Independent Certifier, Expert Determination, Dispute Resolution Board, Mediation and Adjudication**
- **Formal Processes: Arbitration and Litigation**

You will get targeted guidance and tips for navigating each process and making it work for you, including:

- How did things get to this stage? What are the parties in for?
- Critical analysis of the process, why and when to use it
- Key areas/provisions within the project agreements and what to do if the contract seems to be against you
- Anatomy and mechanics – key steps, timelines and what to do when
- Roles and intersections of the parties, and dealing with key stakeholders
- Insights for navigating the process from a dispute avoidance perspective – internally and externally
- Strategies for framing concerns and disputes
- Communication and negotiation techniques, with specific language and drafting tips
- Retaining and working with experts and lawyers, and selecting an arbitrator/decision-maker
- Managing documents, record-keeping and gathering evidence
- Troubleshooting issues before they snowball
- What happens next? What if you don't like the result? What happens to the project? To the relationships?

Interactive Activity: Working Through a Dispute*

Acting as a Projectco or a Contractor, you will troubleshoot issues suspected of contributing to ongoing project problems, and aim to avoid unnecessary escalation or delay. You will breakout into small groups to analyze risk, suggest strategies to negotiate, mitigate and resolve the issues and share findings with the class. The session will conclude with a group debrief, a checklist of considerations, negotiation and dispute resolution and drafting tips.

*Note: breakouts will not be recorded.

MODULE FIVE

October 25, 2023

9:00 a.m. – 4:30 p.m. ET

Preparing for the Next Generation of P3 Models

Understanding Changing Market Conditions: The Next Generation of P3 Models

- Overview of changing market conditions influencing infrastructure delivery in Canada
- Pressing challenges – supply chain issues, few bidders/proponents, onerous risk transfer profile
- Why do we need different delivery models?
- What is the next generation of procurement/P3 models? Why do they need capacity for long-term forecasting and forward-thinking?
- Key risk considerations including the importance of sustainability in project delivery – new national building code, climate risk, carbon tax, ESG

Exploring Newer and Emerging P3 Models

You will delve into the details, structures and objectives involving the newer/emerging P3 models.

- An overview and critical analysis
- What the model seeks to achieve
- The anatomy and mechanics
- Pros and cons of each
- Practical considerations for dealing with risk and issues – includes takeaways and resources

You will examine the following models:

- **Progressive Design Build**
- **Progressive P3s**
- **Integrated Project Delivery (IPD)**
- **Alliancing**
- **Revenue Risk Concession**

Interactive Activity: Choose Your P3 Model*

Using a fact scenario that does not lend itself to a classic P3 or a traditional project model, in small groups you will work through the risk analysis and decision-making processes and select one of the newer/emerging P3 models for your project and share findings with the class. The session will conclude with a group debrief and a checklist of considerations and resources.

*Note: breakouts will not be recorded.

Expert Round-Table: Do's and Don'ts to Prepare for the Future

Legal, finance and industry experts will share their experience, perspectives and insights on where things are heading and how to get prepared, including:

- Are the newer P3 models repeating the same mistakes?
- Pros and cons and key trends and influences
- What's happening in other markets? How are they dealing with challenges and risk?
- Forward-looking strategies and do's and don'ts to prepare for the future

Final Online Exam

Distributed after module five (5), the exam requires online completion and a passing grade of 80% due by **November 27, 2023**.

ONLINE PRIMERS

Covering core concepts and foundational principles, these on-demand primers are approximately one (1) hour each and are included with the certificate. Designed for those who may be newer to the area, or those professionals seeking a succinct refresher, it is strongly recommended to view all primers prior to the start date of the program.

To obtain your certificate, all three primers must be viewed:

- Understanding the Landscape of Canadian Infrastructure Delivery
- Overview and Key Distinctions Among the Various Project Delivery Models Used in Canada
- Summary of the Value for Money Analysis and Crucial Commercial and Financial Terms and Considerations

Primers will be available for viewing by September 13, 2023.

Register today at:

osgoodepd.ca/p3

Registration Details

Fee per Delegate: \$3,995 + TAX

Newly Licensed*: \$1,997.50 + TAX

**This fee applies to newly licensed regulated professionals within the past 2 years*

Fees include online attendance, electronic materials, and technical support. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details.

Financial Assistance

This program is eligible for OSAP funding. Federal and provincial job grants may be available. You may also apply for financial assistance with OsgoodePD. To learn more, visit: osgoodepd.ca/professional-development/fees-policies/financial-assistance

Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a \$150 administration fee will apply. No other refund is available.

For Further Program-Related Information, Please Contact:

Alexandra Karacsony, Program Lawyer at AKaracsony@osgoode.yorku.ca


Certificate Requirements

To receive an Osgoode Certificate, you must view all primers, attend all program modules (whether live and/or by program archive) and pass the final online exam, all by November 27, 2023.

Register today at:

osgoodepd.ca/p3

 **Email:** osgoodepd@osgoode.yorku.ca

 **Phone:** 416 597 9724

 **Mail:** 1 Dundas Street West, 26th Floor, Toronto, ON, M5G 1Z3



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO. Eligible CPD Hours:

LSO (ON): 37h CPD (31h 30m Substantive; 5h Professionalism; 30m EDI)



AB: This program is eligible for CPD credit with the Law Society of Alberta.

BC: This program is approved for 34.5 CPD hours with the Law Society of British Columbia.



NS: This program is eligible for CPD hours with the Law Society of Nova Scotia.

OsgoodePD programs may be eligible for CPD credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca.



CCA: Course hours can be used towards the Gold Seal Certification application for credits, subject to credit approval upon review. Note: every 6 hours of learning equals 1 Gold Seal credit.

This program is eligible for **LAWPRO** Risk Management Credit.

Here's what past participants at our construction and infrastructure programs have to say:

“Excellent content and delivery – very detailed. All sessions were incredibly informative and engaging.”

Giovanni Cautillo
President, Ontario General Contractors Association

“Law plus on the ground expertise makes for a great educational opportunity. Oversight by seasoned industry practitioners together with the varied experience of the course attendees from all over Canada made for a terrific program.”

Leanne Rapley
Principal & Lawyer, Rapley & Co

“The instructors’ passion for the law, for contracting, and for the industry is clear. I’d certainly recommend this course to [my] staff.”

Cory Knutson
General Manager, Trotter & Morton

“Faculty were all very knowledgeable and presentations were clear and easy to follow.”

Anthony Idigbe
President, Pureka Consulting Inc.

“Outstanding content and discussion [and] opportunity to hear the perspectives of others, a great way to interact with people on a different level.”

Sandra McLaughlin
Assistant Director, British Columbia Institute of Technology

“Excellent overall. The calibre of presenters was outstanding and good delivery of the material – very knowledgeable and passionate, which made the learning experience more engaging.”

James Zelinski
Chief Administrative Officer, Pitt Meadows Plumbing & Mechanical Contractors Ltd.