

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

PROGRAM DIRECTORS

Chris Bennett

Partner, Osler Hoskin & Harcourt LLP

Rick Shaban

Senior Counsel, Borden Ladner
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Managing Director, Investments,
Canada Infrastructure Bank

REGISTRATION OPTIONS

January 28, 29, 30, February 6 and 7,
2025

9:30 a.m. – 4:30 p.m. ET

In-Person (Blended)

*Some in-person and some online learning
1 Dundas Street West, 26th floor, Toronto, ON*

OR

Online (Blended)

*All online; combination of live and
asynchronous learning.*

Can't make the date?

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

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

Focusing on real-world examples, case studies and group discussions, you will learn how to better manage the key risks, challenges and disputes that commonly arise within the day-to-day administration of a traditional P3 project.

- Unpack a traditional P3 project (Design-Build-Finance-Maintain), including the contract, core documents and stakeholders
- Practice troubleshooting issues at various project stages, and get specific tips for communication and record-keeping
- Learn how and why the Value for Money Analysis and related considerations, drive P3 projects – and disputes – for up to 30 years
- Review the anatomy and mechanics of the various P3 models, and how and why market changes are driving the next generation of procurement/P3 models

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
- Network and engage with a national faculty and cohort of your peers

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

Giovanni Cautillo
President, Ontario General Contractors Association

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osgoodepd.ca/p3

Developed in the 90s as a ‘better alternative to government projects,’ the evolution of P3s has proven turbulent, and the risk profile too great for many private sector players. While newer models are emerging, P3s continue to be employed for large and complex infrastructure projects, despite their rigid structure and risk profile.

Designed for legal, commercial and technical professionals whose work involves P3 projects, **this innovative certificate provides you with the best-available P3 knowledge, strategies and skills you need** to support the creation of suitable risk management and dispute resolution processes and procedures.

Working with a realistic fact scenario, you will take part in a series of discussions and exercises where you will work through issues, apply core concepts and **learn tactics that you can put to immediate use.**

Program includes three (3) on demand primers, covering core concepts and principles to enhance class learning and discussion. Primers will be released on December 12, 2024.



You will develop crucial knowledge and strategies, including:

- How and why P3s are evolving based on changing market conditions, and why traditional P3s are still being employed
- Tools for managing core contractual rights, entitlements, and dispute mechanisms – including what to do if the contract seems to be against you
- Methods for predicting risk along the project trajectory, including how and why issues can escalate quickly if not properly managed
- Relationship and communication tactics, with tips to reduce delay, clarify uncertainty and to improve the timing of decision-making
- Best practices for overcoming project administration challenges – proper documentation and notices, quantifying and expressing cost/loss, and changes to scope and pricing
- Techniques to solve your problems early, avoid ‘nasty letters’ and unnecessary escalation, maintain proper records, produce documents and when to involve lawyers

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Who Should Attend

- Lawyers in private practice or in-house counsel
- Litigators
- Business, finance, technical, operations and risk management professionals
- Contractors, subcontractors, subtrades and service providers
- Government, procurement, supply chain and policy professionals
- Project and contract managers
- Arbitrators and dispute resolution professionals
- Consultants, advisors, insurers and stakeholders whose work involves infrastructure projects/improvements

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

Program Directors



Chris Bennett

Partner, Osler Hoskin & Harcourt LLP



Rick Shaban

Senior Counsel, Borden Ladner Gervais LLP



Divya Shah

Managing Director, Investments, Canada Infrastructure Bank

Advisory Board

Jason Annibale

Partner, McMillan LLP

Ed Ng

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

Marcia Oliver

General Counsel and VP Legal Services & Indigenous Relations, Bennett Group of Companies

Sharon Telem

Managing Director, Global Banking and Markets, Scotiabank

Agnes von dem Hagen

Senior Vice President (Legal Services), Infrastructure Ontario

Andrew Wong

Partner, Osler Hoskin & Harcourt LLP

Program Faculty

Glenn Ackerley

WeirFoulds LLP

Mark Bain

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

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Director, Infrastructure Advisory Services, BTY Group

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Assistant Vice President & Counsel, Bond and Specialty Insurance, Travelers Canada

Bruce Karn

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McMillan LLP

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General Counsel, Maple Reinders Group Ltd.

Trish Morrison

Borden Ladner Gervais LLP

Johanne Mullen

Partner, Capital Projects & Infrastructure, PwC Canada, and Chair, Canadian Council for Public Private Partnerships

Tristan Musgrave

McCarthy Tétrault LLP

Robert Pattison

Senior Vice President, Commercial Resolutions, Infrastructure Ontario

Mark Plateel

Gowling WLG

Kevin Pringle

Executive Director, Alternative Capital Financing and Partnerships Office, Alberta Infrastructure

Lampros Stougiannos

Dentons Canada LLP

Hillary Thatcher

Managing Director, Project Development, Indigenous and Northern Infrastructure, Canada Infrastructure Bank

Vickie Turnbull

Infrastructure and Project Finance Executive; Board Member, Infrastructure Ontario

Sharon Vogel

Singleton Reynolds LLP

Bing Bing Wang

Managing Director of Strategy, Risk & Transactions, Deloitte Canada, and Director, Canadian Council for Public Private Partnerships

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Agenda

MODULE ONE

January 28, 2025
9:30 a.m. – 4:30 p.m. ET

Unpacking a P3 Project from Start to Commercial Close

The Procurement Process and 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 finance perspectives for all project stakeholders and how and why the 'finance imperative' drives the project and disputes. You will also discuss how to avoid common misunderstandings and to help things run smoothly.

Traditional P3 Agreement and Key Documents

- Unpack the Design-Build-Finance-Maintain (DBFM) project agreement along with other key RFP contracts
- Anatomy and mechanics of core documents, how they relate and where things often go wrong
- How the project documents relate to the trajectory, and which documents are used when
- Examine the DBFM 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 Discussion: Working Through the Project Agreement

Following an introduction to the program's unique fact scenario (DBFM), acting as Projectco or a public entity, you will work through the structuring and development of the project agreement and the decision-making process (before the RFP), in light of key stakeholders, and provide input on risk allocation and management. The discussion will conclude with a group debrief, including a checklist of considerations.

MODULE TWO

January 29, 2025
9:30 a.m. – 4:30 p.m. ET

Construction Through to Operations

Understanding Risk During Construction

- Where do people stumble/go wrong? Where do things snowball?
- Risk management processes, analyses, allocation and troubleshooting, and managing stakeholder relations
- 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
- Troubleshooting tools and practical insights

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 the funds flowing and overcome common 'pain points'

Dealing with Performance Security and Insurance

- Key risks, stumbling points and blind spots
- 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 practical considerations and approaches involved with submitting a claim when faced with overrun, delay and going beyond the long stop. You will discuss key documents and considerations and share findings with the class. The session will conclude with a group debrief, a checklist of considerations, risk management and drafting tips.

MODULE THREE

January 30, 2025
9:30 a.m. – 4:30 p.m. ET

Operations Through to Handback and Expiry

Understanding Risk During Operations

- Why a 30-year term? Forecasting technology change (lifecycle refresh) and impacts
- Key risks including scope split and the unique impacts of technology
- Managing stakeholders – examining roles, interactions, communications and project 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
- Adaptive 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 and 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 that deductions have led to a Lender default. You will discuss key documents and issues and share findings with the class. The session will conclude with a group debrief, including a checklist of considerations, risk management and drafting tips.

MODULE FOUR

February 6, 2025

9:30 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
- Cutting through web of relationships and navigating key points of intersection
- The pivotal role of lenders and why it matters
- Employing a dispute avoidance approach
- How and why disputes influence legal and process developments

Resolving P3 Disputes: From Early Stages Through to Formal Proceedings

In a series of practical sessions, you will explore the available P3 dispute processes and mechanisms:

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:

- 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 within the project agreements and what to do if the contract seems to be against you
- Anatomy and mechanics – core steps, timelines and what to do when
- Roles and intersections of the parties, and dealing with stakeholders
- Insights for applying a dispute avoidance approach at each stage – internally and externally
- Strategies for framing concerns and disputes
- Communication and negotiation techniques, with specific language and drafting tips
- 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 Discussion: Working Through a Project Dispute

Acting as a Projectco or a Contractor, you will analyze challenges suspected of contributing to ongoing project problems and aim to avoid unnecessary escalation or delay. You will work through issues, suggest suitable strategies and techniques to negotiate, mitigate and resolve problems 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.

MODULE FIVE

February 7, 2025

9:30 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

- How changing market conditions are 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 is long-term forecasting important?
- Sustainability in project delivery – key risks, national building code, climate risk, carbon tax, ESG

Exploring Newer and Emerging P3 Models

You will delve into the structures and objectives of Progressive Design Build, Progressive P3, Integrated Project Delivery, Alliancing and Revenue Risk Concession models:

- Overview and critical analysis
- What the model seeks to achieve
- Anatomy and mechanics
- Pros and cons of each
- Practical risk management considerations and strategies, with takeaways and resources

Interactive Activity: Choose Your P3 Model

Using a fact scenario that does not lend itself to a traditional P3 or a conventional project model, you will take part in 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.

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

Legal, finance and industry experts will discuss important developments, where things are heading, and their insights and tips on how to get prepared:

- Are 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 complex 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 multiple-choice exam requires online completion and a passing grade of 80% due by March 7, 2025.

ONLINE PRIMERS

Available on demand by December 12, 2024

The program includes three succinct, pre-recorded classes covering core concepts and principles to help lay a knowledge foundation before class. It is strongly recommended to view all primers prior to attending the program. **To obtain your certificate, all three primers must be viewed:**

- Landscape of Canadian Infrastructure Delivery (~48 mins, recorded 2023)
- Overview and Key Distinctions of Project Delivery Models Used in Canada (~59 mins, recorded 2023)
- Value for Money Analysis and Crucial Commercial and Financial Terms and Considerations (~64 mins, recorded in 2023)

“Very good [and] proper level of detail. I attended the course from an Authority perspective (as a non-lawyer) and I found the level of detail to be very helpful.”

Amy Burt

Project Leader, Public-Private Partnerships,
Government of the Northwest Territories

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*

Fee includes program registration, electronic program materials, 120-day access to the recorded modules, 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: www.osgoodepd.ca/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 prior to the start date of the program. 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 start of the program. If a cancellation request is made with less than 21 days notice, a \$250 administrative fee will apply per person. Within 7 days of the program start date, no refund is available. Payment is required to receive access to the program.

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 March 7, 2025.

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. ON (LSO): 33h 50m CPD (28h 20m Substantive; 5h Professionalism; 30m EDI)



AB: For Albertan lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.

BC: This program is approved for 31.25 CPD hours with the Law Society of British Columbia.

NS: For Nova Scotian lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Nova Scotia Barristers' Society.



CCA: This program is approved for 10 credits toward the Gold Seal Certification education requirement.



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

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

What past participants have said about our P3 and construction/infrastructure programs:

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

Anthony Idigbe
President, Punuka Consulting Inc.

“Very good. The course includes many specialized topics, and it is an excellent primer to these contract structures [including] how risk is distributed among the parties and how dispute resolution [operates] in a project agreement.”

Camilo Silvera
Lawyer, Borden Ladner Gervais LLP

“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
Vice President and Chief Administrative Officer,
Pitt Meadows Plumbing