Submission

to the

House of Commons Standing Committee on Finance

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

May 2017

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 as part of the omnibus *Budget Implementation Act*. This 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 confusion about how the proposed bank would operate particularly around a Cabinet role in the approval of projects, which does not appear to exist in the legislation.[i] CUPE encourages the government to ensure the *Canada Infrastructure Bank Act* receives 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.

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 attract investment from private sector and institutional investors* in infrastructure projects that will generate revenue and will be in the public interest.[ii] There is no longer a mention of low-cost financing.

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 seek to maximize these revenues, which Canadians will have to pay for—often with little or no choice as many public services are natural monopolies. 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.

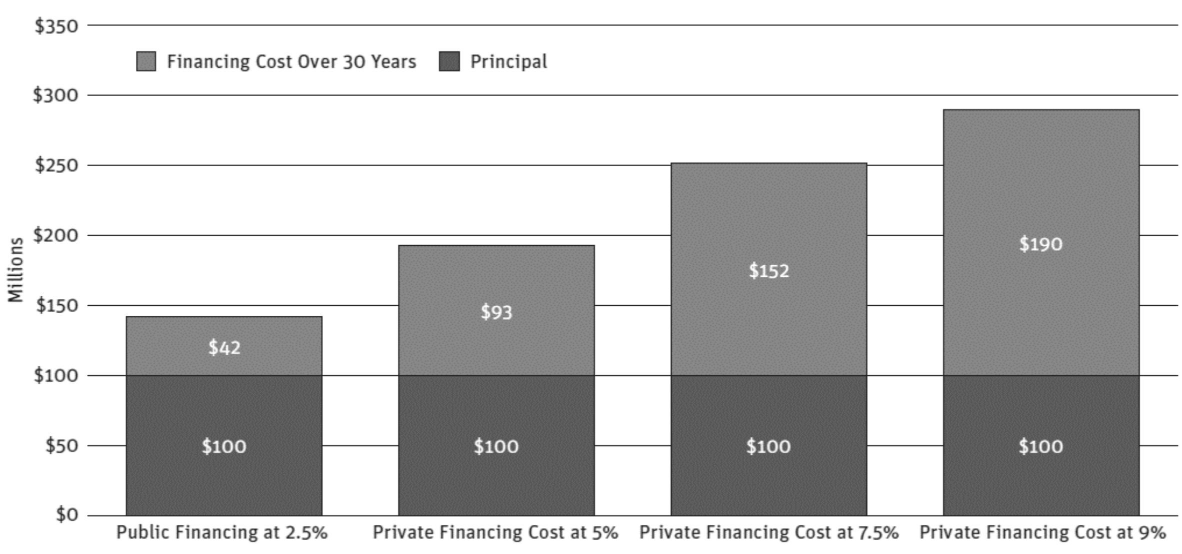
Private financing is more expensive

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".[iii]

One survey of 100 European pension funds listed an expectation of a nine per cent annualized return.[iv] 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.[v]

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.[vi] 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.

FIGURE 1 Private financing can double the cost of infrastructure projects



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

Instead of the CIB, the government could create a public bank with low-cost financing to fund our infrastructure needs. This would involve slightly higher financing costs than direct borrowing by the federal government but significantly below the cost of private finance.[vii] 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.

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).

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 that will profit from it.[viii] The CIB will also result in a privatization of how infrastructure projects are developed as private investors will be able to pitch infrastructure projects through unsolicited bids.

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.

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.

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.

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.

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*, to which the CIB would already by subject. This would make it 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.

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.

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. CUPE is concerned the CIB's data collection role places it in a conflict given the incentive to demonstrate positive outcomes of infrastructure financed through the bank. To maintain data quality and independence, CUPE encourages the government to incorporate the data collection and analysis role into Infrastructure Canada and/or Statistics Canada's mandate.

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. 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. A public planning process would enable the government to set infrastructure priorities to ensure investments are in the public interest, especially given that most public infrastructure has some degree of natural monopoly making it much more easily exploited for private profit.

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. 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.

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May 25, 2017

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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] Infrastructure Canada, Infrastructure Internal Advisory Committee: Workstream 3, Accessed through ATIP 2016-027
[iv] Survey of 100 European pension schemes undertaken by Richard Davies Investor Relations for Financial News, 10.12.2007.
[v] J.P. Morgan Asset Management, Illustrative returns for infrastructure assets, March 31, 2015
[vi] Sanger, Toby, Creating a Canadian infrastructure bank in the public interest, CCPA, March 2017
[vii] Sanger, Toby, Creating a Canadian infrastructure bank in the public interest, CCPA, March 2017
[viii] Curry, B. Private-sector role in Canada Infrastructure Bank raises conflict issues, Globe and Mail, May 5, 2017