

The Governance of Public-Private Partnerships: Success and Failure in the Transportation Sector

by

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Abstract

Since the 1970s, the focus of public policy in many countries has been redirected from the public provision of goods and services to an emphasis on curbing government spending and limiting bureaucracy. This has led to a proliferation of alternative service delivery arrangements, in which the private sector is involved in public service delivery. The term “governance” is now commonly used to signify this shift away from the hierarchical mode of government that had been applied in the past. For many supporters of alternative service delivery, increased freedom for the private sector is regarded as the key to successful governance.

Public-private partnerships (P3s) are a family of alternative service delivery mechanisms that allow the private sector to finance, own, and deliver goods and services to the public through long-term contracts. P3s fit comfortably into the logic of alternative service delivery, which implies that by removing some elements of the public sector and replacing them with some aspects of the private sector, a balance between accountability and efficiency can be struck. However, this presents an inherent conflict, as the public sector is viewed simultaneously as the problem and as the solution to improving public policy.

This inherent conflict can sometimes lead to governance failure, a phenomenon that is not sufficiently understood. By examining two case studies in P3 delivery of transportation infrastructure, the Canada Line in Vancouver, Canada and the Sydney Airport Link in Sydney, Australia, the conditions for governance failure can be explained. These two cases have similar technical parameters and political motivations, but in the Canadian case, where the public sector fostered policy networks, demonstrated policy learning, and employed a collaborative institutional approach to project implementation, successful governance was achieved. By contrast, the Australian case, in which the government was not substantially engaged in the partnership, resulted in governance failure. From an analysis of these two cases I conclude that public sector policy leadership is essential to the prevention of governance failure.

Keywords: Governance; public-private partnerships; transportation; policy networks; policy learning

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List of Acronyms

BOOT	Build-Own-Operate-Transfer
CLCO	Canada Line Company
CLRT	Canada Line Rapid Transit
DBFO	Design-Build-Finance-Operate
GVRD	Greater Vancouver Regional District
GVTA	Greater Vancouver Transportation Authority
ICAC	Independent Commission Against Corruption
P3, PPP	Public-Private Partnership
PFI	Private Finance Initiative
RAV	Richmond-Airport-Vancouver
RAVCO	Richmond-Airport-Vancouver Company

Chapter 1.

Introduction

With the transition away from Keynesian economic management that occurred in the 1980s and 1990s, and with the rapid and easy transnational movement of capital and information that is often referred to as globalization, the modern democratic state finds itself in a world that is converging on a mode of *governance* that differs from the conventional methods of *government* that had been prevalent in Western democracies since the Great Depression. From one point of view, the government's role has been changed from one of control to one of "steering" (Mayntz, 1993), in that hierarchical government with an independent and process-oriented bureaucracy has been, in many sectors, replaced by a system in which the formulation and implementation of public policy is decentralized and is often delegated in part or in whole to non-governmental actors. From this perspective, governance is about how "governments and non-government actors can democratically exert some influence, control and coordination" and effectively steer society (Pierre and Peters, 2000: 3). This includes the changing authority and roles of the state in the international sphere; the devolution and decentralization of authority within states (with a concurrent centralization of power in state executives); and the rising importance of non-governmental groups and private sector firms in the delivery of formerly public services. In this era of governance, alternative service delivery mechanisms that allow the private sector to finance, own, or

operate public goods and services have become popular policy instruments for developing infrastructure and delivering goods and services to the public.

Public-private partnerships (also called P3s or PPPs¹) are a family of alternative service delivery arrangements in which governments and other public sector agencies enter into long-term contractual agreements with private corporations for the delivery of public services.² Arguments used in support of P3s often refer to them as the “best of both worlds” (United Nations, 2008: iii), a union of private sector efficiency and public sector accountability that is superior to either sector acting alone. P3s have been lauded for their ability to use private finance for public investment, which supporters see as a means to reduce the public’s tax burden and to free up the government’s financial resources for other, more pressing demands (Telliford, 2009). They are also frequently promoted as being able to add a high degree of efficiency to public service development and delivery, including technical innovation, budget control, and time management, that will result in major cost savings (Poschmann, 2003). From the other side of the table, P3s are seen by private corporations as a secure, long-term investment that in many cases is guaranteed (or at least, protected) by the government (TD Bank Financial Group, 2006: 11).

In spite of the enthusiasm with which some governments have embraced alternative service delivery, P3s and other governance arrangements do not always produce the fantastic outcomes that are attributed to them in theory. Spectacular failures

¹ I prefer to use “P3”, as it is the form that is easiest to say out loud. However, many authors continue to use “PPP” as an abbreviation.

² Following Vining and Weimer (1990: 3), I will take “public services” to include goods as well as services.

– from both a financial and a social perspective – have been documented in several countries. Advocates of P3s will often point to intrusion from the public sector, such as “over-regulation”, “micromanagement”, and “political interference”, as key factors contributing to failure in P3s (Pongsiri, 2002: 490-491; Zhang, 2005: 7). Much of the literature that deals with enhancing the use of P3s is predominantly concerned with how governments can improve incentives for the private sector to enter into partnership arrangements (e.g. Abdel Aziz, 2007), not with the role that governments can play in participating in, or even managing the partnerships themselves.

In fact, the logic of public-private partnerships is primarily based on a presumption that to improve the quality and reduce the cost of public service delivery, some degree of government needs to be removed from the equation. According to this view, government-run projects are usually delivered late and over-budget, because governments lack the profit incentives of the market that induce private companies to minimize budgets and schedules (Grimsey and Lewis, 2005). P3s – and in a broader sense, all alternative governance arrangements – are seen by many as a way to allow governments to replace their own worst qualities, such as a slow and dense bureaucracy, budget maximization, and political conflict, with the efficiencies and innovative qualities of the profit-driven private sector (Pongsiri, 2002; Zhang, 2005; TD Bank Financial Group, 2006). However, P3s are seen as being superior to full privatization by these same observers, because the presence of the public sector adds an increased component of accountability to the public (Pongsiri, 2002: 491). This presents an inherent conflict, as governments are seen simultaneously as the problem and as the solution to improving public service delivery.

This inherent conflict in governance arrangements can sometimes lead to governance failure, a phenomenon that has not been adequately explained. The precise role of the public sector in ensuring successful implementation of policy through the use of P3s is not sufficiently understood, because the research focus to date has been on eliminating the perceived shortcomings of government from public service delivery, and not on how governments and private corporations can collaborate successfully. Likewise, empirical research on governance arrangements has not yet produced an adequate understanding of the impact of alternative service delivery – and especially failure in alternative service delivery arrangements – on the achievement of the state’s public policy goals.

The objective of this dissertation is to determine how governments and public sector agencies can engage P3s so as to ensure successful implementation of policy through governance arrangements. First, I will define governance failure and offer hypotheses on its causes and consequences. Then, I will examine two case studies in P3 delivery of transportation infrastructure, the Canada Line in Vancouver, Canada and the Sydney Airport Link in Sydney, Australia, to determine how governance failure occurs and how it can be avoided. In addition, I will show that strategic public sector policy leadership is crucial for governance success in P3s. These two cases have similar technical parameters and political motivations, but in the Canadian case, where the public sector displayed policy leadership through the fostering of policy networks, through bounded-rational policy learning, and through a collaborative institutional approach to project implementation, successful governance was achieved. By contrast, the Australian case, in which the government was not substantially engaged in the partnership, resulted in governance failure. Despite claims from some authors that

increased freedom for the private sector is the key to success in governance arrangements, from the two cases presented here it will be possible to demonstrate that policy leadership from the public sector is essential to the prevention of governance failure.

There are nearly infinite ways for the public and private sectors to collaborate, which makes obtaining a precise and universal definition of public-private partnerships somewhat elusive. Partnership formats and acronyms abound, such as BOOT (“build-own-operate-transfer”) and DBFO (“design-build-finance-operate”). Unfortunately, although these names are intended to signify particular financial and legal arrangements between public and private sector entities, the concepts they are meant to convey are overlapping and definitions are often inconsistent in both industry and in academia. What is clear, especially from attempts to catalogue the various names that have been used to refer to formats of P3 arrangements (e.g. Siemiatycki, 2006: 138; United Nations, 2008: 2-4; Koppenjan and Enserink, 2009: 285-286), is that the degree of public ownership of assets, the percentage of private capital investment, and the nature of the risks assigned to the various entities involved in a P3 project can all vary from project to project. The quantity and arrangement of these ingredients will determine the format for a particular project, and they are employed according to the idiosyncratic requirements of the governments and private sector proponents involved in that project.

Therefore, assembling a list of all the possible P3 arrangements would be a difficult and tedious task, because there is a continuous spectrum of public ownership, capital investment, and risk allocation that could be supplied for any individual public service project. These are not activities that can be easily compartmentalized into categories with clearly defined boundaries. A more constructive way to view P3s is as a

family of partnership modes, all designed to allow the private sector to deliver goods and services to the public on behalf of a government (Hodge and Bowman, 2004: 203). Public-private collaboration is therefore best seen as a spectrum of integration, from purely government-controlled supply on the one hand to complete divestiture to the private sector on the other.

Nonetheless, there are some features that are common to different P3s. All P3s involve some sharing of responsibility between the public and private sectors, as well as some sharing of the risks and rewards of the project in question. While different P3 projects will apportion responsibility, risk, and reward differently, in all cases these three elements will fall in some arrangement to both the public and private sector partners. It is this sharing of responsibility, risk and reward that creates challenges for P3 governance, mainly because the goals of the government and the goals of a private corporation are not often perfectly aligned. Most often, the objective of government will be to solve some political or social problem, perceived or real. For the private sector, the main objective is profit. In many cases, such as supplying public transit to low density neighbourhoods, providing affordable housing for low-income families, or dealing with drug dependence, social objectives may not be profitable. In other examples, private corporations involved in service delivery may oppose expanding a program if the expansion will be costly or if it will provide subsidized services that compete with similar services offered at a higher standard rate. In all cases, the private sector partner in a P3 arrangement will object to altering a profitable course of action, even if it means achieving a desirable political or social goal.

Given the private sector's attention to profit, it is no surprise that the vast majority of research on public-private partnerships – academic or otherwise – is concerned with

economic aspects and outcomes of the P3 arrangement. However, economic considerations are only one part of the story. The other, untold, story of P3s involves the effectiveness of partnerships as an instrument for achieving policy goals and for attaining specific social outcomes; there is a world of activity that is of great relevance to public policy and to which economic concerns are secondary. It has, unfortunately, become common in the media and within the prevailing Western political culture to conflate the two.

As Drucker (1974: 45) observes, there is a difference between effectiveness, which can be a non-economic descriptor, and efficiency, which is necessarily economic: effectiveness describes the achievement of a specific goal, and efficiency is achieving that goal at the lowest possible cost. In the business world, although these two things may be separate (effectiveness, for instance, might require finding the right market for a new product while efficiency might require a factory to assemble the product cheaply), they can both be measured by the same outcome: profit.

In the public sector, however, this is not the case. Social outcomes rarely have an empirical monetary value. Efficiency, in theory, ought to be measured by the difference between the benefits of output and the costs of input (Self, 1977: 264), but while the input costs of public programming may be quantified, benefits to society will be difficult to measure in financial terms. In other words, social “profit” has no economic meaning, so public sector effectiveness and efficiency must be measured in separate ways (and by different people as well, since social outcomes are gauged by policy analysts and program costs are measured by accounting departments). Again, the trend in popular media reports and in rhetoric emanating from government public relations departments is to fuse economic efficiency concerns with non-economic policy

effectiveness. However, I believe there is good reason for separating the two. The demands, strategies, and goals of public policy effectiveness – as well as the consequences of ineffective policies – are relevant to politics and to society, and require a separate treatment from economic analysis.

This presents a significant challenge for P3s and for those interested in studying them. Since P3s by definition involve the collaboration of the private sector, whose main concerns are economic, and the public sector, whose objectives can be both economic and social or political, the primary goals of a particular public-private partnership can be ambiguous. Furthermore, if it is difficult to define the goals of a P3, then it would be similarly difficult to ascertain whether or not a P3 has met with success or failure. Nevertheless, P3s, and governance arrangements more broadly defined, are likely susceptible to some kind of failure. This is because governance is, at its core, a collaboration between market actors and government actors, and as many volumes of academic scholarship would have us believe, both markets and governments can fail. The first task then, for those interested in advancing scholarship in this area, is to define success and failure for P3s and for governance arrangements in general.

To this end, I will investigate four broad research questions:

1. Can governance fail?
2. What does a governance failure look like?
3. What are the consequences of governance failure?
4. How can governance failure be avoided or mitigated?

Accordingly, while economic analyses of public-private partnerships are plentiful, with both theoretical treatments and empirical studies well represented in the academic

literature (e.g. Poschmann, 2003; Ohemeng and Grant, 2008; Shaoul, 2009), they alone are insufficient for a complete understanding of the dynamics of governance of P3s. This is because economic considerations will not help answer research questions about the consequences of governance failure, such as those posed above. Unfortunately, there are very few studies of P3 governance that are primarily non-economic, and the majority of these studies are highly theoretical (see Hodge and Bowman, 2004 for example). There exists only a sparse population of scholarly work examining non-economic aspects of public-private partnerships from an empirical perspective (see Klijn and Teisman, 2004 for example). Empirical studies of P3 governance that show how failure can occur, and what the consequences of P3 governance failure may be, are lacking from the existing scholarship.

Now is an appropriate time for the development of a theory of governance failure. Theories of how markets acting alone can result in “market failure”, in which the free market cannot deliver a Pareto-optimal allocation of resources (see Greenwald and Stiglitz, 1986 for example), arose in the middle half of the 20th century, during a period in which Western democracies were cultivating a system of government intervention and public programming collectively called the welfare state. A vast literature has arisen on the subject of market failures, discussing their existence or non-existence, debating the need to correct them or not, and defining the successes and failures of government intervention in furthering the goals of the welfare state.

Theories of “government failure”, in which government intervention can result in a failure to achieve its own goals (see Wolf, 1987 for example), first appeared in the 1980s, during a period in which the apparatus of government was increasingly seen as slow, budget-maximizing, self-serving, and unable to act efficiently to solve social and

economic problems. During that time, many Western countries moved to curtail government action and to increase the roles and responsibilities of markets in delivering public services. This included many different policy instruments aimed at favouring the private sector but also at the marketization of government, such as New Public Management, alternative service delivery, extensive use of consultants for policy analysis, contracting out for public services, and privatization of state-owned enterprises.

Now, more than ever, markets and governments must work together to deliver public programming (Goodwin, 1998: 5-6; Stoker, 1998: 19-22; Jessop, 2000: 16-18; Aikins, 2009: 406). In this new paradigm of governance, the consequences of the use of collaborative policy instruments like P3s, such as influences on democratic accountability and on the ability to achieve public policy goals, are still unclear. Jessop (1998: 43) argues that systems of governance, like markets or governments alone, are prone to failure – but governance failures have so far received little attention and a general theory of “governance failure” has yet to be adequately articulated (see Dixon and Dogan, 2002 for an early attempt at a theoretical approach to governance failure). This represents a significant gap in the collective knowledge about governance arrangements, especially since collaborative efforts such as P3s are increasingly seen as effective methods of developing infrastructure and delivering public services (Garvin and Bosso, 2008: 162; Siemiatycki, 2010: 43).

Transportation (especially, but not exclusively, public transit) has frequently been included in inventories of public services (see Le Grand, 1987; Galambos and Baumol, 2000: 305; Winston, 2000: 404) and as a target of government intervention (Jones 1984; Rephann, 1993; Rietveld and Stough, 2007: 1). Transportation has been associated with state-building (Jones, 1984; Perl, 1994), and railways, highways, inland canals, ferry

services, and airlines have historically been of interest to national and sub-national governments. Although the marketization of the transportation sector may not be a new phenomenon in some countries (see Perl and Newman, 2012 for example), it is a good area in which to study the impact of increasing use of the private sector, because of its historical ties to government action. Moreover, the transportation sector in many countries has attracted P3 investment in recent years (Levinson et al. 2007: 301-302).

But more specifically, transportation constitutes a prime venue for analysis of the impact of the use of P3s on the attainment of public policy objectives. Because transportation projects usually involve the construction of large pieces of infrastructure (such as highways, ports, airports, and subway systems), they are invariably associated with enormous capital costs and long-term, costly, and detailed maintenance plans. In order to entice the private sector into engaging in a partnership that will assuredly be expensive and demand long-term commitment, a transportation P3 contract will often require a partnership agreement that lasts at least 25 years, so that the private partner can be assured of an appropriate return on investment. Furthermore, transportation P3s will also often contain contractual stipulations of revenue guarantees, and they usually (but not always) provide the private sector partner with access to proceeds from user fees. Lengthy concession periods, revenue guarantees, and shared revenue streams are often thought to be factors that produce controversy in P3 contracts (Hodge and Bowman, 2004). In other words, P3 arrangements in transportation present an arena in which several of the most contentious aspects of public-private partnership contracts are frequently used together. In addition, transportation P3s also entail the kinds of controversies that are endemic to P3s in most other sectors, such as sealed contracts, secrecy of contract negotiations, and unfortunate financial arrangements involving “tax

leakage”, in which ongoing public sector costs at one level of government are inflated by the taxes that private sector P3 partners must pay to other levels of government (Poshmann, 2003).

A number of authors have speculated as to how these common contractual elements of P3s – and especially, the conflict they can potentially enable – might affect the achievement of public policy goals (see Langford, 1999; Greve and Hodge, 2010, for example). The effect of public-private partnerships on public service delivery is a relatively unexplored domain; as transportation P3s represent a logical extreme in P3 arrangements, it is reasonable to begin the research there and work towards the middle as the research agenda matures. With hospitals or prisons, the diversity of tasks involved in their operations (doctors, laboratories, cafeterias, prison guards, administration etc.) allows a much wider variety of sub-divided P3 arrangements that is not available to transportation infrastructure projects, which means P3s can be used for smaller sub-components of operation and could thereby avoid potential conflicts (see Grimsey and Lewis, 2004: 96-102 for a detailed discussion of various P3 options for hospitals and prisons). In addition, some sectors (wastewater management, for example) may not currently be able to charge direct user fees, so P3s in these sectors could potentially operate with a smaller risk of conflict, by using more reliable (i.e. government) repayment mechanisms. While transportation infrastructure may require multiple processes for design and construction, in operation it will require its many functions to be integrated for the single task of enabling objects and people to move from one location to another. The unity of operations for transportation, combined with the potential for direct access to revenue supplied by the user, could expose

transportation P3s to potential governance conflicts that other sectors are currently able to avoid.

However, the kinds of contractual obligations to the private sector partner that are popular in transportation P3s have been and continue to be used in other sectors (the contract for the province of Alberta's Special Waste Management System P3, in operation from 1986 to 1995, for example, contained revenue guarantees. See Boardman et al., 2005: 178). As P3s become more popular and political confidence in them grows, and as advances in technology continue to develop, long contracts, revenue guarantees, and user fees could all be employed by many other sectors, and more often. Therefore, my findings from the transportation sector will illuminate aspects of P3 arrangements that are currently used in part – but could soon be used in whole – in many other sectors of service delivery. There is good potential for the results of this transportation sector case study to be generalized to other sectors.

The two cases that I have chosen, the Canada Line and the Sydney Airport Link, represent a unique opportunity to compare nearly identical P3 projects that resulted in dramatically different outcomes. Both cases involve rail extensions of metropolitan public transit networks; both connect downtown cores of a major metropolis with an international airport and continue on to the suburbs; both cases are infrastructure projects that required hundreds of millions of dollars in capital investment; both involved extensive tunnelling under urban centres, including complicated and expensive tunnel boring techniques; both Canada Line and the Sydney Airport Link were projects driven by sub-national governments in a federal system (i.e. British Columbia and New South Wales, respectively); both cases were structured as public-private partnerships with substantial capital investment from the private sector – and both involved private

ownership of assets, fixed-price design-build construction contracts, private sector operations and maintenance, and 35-year concession periods. In addition, both the Canada Line and the Sydney Airport Link were built in anticipation of an Olympiad and faced similar political motivation and pressures surrounding the Olympics bid and the event itself.

However, while the Canada Line could be seen as a success (it has exceeded ridership expectations by a wide margin and continues to increase patronage), the Sydney Airport Link debuted at around one-quarter of expected patronage, and after five years of service, a financial restructuring, and a revised P3 contract, had only seen negligible improvement in patronage levels (Nixon, 2006). Moreover, while the Canada Line has successfully deflected more than one major lawsuit, the Sydney Airport Link has suffered from legal action between the public and private sector partners, the bankruptcy of the original private sector consortium, and a renegotiated revenue-sharing arrangement that resulted in an increased cost to the public sector of about \$145 million.³

Canada and Australia are, of course, very similar political jurisdictions in that they are both federated Westminster parliamentary governments with, excluding the province of Québec, legal traditions based on common law precedents. Both Canada and Australia are (majority) English-speaking countries with historical colonial ties to Great Britain and comparable themes of the legacy of interaction with indigenous populations. Both countries have similar economic dependencies on natural resource extraction and

³ All currency is in 2011 Canadian dollars unless otherwise stated. My calculations use the Consumer Price Index from the Australian Bureau of Statistics and Statistics Canada, and annual exchange rates from the Bank of Canada. All dollar figures are meant to be approximate.

are reacting to the same global economic forces such as a realignment in international commodities markets. Moreover, comparing Canada and Australia is a tradition that goes back several decades (see Albinski, 1973 for example). This high level of similarity at the contextual level enhances the most similar systems case study approach used here, because not only are the cases themselves as alike as possible but the national political and jurisdictional settings under which they exist are also very aligned – so any difference in outcomes is probably not attributable to issues of unique national context.

The Canada Line and the Sydney Airport Link are therefore nearly perfect candidates for a small-n case study comparison of success and failure in public-private partnerships. In my analysis, I rely mainly on three methods of data collection: elite interviews, primary document analysis, and published secondary source literature. Each of these three methods has a unique set of advantages and shortcomings, but combined they provide for a reliable set of data from which convincing conclusions can be drawn. Using multiple techniques for gathering data enhances my findings by triangulating my results (Burnham et al., 2008: 232; McNabb, 2010: 242).

Elite interviews are used to gain information from people who have specialized knowledge (Brians et al., 2011: 366). These people are elites in the sense that they have unique information on unique experiences; the term “elite” as it is used here does not refer to any political or class position, real or perceived (although interview subjects may qualify as “elite” in that sense as well). Accordingly, the responses given by elite interview subjects are valuable for the facts they provide on the events in question, but they are perhaps even more valuable for the perspectives and interpretations of these facts that vary among the respondents. Elite interviews can provide information about

events, but they can also serve to explain how key actors involved in a case interpret these events, which in many cases of political analysis may be even more useful.

I conducted semi-structured interviews with 24 individuals, including former and current CEOs and other executives from the private sector partners in both cases, one former premier, two former transportation ministers, several high-ranking executives from relevant public sector agencies and from the airport authorities in both cases, a former city councillor, multiple civil servants at the state/provincial and municipal levels, and one prominent transportation activist. Anonymity was promised to all interview subjects, which resulted in remarkably candid, cooperative, and enthusiastic responses. Each of these interviews provided a wealth of information, both factual and interpretive, that when held against a backdrop of multiple other interview responses and published documents should be considered substantially reliable.

I initially selected candidates for interview by compiling a list of individuals whose names and positions appeared in primary documents, newspaper reports, press releases, and secondary sources. Using ordinary internet searches, I successfully located contact information for the vast majority of this list, and I contacted these individuals directly whenever possible. At least half of the people I contacted agreed to be interviewed; most of the rest did not reply to my requests, although a small number (one person in the Vancouver case and three in the Sydney case) specifically declined contact. For some individuals I was unable to obtain contact information.

I then proceeded with the “snowball” method of sampling interview subjects, in which further candidates for interview are recommended by people who have already agreed to be interviewed. This method has two major benefits: it allows people who are

insiders to suggest highly relevant candidates whose names might not appear in published documents and who may be otherwise unknown to the public; and it indicates which people the existing list of interview subjects – who are themselves elite informers – perceive as being elite (Neuman, 2003: 214). In other words, not only did a snowball sample allow me to discover candidates for interview that I would otherwise not have known about, but it also served as a way to grade potential interview subjects according to who their peers believe to be important or influential within the spheres of the two cases.

There are, however, two major drawbacks to pursuing the snowball method of selecting interview candidates. First, because interview candidates selected under the snowball method do not come from a set (or even finite) list, it would be difficult for another researcher to repeat my study in a way that would allow for scientific verifiability in any strict sense. This has negative implications for the repeatability of my study. However, this problem is mitigated by the fact that many of my interview candidates recommended the same people. The problem is further reduced by the pervasive agreement among my interview subjects as to the important facts of the two cases, and substantial agreement as to interpretations of these important facts among individuals from the same organization or from the same side of the public-private divide. I would therefore speculate with some confidence that another researcher would either assemble a very similar list of interview candidates or would interview other subjects whose responses would conform very closely to the comments and sentiments I obtained in my own interviews.

Second, with snowball sampling, it is not clear when to stop searching for new candidates, as each subsequent interviewee may propose new names for consideration

(Burnham et al., 2008: 233). Naturally, the pressures of time forced a somewhat arbitrary end to the process, with the result that I was not able to interview every possible person who was involved in the two cases. This has a similar effect on the repeatability of my study as described above, but it also implies that the interviews that I was able to conduct represent only a sample of the total set of potential subjects, rendering my research incomplete.

In addition, as mentioned above, some of the individuals contacted for interviews either did not reply or declined to be interviewed. In fact, I was not able to obtain access to several immensely important figures, including Ian Jarvis, who is the current CEO of TransLink and was formerly TransLink's Chief Financial Officer during the procurement phase of the Canada Line; Max Moore-Wilton, who is a former Director General of the New South Wales Department of Transport and was instrumental in organizing the Sydney Airport Link project; and Dr. Richard Day, who was Transport Planning Manager at CityRail and was another highly influential figure in the Sydney case. However, I was able to interview some very central figures who provided tremendously valuable data. In addition, there was a high degree of consensus as to facts among all interviewees and as to interpretation among responses from similar organizations, as described above. While it is possible that one of the important figures that I was unable to contact might have made a contribution that would have dramatically altered my findings, I would rate this as unlikely, considering how much the interview responses agree (or predictably disagree) with each other and with the recorded facts provided by the primary and secondary documents. I am highly confident that these "missing interviews" would only serve to corroborate my analysis.

Elite interviewing in general has some of its own drawbacks. For example, any conclusion drawn from elite interviews relies on the credibility of interview subjects (Brians et al., 2011: 367). In fact, interviewees may have opinions that are biased or prejudiced in some way, and their statements may therefore be misleading. Alternatively, they may recount events so as to rationalize their actions or present an optimistic interpretation that absolves them of wrongdoing. Worse yet, they may plainly lie. In general, single interview responses are not as reliable for facts as published documents.

However, once again, my interviews in each of the two cases revealed a high degree of agreement as to factual details surrounding timing of events, importance of key individuals, and actions committed by both public and private sector actors. In general, it was relatively easy to verify comments made by interview respondents by comparing them to other interviewees' responses and with published documents and news reports.

In addition to interviews, a substantial amount of my data came from official documents released by the organizations involved in the two cases, as briefly mentioned above. For the Vancouver case, the majority of documents, including press releases, consultant reports, and official contract documents, were downloaded directly from the publicly-accessible website for the Canada Line project. Unfortunately, that website was decommissioned once the Canada Line went into operation, as it was mainly intended as a hub for information distribution and feedback collection while the Canada Line was being procured and constructed. However, all of the information I downloaded from the Canada Line website is in the public domain and should be available from TransLink upon request.

My research in the Vancouver case also relied on documents that are available to the public from internet sources. For instance, I obtained meeting minutes, annual reports, press releases, and other documents directly from government websites, including the city of Richmond, the city of Vancouver, Metro Vancouver, the province of British Columbia, and the federal government. All of this is public information and if it is not available online it will be available by request from the relevant government or government agency. Court Rulings from British Columbia Supreme Court and the British Columbia Court of Appeal, which provided a wealth of information into both the specifics of the legal conflict experienced by the Canada Line and details about the Canada Line's P3 arrangement, and transcripts of the debates of the British Columbia legislature, the Legislative Assembly of New South Wales, and the Legislative Council of New South Wales are available to the public online.

In addition to these official sources, a significant amount of relevant material was obtained online from the Do RAV Right Coalition's website, which has subsequently been removed in its entirety. The Do RAV Right Coalition was sponsored by several owners of businesses that were located on the construction route of the Canada Line and was the group that unsuccessfully attempted to halt construction of the project through a lawsuit against the provincial Environmental Assessment Office. Members of this group were, in a different capacity, involved in both the second unsuccessful lawsuit against the Canada Line over lost revenues of a single business affected by construction of the project, as well as the ongoing class action lawsuit that will attempt to recover lost revenues for multiple businesses along the route. While two of these cases are now terminated, the class action lawsuit has not yet gone to trial.

Admittedly, there is some reason for skepticism regarding this material. For one thing, Do RAV Right is a private entity and the information posted on their website is not verified, guaranteed, or endorsed by anyone in any professional or official capacity. Secondly, the statements posted on their website were aggressive, polemical, and clearly biased against activity undertaken by governments and organizations affiliated with the Canada Line. For these reasons, I did not rely on any statements or comments posted on the Do RAV right website for purposes of acquiring factual information.

However, Do RAV Right was responsible for the first comprehensive Freedom of Information request for materials related to the Canada Line project, including contract documents and funding agreements. These documents were then hosted on the Do RAV Right website, which is where I accessed them. Whenever possible, I compared documents acquired from Do RAV Right with similar documents available from official sources, and in every case they were identical. Therefore there is reason to believe that all the documents that were hosted online by Do RAV Right that were obtained through the BC Freedom of Information and Protection of Privacy Act are reliable and legitimate. In no case did I encounter a document that I obtained from Do RAV Right that contradicted anything acquired from another source or reported by an interview respondent. Unfortunately, the Do RAV Right website is no longer accessible online, but since these documents were made available under Freedom of Information, it is very likely that they can now be obtained directly from the British Columbia Ministry of Transportation and Infrastructure or from the Office of the Information and Privacy Commissioner for British Columbia.

In the Sydney case, official documents were harder to obtain. Since the timeline of events of the Sydney Airport Link begins before the internet and therefore before

online access to information became standard practice, many important documents were never digitized or made available to the public through online sources. In addition, a request that I made to the New South Wales Independent Commission Against Corruption to provide documents related to the 1993 inquiry into impropriety in the procurement process for the Sydney Airport Link was denied, since, ironically, the internal processes of the Commission are exempt from the state's Government Information (Public Access) Act. A request to RailCorp, the New South Wales government agency responsible for rail infrastructure and the official signatory to the Airport Link's P3 contract, to provide documents related to the Sydney Airport Link failed under the same state Act. After some initial work on the file, officials at RailCorp told me that because documents related to the Airport Link were archived on hard copy and not available in electronic format, and because no one had ever requested them before and they had not been approved for public viewing and had not had confidential information redacted, my request would take hundreds of hours of work and cost over \$10,000. This was beyond my resources for this research project, either in terms of time or funding.

Accordingly, I relied more on secondary sources for information in the Sydney case than I had in Vancouver. I was fortunately able to obtain documents from libraries both in Sydney and in the United States that were pertinent to the case and useful for my research, like the *Integrated Transport Strategy for Greater Sydney* (New South Wales, 1993). In addition, I was personally given important documents, such as the *Restated Stations Agreement* (RailCorp, 2005) that serves as the official P3 contract, by some of my interview subjects. The rest of the factual data in the Sydney case came from Hansard and archived newspaper reports.

I will acknowledge that this represents a potential limitation of this dissertation. I was not able to view some very central documents that might have provided important factual information, such as the original P3 contract, the Request for Expressions of Interest, or the statement of default that the Airport Link Company sent to RailCorp when it became evident that the Airport Link Company had missed a payment deadline. However, the information that I was able to obtain is highly internally consistent, and it agrees overwhelmingly with information provided by my interview respondents. Even without access to some of these “missing” primary documents it is still possible to assemble a coherent history of events of the Sydney Airport Link project and to construct a cogent analysis of the potential causes of governance failure, as will be seen in the next few chapters.

In the chapters that follow, I will analyze these two cases and I will show that factors that were present in the Canada Line P3 but not in the Sydney Airport Link P3 contributed to the Canada Line’s success, and that their absence promoted governance failure in the Sydney Airport Link. Contrary to the position held by most proponents of P3s, who tend to emphasize the benefits of the market side of P3s while ignoring the importance of the public sector, active policy leadership on the part of the public sector contributed to the successful outcomes in the Vancouver case and the absence of this kind of leadership from the public sector contributed to failure in the Sydney case. In fact, allowing the private sector too much free reign is a recipe for governance failure, as the Sydney case will clearly illustrate.

Chapter 2.

Public-Private Partnerships

Private sector firms and public sector organizations can collaborate to deliver services to the public, but why should they? Private firms and governments do not usually have the same objectives, so it is logical that they might also perform different functions in the economy and in society. In reality, of course, there is a lot of interaction between the public and private sectors. Firms and governments can compete in the same arena, such as municipal garbage collection; they can operate in parallel, performing similar functions for different populations, as in health care; and they can collaborate in a variety of mixed enterprise modes, as they do in the transportation sector. Public-private partnerships represent one collaborative mode of service delivery, but there are many others. It is therefore more interesting to know *when* the public and private sectors should collaborate, and how these collaborations ought to be arranged.

Many scholars who are interested in the material aspects of public service delivery (see Savas, 2000; Batley, 2001; Moavenzadeh and Markow, 2007 for example) divide goods and services along two separate lines: excludability and competitiveness. Goods and services that are excludable are those that some customers or recipients can be prevented from accessing. Goods and services that are competitive are those that are in limited supply and thus if one customer or recipient is using it, another may not be

able to. Therefore there are four different possibilities for goods and services in this model (see Table 1):

i. excludable and competitive:

- all private consumer goods, like televisions, appliances, homes, cars.
Exclusion is usually achieved through pricing. Competition is dealt with through supply and demand.

ii. excludable and non-competitive:

- most utilities, like drinking water or electricity, and large-scale services like insurance or internet access. Exclusion is achieved in this case by charging customers for service and denying access to non-payers.

iii. non-excludable and competitive:

- e.g. public roads. Without a toll system, roads can be accessed by anyone. However, not all cars can use a single road at the same time, as this will result in traffic congestion.

iv. non-excludable and non-competitive (also called “public goods”):

- a number of services are delivered in a way that makes it difficult to charge customers directly, and can also be used by all customers at once. Examples are national defence, police forces, fire protection and snow removal.

	Competitive	Non-competitive
Excludable	<p>Private Consumer Goods (e.g. TVs, homes, cars)</p>	<p>Large-scale Services (e.g. utilities and insurance)</p>
Non-excludable	<p>Public Space (e.g. parks, city roads)</p>	<p>Public Goods (e.g. national defence, snow removal)</p>

Table 1. Excludability and Competitiveness of Goods and Services.

Since customers cannot be prevented from using a non-excludable service, it is difficult in those cases to charge users directly for use. Private companies in a free-market economy are motivated by profit; therefore, it stands to reason that they would not have much interest in non-excludable goods and services. Accordingly, the only way to fund these services is through coerced payment (i.e. taxes) or through voluntary contributions (Savas, 2000: 53). In this respect, it is often argued that for non-excludable goods and services, collective (i.e. government) provision is the most logical and efficient method of delivery (Moavenzadeh and Markow, 2007: 132).

Many authors consider non-excludable goods and services to be instances of “market failure”: situations where the undisturbed private market would reach an equilibrium position that is not economically efficient (Greenwald and Stiglitz, 1986). Public goods, which are non-excludable and non-competitive goods and services, are market failures because the free market will not provide them on its own as it would be impossible to collect payment for services rendered. In many cases, collective action

through government provision is required to provide public goods such as clean air, street lighting, or national defence, for which it is not possible to charge users directly.

Transportation infrastructure can be excludable, as in rail transit with fare gates that control access, or non-excludable, as is common with ordinary city roads in which it is difficult to charge drivers the exact cost of their use. Infrastructure, as well as many public utilities, are often excludable but require economies of scale and enormous capital investments to be economically efficient. These are usually termed “natural monopolies” and are also considered market failures. Both of the cases considered here in later chapters are examples of natural monopolies. In both cases, the private sector demonstrated a documented unwillingness to meet the initial requirements of the scope and scale of the projects. In fact, although the Sydney case was initially conceived as being entirely funded by the private sector, this financial model was quickly abandoned as it became clear that the private sector partners were unwilling or unable to provide the more than \$1 billion that the project would eventually cost (Coulton, 1994). In Vancouver, the final and winning bid from the private sector still fell short of the expected private sector funding, and resulted in an adjustment to the funding arrangement from the public sector (Cohn, 2008: 35).

For this reason, both the Sydney and Vancouver cases can be seen as functioning like natural monopolies requiring government intervention, rather than as standard consumer goods as would be implied by their status as excludable and competitive services. In both cases, the public sector was forced to compromise, either by altering the parameters of the project (as in the Canada Line when the public sector eliminated some stations from its design requirements) or by contributing substantially more capital funding (as in the Sydney Airport Link when the state government

dramatically expanded its capital contribution before signing the P3 contract). In both the Canada Line and the Sydney Airport Link, as is generally the case with natural monopolies, the public sector's input was required to help bring the project to reality, as the free market would not produce the service on its own.

However, market failures are not the only reasons for which the lines between markets and governments are crossed. While preventing or correcting market failures is one economic goal, there are social and political motivators for government action as well, such as state-building, national unity, redistribution of resources, and economic development of a particular industry or region – although government action in support of these goals is often framed as a prevention or correction of a perceived market failure. In both the Canada Line and Sydney Airport Link cases, for example, urban development was cited as a rationale for building the rail line (New South Wales, 1994; RAV Project Management Ltd., 2003: 12). In addition, private firms can “intervene” in areas of traditionally public sector activity, and can thereby deliver what are technically or conventionally seen as public goods, if governments pay them to.

In short, although there are theoretical prescriptions for which activities ought to be performed by the private market and which ought to be performed by government, in reality the public and private sectors do not operate along clearly-defined boundaries. More accurately, there is a continuum of public and private involvement in society and in the economy, ranging from purely private market delivery to pure government provision (Savas, 2000: 241). In the space between these extremes lie all forms of public sector/private sector collaboration, including what are referred to as public-private partnerships.

Unfortunately, there is some disagreement as to what exactly is meant by the term “public-private partnership” (de Bettignies and Ross, 2004: 136). For instance, Bult-Spiering and Dewulf (2006: 16-19) and Allan (2001: 6-8) list many definitions of P3s given by numerous authors, but each one is slightly different than the next, with no general consensus on a precise definition. An additional confounding layer is provided by Dunn (2000: 77-78), who makes the distinction between “policy-level partnerships”, in which private sector delivery of a service may be subject to government regulation, and “project-based partnerships”, in which the public and private sectors collaborate on the service’s actual construction or delivery. Koppenjan and Enserink (2009: 285-286) further divide P3s into three separate categories (operations/maintenance/service, build/operate/invest, and joint ventures) according to the level of involvement of the private sector. The state of the academic literature is such that it seems that every author must begin a discussion of P3s by attempting to create a novel definition of the phenomenon.

This difficulty in establishing a precise definition is likely a result of the fact that P3s represent a variety of collaborative activities, rather than one particular mechanism. Therefore, I consider Hodge and Bowman’s (2004: 203) definition of P3s as “a family of integrated partnership modes by which asset and service provision may be supplied to the public sector” to be the most useful. This definition acknowledges that P3s constitute a spectrum of activities and arrangements rather than one precise mode. In addition, the Hodge and Bowman definition states unequivocally that P3s refer to private sector involvement in areas of public service delivery that have previously been considered the domain of the public sector. This definition is flexible enough to account for different

configurations of P3 arrangements, yet it still frames the discussion on P3s as a means through which to include the private sector in public sector activity.

It is possible, however, to build on this definition in order to make it more precise. Contractual public-private partnerships are distinguishable from other forms of interaction between the public and private sectors, and in particular, there are two elements that are necessarily common to all P3s in theory and in practice. First, the word “partnership” in the term “public-private partnership” implies, at the very least, a sharing of risks, responsibilities, or rewards (Allan, 2001). For this reason, when a government hires a private company to deliver a service on the government’s terms (often referred to as “contracting out”), this should not be considered a P3. In these instances, the private contractor does not share in the risks or responsibilities of providing the service to the public, and there is no shared revenue as the contractor is paid a fixed amount that is stipulated in advance (Grimsey and Lewis, 2004: 57). Under this arrangement, the government is still the supplier and provider of the service to the public, and the contractor is merely used as a mechanism for delivery. Likewise, a situation in which a private company may hire a public agency to perform a specific task, as the private operator of Ontario’s 407 ETR toll highway does when it pays the Ontario Provincial Police to patrol traffic violations on the highway, is again not a P3, because the public sector police force is merely a contracted agent and not a partner with decision-making responsibility. And finally, a complete divestiture of a public property or agency to a private firm – often referred to as “privatization” – is not a P3 either, because in these instances the public sector has relinquished its responsibility for delivering that service to the public, and the private firm takes on all risks, responsibilities, and rewards attached to service delivery in that area. While many different varieties of P3 exist in

practice today (see Grimsey and Lewis, 2004: 54 for a list of various P3 configurations), any true P3 would necessarily involve some shared level of capital investment, cooperative responsibility for decision-making, or shared revenue stream between the public and private sector partners.

Second, in all P3s, the sharing of investment, responsibility, risks or rewards (or some combination thereof) is governed by a contract that is legally binding on both the private and public sector partners. These contracts are the defining documents of the partnership: they specify the nature of the partnership and the tasks demanded of the partners, they delineate the allocation of responsibilities and risks, and they provide for dispute resolution mechanisms. P3 contracts are ultimately adjudicated by courts, not by legislatures, and they are often sealed from public view as they are private arrangements that can sometimes be shielded from Freedom of Information laws. All of the above elements are seen in the contracts for both the Canada Line and the Sydney Airport Link.

Because of this formulation of P3s as a legal partnership between independent agents, P3s are effectively a method of implementing public policy via contract rather than through legislation (Grimsey and Lewis, 2004). It is this use of binding partnership contracts in the implementation of public policy that makes the P3 arrangement so unique. A contractual partnership arrangement for the delivery of public programming is different from other forms of public goods or service delivery (including conventional public delivery, government subsidy of private enterprise, and state-owned enterprise), in that the partnership contract attains legal superiority over other government instruments. While governments can (in principle) rescind or amend laws as they see fit, they cannot easily abrogate a contract with a private entity. Just as Western mixed

economies depend on private actors to fulfill important societal and economic functions, these private entities act on the assumption that their contracts are safe and will be enforced. Widespread abrogation of contracts “would decrease the willingness of private parties to enter into agreements with local governments” (Griffith, 1990: 283; for a more detailed discussion of the above argument, see Hodge and Bowman, 2004).

This precedence of contracts over statutes creates the potential for conflict. This is especially so for infrastructure P3s, for which concession periods are often set for a duration of 25 years or more. As it is impossible to make predictions about the distant future, no P3 contract will ever perfectly account for all of the financial, business cycle, technological and political changes that may arise over the length of the concession period. Contracts that are binding on both parties for multiple decades are therefore a potential source of conflict between the partners in a P3 (Hodge and Bowman, 2004). In addition, binding contracts may constrain both public and private partners when faced with conflicts that arise with third parties. In the case of the Canada Line, for instance, the contract between the local transit authority and the private sector developer of the Canada Line was the subject of scrutiny in an ultimately unsuccessful lawsuit that charged both parties with creating a nuisance through their chosen construction methods (see *Heyes v. City of Vancouver 2009 BCSC 651*).

Since P3 contracts are adjudicated by the courts and not by legislatures, and since many P3s have long contract periods as described above, it is very realistic that future governments might be bound by contractual obligations that could constrain their ability to implement public policy as they see fit. For example, between 2003 and 2006, the Ontario government of Dalton McGuinty attempted to fulfill an election promise of reducing tolls on Highway 407, but it was prevented from doing so by a successful legal

action in which the highway's concessionaire rightfully claimed that they were the sole authority on pricing the highway's tolls, as was specified in their contract (Campbell, 2006). This has implications for our understanding of the democratic state, in which elected politicians are expected to be able to enact and enforce policy on behalf of the population they represent. Again, the government's various goals of social policy, wealth distribution, economic development or whatever else is on the political agenda of the day may not always align with the private sector's market-driven objectives of profit and growth.

Although in the short term, it is possible that a private P3 partner could have non-economic motives, such as developing a market or proving its value as a business partner for future P3 ventures, in the long run, a private corporation's (or consortium's) goal is to earn profit for its investors. Therefore, ultimately, the private sector's principal motive for engaging in a partnership with a government entity is to access a profitable revenue stream. This can be achieved through direct access to user fees or by payments from the public sector partner.

The public sector, however, may choose to collaborate with the private sector for several reasons (Moavenzadeh and Markow, 2007):

1. To capitalize on perceived efficiencies in the private sector that would hopefully lead to lower costs, improved technology, or better choice for citizens.
2. To gain from the technical experience or the existing enterprise of a private firm already involved in a particular sector.
3. To "reduce government spending and limit government's role in the economy" (Moavenzadeh and Markow, 2007: 130).

In general, this last point is frequently framed by governments as the desire to access private capital for investment in public infrastructure or service delivery. This argument was used by governments in support of P3s for both the Canada Line and the Airport Link projects (e.g. Baird, 1992b: 8101; Bridge, 2003). In some jurisdictions – notably in developing countries – partnership with the private sector may very well be a good way to access the capital required for investment in infrastructure (see for example, Gerhager and Sahoo, 2009). However, the long-term real economic benefits to government of private capital investment in industrialized countries are doubted by most analysts, including experts from different ideological perspectives (e.g. Poschmann, 2003: 3; Vining and Boardman, 2008; Sawyer, 2009: 50-51). In most advanced economies, including Canada and Australia, governments have much greater access to capital than private firms do, and at lower rates of interest (Daniels and Trebilcock, 2000; Hamel, 2007 – although the real cost of borrowing is still debated; see Grimsey and Lewis, 2004: 133-135). In addition, Daniels and Trebilcock (2000) point out that any revenue stream that would be available to the private sector partner, through charges or user fees, would also be available to government. Any effort to access private capital through a P3 initiative, according to Daniels and Trebilcock, is simply an attempt to move government expenditures off-budget. The financial incentives inherent in P3s are therefore only likely to be gained through exploiting any efficiencies of the private sector. Nonetheless, governments continue to argue that P3s inject much-needed capital into public sector investment, thereby fuelling this controversial aspect of P3s.

There are some additional economic sources of contention in P3 arrangements. For example, many scholars agree that P3s are most effective when they can harness

the classic advantage of the free market: competition (Hakim et al., 1996; Rosenau, 2000; Batley, 2001). In theory, in a competitive environment, firms will seek to improve technology, reduce costs, provide more and better choices to customers, and deliver projects faster than a single provider – government or private sector – could hope to do in a monopoly environment. This is most easily accomplished when the service in question is excludable and competitive, according to the typology discussed earlier (Moavenzadeh and Markow, 2007). However, as explained above, P3s are often used to attract private sector involvement in areas that are non-excludable or non-competitive, such as water treatment, hospitals, prisons, highways, and public transportation. In these instances, competition among private sector firms is limited to the procurement phase of the project, in which multiple firms will bid for the P3 partnership. Once the contract is signed, only a single firm (often, a consortium of several distinct corporations cooperating through a jointly-owned special purpose vehicle) will hold the P3 concession for the life of the contract. Presumably, at the end of the contract, the concessionaire will have to compete for the right to renew the contract for another concession period (although given the current youthfulness of most P3s, this form of competition has yet to be tested widely). Competition in P3s is therefore longitudinal rather than cross-sectional: firms compete in isolated, serial contests spaced apart by multiple decades, but winners are awarded contracts that are essentially competition-free for substantial periods of time. Therefore, the benefits of market competition for P3s may not be as straight-forward as traditional economic theory – which is based on ongoing, nearly continuous competition for streams of customers – might suggest.

Ultimately, all statements in favour of using public-private partnerships for public service delivery hinge on the argument that the state acting alone will not deliver the

best possible service to the public. Different perspectives will take diverging normative positions on the overall desirability, and the optimal extent, of the removal of the public sector from service delivery, but in general, the debates on economic issues and contract arrangements presented above are all based on this central principle. P3s are designed to remove some – but not all – elements of the state and replace them with some – but not all – aspects of the private sector.

At its very core, this is what public-private partnership is about. In many countries, especially in the US and Europe, P3s have been associated with a decreased role and responsibility for government and an attendant increased use of private capital (Dewulf et al., 2012: 3). One of the primary reasons for engaging in a P3 is to allow “a reduction in the size of a public agency by substituting private-sector resources and personnel” (Levy, 2011: 7). P3s are seen by authors on all sides of the political spectrum as being linked to privatization; P3s are meant to enable “a roll-back of the state” in order to extend the “benefits of privatisation to core public services which could not be privatised” (Yescombe, 2007: 16). P3s are part of a philosophy that believes that the role of the state is to formulate policy, but that implementation should be left to the private sector (Falch and Henten, 2010: 497). This is often justified by reference to a slow, bureaucratic, inefficient, and ineffective public sector, where “There is a long history of publicly procured contracts being delayed and turning out to be more expensive than budgeted” (Grimsey and Lewis, 2005: 346). In fact, all of the benefits of P3s that have been described rely on the removal of the public sector from service delivery: the efficiency of the private sector, the potential for innovation generated through market competition, and the transfer of risk away from the public purse, for example, all imply

that P3s are effective when the state retreats from service delivery in favour of the private market.

This philosophy is emphasized by proponents of P3s, and for many authors the key to success in public-private partnerships is to increase the freedom allotted to the private sector in decision-making and in the general implementation of public service delivery. In analyzing P3s in the United States, Papajohn et al. (2011: 130) argue that administration in a P3 should be handled by the private sector, “to avoid some of the overly complex government procedures and political influences and thus expedite the process of project delivery”. Other authors cite the “capricious nature of the public sector” as well as other “deficiencies of the public sector, such as ineffective policy and strategy, non-professional project origination and identification” which “can lead to problems in PPPs including poor procurement incentives, lack of coordination and high transaction costs” (Yuan et al., 2009: 254). P3s must be protected from excessive government intervention through an administrative buffer, “as government objectives for political or social reasons may act as a disincentive to investment” (Pongsiri, 2002: 490). Governments, according to some, ought to remove themselves from asset management and instead concentrate on regulation and oversight (TD Bank Financial Group, 2006).

However, the difference between public-private partnerships and privatization is that in a P3, the state is expected to retain a role – albeit one of oversight rather than direct action. Public sector involvement is often justified as being required for the protection of vulnerable segments of the public, to ensure accountability, and to reduce the impact of negative externalities (Rosenau, 2000; Dewulf et al., 2012: 29). As mentioned in the previous chapter, this creates something of a paradox, as one of the supposed benefits of using a P3 is to replace the inefficient bureaucracy of government

with the efficiency of the private sector, but another supposed benefit is the control of negative externalities and the promotion of transparency through public sector accountability (Grimsey and Lewis, 2004: 17). In other words, the point of using a public-private partnership rather than direct government provision is to keep the government out, because the private sector is supposedly more efficient; however, the point of using a public-private partnership rather than complete privatization is to keep the government in, so as to ensure accountability. The public sector is therefore viewed simultaneously as the problem and as the solution to improving public service delivery. One of a P3's inherent challenges is to reconcile this fundamental conflict by deciding what level of activity to assign to the public sector.

P3s remain controversial policy instruments. Even their acceptance by governments and by the general public is a source of debate, with some scholars arguing that they are gaining in popularity with governments (Coghill and Woodward, 2005), others claiming public sector resistance (Faulkner, 2004: 66-67) and still others suggesting that the general public itself may be "deeply sceptical about, and even hostile to" P3s (Grimsey and Lewis, 2004: 17). While P3s do not aim to remove benefits or reduce social programming, they do frequently transfer decision-making from the state to the private sector, and citizens who are accustomed to modern welfare state principles may therefore be suspicious of public-private partnership and its potential effects on social welfare services (Grimsey and Lewis, 2004: 17; United Nations, 2008: 59). Vote-conscious governments will have to take this into consideration.

Despite the existence of this controversy, P3s do not constitute a radical redirection in public policy. Rather, public-private cooperation has existed for centuries. For a long time, roads and bridges were maintained by private individuals on behalf of

the state, under an arrangement of shared revenue. The revenue stream (in the form of tolls) was as important then as it is in modern P3s, as this was the incentive for the private partner to enter into the agreement (Lockwood, 2007). In France, public-private collaboration was instrumental in creating a national rail network (Jones, 1984). And in a more precise example, Grimsey and Lewis (2004) describe a situation in 18th century England in which a private investor was provided a concession to build and maintain lighthouses for a set period of time, during which he was provided with a share of the docking fees of the local ports. In a striking parallel to modern P3s, the English government at the time contended that there were not enough public funds available to build all of the lighthouses needed on this particular stretch of coast.

However, public-private partnership experienced a decline throughout the bulk of the 20th century, when direct market intervention through regulation and state-owned enterprise became more popular forms of economic management. This was the heyday of the welfare state, in which many governments took on a vastly increased capacity to deliver a minimum universal level of public services in many areas (such as health, higher education, family planning, research and development, pollution control and so on) and intervened in industrial markets in various sectors. The development of the welfare state was connected with what Esping-Andersen (1999: 7-8) calls “the egalitarian agenda”: a deliberate attempt to create an individual-centered, rights-based social benefits program, in which class issues involving the income mobility of lower wage earners were made less relevant by the institution of universal social rights. This program (in conjunction with a general rise in prosperity related to the abundance of secure, low-skill, high-wage, manufacturing jobs) was so successful, that as it evolved it became self-perpetuating: empowered working classes merged with middle classes and

demanded ever-increasing social rights (Esping-Andersen, 1999: 15). This resulted in a substantial decrease in private sector activity in areas of social programming, and public-private partnership as it had been known previously became at most a marginal occurrence in many countries.

After the energy crises in the 1970s and the trend toward neoliberal politics in the 1980s, however, the use of contractual partnership relationships as a policy instrument for public service delivery reappeared in many jurisdictions. P3s are now seen as a way to deliver services, programming and infrastructure without dramatically increasing the public budget or necessitating a rise in taxes (Levinson et al., 2007). Many scholars have remarked that P3s have recently exploded in numbers (Teisman and Klijn, 2002; Garvin and Bosso, 2008; Siemiatycki, 2010), especially since the UK pioneered the Private Finance Initiative (PFI) in the 1990s (de Bettignies and Ross, 2004). In the last 20 years, P3s have appeared in the Netherlands (Klijn and Teisman, 2004), Canada (Siemiatycki, 2006), the US (Boardman et al., 2005), Sweden (Almqvist and Högberg, 2005), New Zealand (Cervin, 2000), Germany (Oppen et al., 2005) and Australia (Harding, 2000), among many other places. P3s have emerged in a wide variety of areas, including public transit, hospitals, schools, and prisons.

This increased use of P3s in recent years gives the subject a renewed relevance that demands scholarly attention. For one thing, the current political climate is dramatically different from the last period when public-private collaboration was popular. Before World War I, most developed countries operated under a laissez-faire style of economic and social management, with minimal state intervention in industry or the private market and limited social services. Many social services before the 1920s were delivered by private charities (Oakley, 2006) and available only to the extremely poor. In

the 21st century, governments in most Western democracies now manage a wide range of social programs, from employment insurance to pensions to public transit to health care, but the state is undergoing a reorientation to what might prove to be a post-welfare state mode of governance. P3s are useful governance tools in part because they harmonize well with the political culture embedded in many modern governments: the alleviation of a government's financial burden and especially of financial risk associated with capital expenditures is a frequently cited reason for employing a P3 arrangement (see Poschmann, 2003; Grimsey and Lewis, 2004 for example). However, their reintroduction into public service delivery during a period of a major redefinition of the roles and responsibilities of the state presents a new cluster of policy problems for the state and society to contend with.

There are a number of scholars who have begun to address the challenges that P3s may pose to the attainment of public policy goals. Most of this work has taken the form of well-developed hypothesizing: authors have written that actors in P3 arrangements will necessarily be less accountable to the public and under less oversight than employees of government departments and agencies (Langford, 1999); that the long contractual periods common to P3s may have unknown consequences for governance, since there is no way that any contractual partner could ever foresee all possible events that may take place throughout the lifetime of the contract (Greve and Hodge, 2010); and that since there is no requirement for private-sector employees to be politically neutral, there is the danger that partisanship could be introduced into public service delivery (Langford, 1999). On this last point, many authors, including Weber (1948 [1921]), Hansen and Levine (1988), and Aucoin (1995), have written about the benefits of an anonymous, politically neutral bureaucracy.

There have also been some empirical studies of the effects of using P3s for public service delivery. In one study, Teisman and Klijn (2002) questioned the role of P3s as a form of network governance, and using a P3 project in the Netherlands as a case study, showed that the public sector's penchant for hierarchy and control may prevent it from using partnerships effectively for governance. In another, Greenaway et al. (2007) analyzed the development of the Norfolk and Norwich hospital P3 in the UK and found that the partnership arrangement and the national-level policy network that emerged from the project effectively obscured accountability and reduced the democratic potential of local representatives. However: empirical studies of this nature are few and far between.

The overwhelming majority of the existing scholarship concerning P3s has been aimed at assessing the economic viability and performance of the partnership arrangement. P3s have been lauded by some as an alternative source of infrastructure capital for governments that are unable or unwilling to raise taxes (Telford, 2009); as a means of transferring risk away from the public purse (Grimsey and Lewis, 2004); and as a way to ensure that infrastructure projects are delivered on time and within their prescribed budgets (Poschmann, 2003). All of these have been cited by governments as reasons for employing P3s as policy instruments. Critics have disputed each of these claims (see Daniels and Trebilcock, 2000; Hamel, 2007; Sawyer, 2009; Shaoul, 2009, for example), and scholarly material continues to be produced from both sides of the economic debate. Unfortunately, amid all of this performance analysis, the literature "seems to pay less attention to the governance challenges faced by democracies if they were to use PPPs more systematically" (Greve and Hodge, 2010: 158). And while some authors have speculated on the effects of governing by contract rather than by statute

(see Langford, 1999; de Bettignies and Ross, 2004; Kettl, 2010 for example), empirical studies specific to the public policy impact of P3s are conspicuously absent.

In general, a formal unified theory of failures of governance is necessary for a deeper understanding of the dynamics of the modern state and how collaboration between the public and private sectors can have an impact on how states are governed. P3s are an aspect – perhaps, increasingly, a fundamental aspect – of interaction between the public and private sectors, and they can be used to develop a more general theory of the causes and consequences of governance failure.

Chapter 3.

Governance Failure

In the past, markets and governments were seen as ideological opposites (Jessop, 2000: 15). For all of the objectives of government intervention in the marketplace that were pursued during the welfare state era, including correction of market failures, state-building, and democratic egalitarianism, the market was seen as the logical alternative. This is a reasonable assumption in advanced democracies, where market mechanisms historically functioned as the primary mode of service delivery before the advent of government intervention, and where anarchy, violence, military, and religious solutions are not deemed to be acceptable.

During this time, separate theories were developed to explain why neither markets nor governments functioned exactly as their ideal forms would suggest. Welfare economics has provided a well-articulated account of market failure, in which the free market for a particular good or service results in an equilibrium distribution of resources that is either not economically Pareto-optimal or that is socially undesirable. Four main situations arise that are believed to result in market failure: public goods and natural monopolies, which were discussed in the previous chapter; markets with externalities, such as pollution, which are by-products of a market but whose effects on society are not accounted for in the consumer price of a product; and markets with asymmetric

information, in which producers know more about their products than consumers do, or where consumers know more about their preferences than manufacturers do, and so the equilibrium price of the market does not adequately represent both supply and demand (Weimer and Vining, 2011). In these cases, welfare economists argue that government intervention is required to correct the market failure, either to restore economic efficiency or to redistribute resources so as to achieve some desired social outcome.

As distrust in government intervention became the prevailing attitude in the 1980s, a theory of government failure was advanced to mirror the theory of market failure, in which government failures occur when a particular government intrusion into the marketplace either fails to correct the market failure to which it is targeted, or worsens the situation by reducing the economic efficiency of the market (Wolf, 1987: 53). However, the conditions that lead to government failure are not fully agreed upon. Wolf (1987; 1988) posits four circumstances that lead to government failure: situations in which the costs of intervention are disconnected from the revenues used to pay for it; internal politics, including personal career ambitions of public officials and rent-seeking; externalities derived from government intervention; and differing definitions of “social desirability”. Le Grand (1991) argues that Wolf’s conditions do not explain all situations of government failure: in addition to Wolf’s four circumstances, direct provision of goods will also result in government failure because the public sector does not operate under the pressure of competition or bankruptcy; government subsidy will fail because it will obscure the natural price mechanism of the market and shift the equilibrium position to one that is not economically efficient; and regulation will result in government failure because governments cannot acquire the necessary information to make a precise calculation of what an efficient allocation of a service should be. Even in more recent

years there is still some disagreement as to what a mature theory of government failure should look like (see Wallis and Dollery, 2002, for example). For this reason, theories of government failure are “neither as comprehensive nor as powerful as the theory of market failure” (Weimer and Vining, 2011: 157).

The principal difference between theories of market failure and theories of government failure is that market failure presumes that markets will function efficiently and as intended under most circumstances, but that situations can arise that can cause markets to fail (like public goods or negative externalities). Government failure, on the other hand, presumes the opposite – that governments will inevitably fail at all tasks and endeavours. Both Wolf’s (1987; 1988) and Le Grand’s (1991) theories of government failure argue that all government activity will lead to failure, and differences between the theories are related to why this is and which market mechanisms can best be used to replace government intervention. This is an untenably defeatist theoretical position, because under this perspective the best course of action would be to eliminate government altogether.

Clearly, markets and governments are both essential components of a liberal democratic state and of a developed economy. In some countries, notably Switzerland (Trampusch and Mach, 2011), South Korea (Lee, 1992), and Singapore (Haque, 2004), widespread collaboration of governments and markets has historically produced sustained economic growth and dramatic improvements in living standards. More importantly, the dichotomy between market mechanisms and government intervention is no longer as distinct as it may have been in the past. In the current era of governance, the debate has transitioned from “whether old-style public intervention is better than the free market, or vice versa” to “the ways in which state and market can be integrated”

(Goodwin, 1998: 5). Governance is supposed to bridge the ideological gap between governments and markets, to allow them to collaborate rather than to antagonize each other (Jessop, 2000: 16-18) or to operate in parallel.

In light of this, separate theories of market and government failure are no longer sufficient to represent the dynamics of interaction between governments, corporations and society. Unfortunately, a fully-developed theory of *governance* failure has yet to be articulated. Some attempts have been made at developing a general theory of governance failure, but these efforts are in their infancy. For example, Dixon and Dogan (2002: 175) define governance failure as the “perceived ineffectiveness of governance processes,” but their use of the word “governance” is in the traditional sense of governing, and so they are referring to all forms of governing including government and market, as well as mixed forms of governance. Dixon and Dogan’s treatment of the subject involves a philosophical approach to the epistemological and ontological issues of the interaction between the governed and their governors, and although they offer a thorough discussion of the effects of all modes of governance failure on this interaction, they do not explore the conditions for or the causes of failure.

Without offering an actual set of criteria for failure, Jessop (1998; 2000) describes what a more complete theory of governance failure might look like: since governance combines the economic goals of the market with the social goals of the state, governance failure would likely emerge as a failure in both economic and social/political terms. Unfortunately, Jessop argues that as the point of governance is to provide flexibility to decision-making structures (as opposed to the rigid structures of the state bureaucracy or the strict microeconomic laws of the market), a general theory of governance failure might prove to be elusive (Jessop, 2000: 17). Furthermore, Jessop’s

conclusions take the defeatist position that all attempts at governance will inevitably fail, since the objectives of the state and the objectives of private sector corporations will never be completely aligned. This position, like that of government failure theorists, is not conducive to theory-building, because if governance is liable to failure under all circumstances, constructing a theory of when and how governance can fail is unnecessary – it will simply always fail. This point of view, taken to its logical extreme, also raises the same curious questions as those produced by theories of government failure, such as whether or not the best course of action would be simply to do away with governance entirely and find some other mode of state-society interaction to replace it.

Bovens, 't Hart, and Peters (2001) present an ambitious attempt to analyze governance failure, as well as governance success, using a comparative approach in Western Europe. However, what these authors refer to as “governance failure” might more aptly be called “policy failure”, as it pertains directly to the “effectiveness, efficiency and resilience of the specific policies being evaluated” and their political interpretations (Bovens et al., 2001: 20). While their study is situated in the context of the shift to a cooperative mode of governance in which the public and private sectors are increasingly collaborating in the delivery of public services and in the regulation of national economies, the authors' focus is on how national governments tackle specific social and economic problems – and not on the factors that contribute to failure in governance partnerships.

The concept of governance failure is developed further by Arnouts and Arts' (2009) study on bird species and habitat conservation policy in the Netherlands. Arnouts and Arts offer a preliminary theory of governance failure, in which governance structures can expect to succumb to four kinds of failure: “actor overload”, in which the presence of

too many actors involved in a policy area can cause a breakdown in the function of a governance network; “power struggles”, in which confusion and conflict can occur over which actors are responsible for which decisions; “conflicting discourses”, where different actors may interpret the goals of the policy process differently; and “unclear rules”, where confusion over the rules of interaction between the actors occurs. However, this theory is handicapped by two shortcomings: first, these four metrics are somewhat arbitrarily defined and unmeasurable. How many actors are necessary to cause an overload? How unclear do rules need to be in order for a failure to occur? Unfortunately, governance failure itself is never satisfactorily defined, so these questions are impossible to answer. Secondly, the authors’ assumption from the beginning is that failure is an inevitable outcome of governance – this is their initial hypothesis and is also reflected in their conclusions. In fact, the results from their case study show all four of their forms of governance failure, confirming for the authors that governance results in governance failure. Once again, this does not generate a useful theory by which the conditions of governance failure can be predicted.

To summarize the lessons gleaned from the above discussion, a robust theory of governance failure must a) properly define failure for governance systems in terms of the collaborative nature of the interaction between the public and private spheres, b) not assume that all attempts at governance will lead to failure, c) show the particular conditions under which failure occurs, and d) allow for some discussion as to how failure can be avoided or corrected.

Failure of any kind must be defined as the inability to attain a particular goal, and governance failure can also be defined in these terms. This is precisely the model

followed by analogous literatures in other areas of public policy, including discussions on market failure, government failure, and policy failure.

For example, Bator (1958: 351) famously defined market failure as “the failure of a more or less idealized system of price-market institutions to sustain ‘desirable’ activities or to estop ‘undesirable’ activities, where ‘activities’ include both consumption and production”, and where the idealized market is errorless, perfect, and Pareto-maximizing.⁴ In other words, the goal of the free market in a capitalist economy is to achieve an economically efficient and Pareto-optimal allocation of scarce resources among producer firms and consumer individuals, so any time the market cannot achieve this position, it has failed. The various conditions that lead to market failure all produce situations in which the efficiency of the market is obstructed: in situations of public goods (for example, street lighting), markets alone will not produce the quantity of the good demanded (or they may not produce it at all), because they lack the ability to charge consumers directly for the product. In situations of natural monopoly (such as electricity generation), markets acting alone will overcharge for their product because the economy of scale required for the enterprise will result in monopoly production and will be subject to the abuses that monopolists are in a position to pursue. In cases of externalities (for example, water pollution as a by-product of a mining operation), firms will undercharge for their product, because the cost of the externality will not be accounted for. And for situations of information asymmetry (for example, health insurance), the price of the product may be inflated or understated, as the case may be, depending on whether consumers or producers have more information than their counterparts. In general,

⁴ The choice of “estop” rather than “stop” is deliberate and connotes an effort to plug up or fill in a gap.

market failures can be summarized as cases in which the price of a product does not represent the true value of that product (Bozeman, 2002: 146); as such, market failures are situations in which the Pareto-maximizing objective of the market has not been achieved.

Government failure theory, as has already been observed, concentrates on only one function of the public sector and defines government failure as the inability of government to correct market failures through regulation or direct intervention in the economy. Like market failure theory, theories of government failure define failure as the inability to achieve an objective. However, the goals of government in a democracy are obviously more numerous than simple market intervention: more generally, states aim to balance the interests of variously identified groups in society (ethnic, religious, language-based, class, age, etc., and often in overlapping combinations) in order to achieve peace, justice and economic stability; to protect citizens from financial and physical harm through the use of policing, by applying civil and criminal penalties, and through national defence; to maintain a national economy and its associated currency; to provide diplomatic functions with other countries or sub-national units; and a myriad of other objectives that depend on the political culture and prevailing attitudes and priorities of citizens in various countries. There exist theories of “state failure” that deal with failures of governments in these areas, including the conditions that lead to war, civil conflict, economic collapse, and anarchy (e.g. Migdal, 1988). As with market failure and government failure, these theories of state failure are framed in terms of the failure of the state to accomplish the various goals described above.

Failures in public policy can similarly be defined in terms of the failure to achieve particular policy objectives. Kerr (1976) argues that policies can be considered failures

when they cannot or do not achieve their stated objectives. McConnell (2010: 56) defines a failed policy as one that “does not achieve the goals that proponents set out to achieve”. Walsh (2006: 495) provides a similar definition: “Policy failure occurs when the decision makers responsible for initiating the consideration of and approving new policies conclude that current policy is no longer achieving the political and program goals they prefer”. In all of these definitions the non-achievement of the initial goals of a public policy is the essential element of failure.

As explained above, markets have a single objective that can be described in terms of economic efficiency. Public policy is not so straightforward. Defining policy failure strictly in terms of the failure to achieve objectives produces two dilemmas for analysis: one, policy objectives may not be clearly articulated or publicized (or may not even be known) by decision makers before action on them begins; this makes it relatively more difficult to determine if a policy has failed. And two, policies will necessarily have political and distributional implications, which attaches a highly normative component to policy failure. In these cases, opponents of a policy may see failure where supporters do not (McConnell, 2010: 56). To cite an extreme example, the policy objectives of the Khmer Rouge were to terrorize the population of Cambodia into submission; as repugnant as it seems, under a strict objective-attainment definition of policy failure, the Pol Pot regime would have to be considered a resounding policy success. It is necessary, therefore, to consider the normative implications of the outcomes of public policy, and to frame policy failure in terms of who is affected by a particular policy and how (Kerr, 1976; McConnell, 2010). From another perspective, it may not even matter whether a policy has failed on any objective scale, but rather whether or not (and how) observers *perceive* failure in public policy (May, 1992: 341).

Governance structures strive to allow public (i.e. government) sector and private (i.e. market) sector actors to collaborate on directing society. Governance is, by definition, a combination of markets and governments working together through some blend of structured and unstructured interaction. Therefore, if governance can fail anywhere it must be by failing to allow market-government collaboration to happen. Of course, governance does not necessarily imply deliberate, hierarchical consensus-building; rather, it is a system in which government and non-government actors reach compromises through negotiation, bargaining, preference-pooling, log-rolling, and competition (either directly, through market mechanisms, or indirectly, by competing for public support). When governance functions smoothly, this bargaining and competition gravitates toward a dynamic equilibrium that can produce policy outputs. So a governance failure can be said to occur when this equilibrium is disrupted, that is, when a governance regime results in unstable antagonism between corresponding public and private sector actors. Governance has failed completely when cooperation for mutual benefit – organized or otherwise – ceases to happen. In essence, governance failure can be defined as the failure to achieve policy through the interaction of markets and governments. As such, analysis of failure must take into account the technical aspects of objective-attainment as well as the perceived failure that might be implied by normative perceptions of the outcomes of governance. In other words, because governance combines the technical nature of the market with the political nature of the state, analysis of governance failure must consider both the technical and the distributional outcomes of a governance system.

Governance does not automatically result in failure. Governance arrangements can last for long periods of time and can produce continuous policy outputs. For

example, over the past 20 years, international airports in Canada, all of which had previously been controlled directly by the federal government, have been turned over to independent, privately-managed, not-for-profit airport authorities. This system has produced functioning airports that continue to cooperate with the federal government on issues such as the long-term leasing of land and property, infrastructure expansion, and environmental protection (Gillen and Morrison, 2004; Oum et al., 2006; Padova, 2007). In other words, in the case of airport restructuring in Canada, governance has achieved its policy objectives through an interactive collaboration of markets and government. A normative evaluation of the outcomes of this governance regime – for example, whether semi-privatized airports are better or worse than airports that are run directly by governments – would have to be assessed in terms of who benefits from the regime, and how, and how much.

Of course, not all governance arrangements are harmonious and governance failure does happen. Borins (1986) recounts the stories of several governance failures in mixed enterprise in Canada, in which the government subsidized or invested in private corporations. In all of Borins' cases, the partnership ended either in bankruptcy or in the sale of the government's interest in the company. In the United States, a P3 arrangement for express toll lanes on California State Route 91 led to legal action between the public sector and private sector partners, and resulted in the purchase of the entire asset by the California Department of Transportation (Garvin and Bosso, 2008). Also in the US, the multi-decade collaboration between the government and the private sector to develop alternative energy sources, including liquefied coal and fusion reactors, ended without ever producing a useful product (Grossman, 2009). Arguably, the 2008-2009 economic crisis and associated failures of the banking sectors in many

countries could be considered a governance failure, as relaxed banking regulations resulted in an unsustainable governance regime (Aikins, 2009). In all of these cases, market-government collaboration to achieve policy goals was not attained, and distributional outcomes produced negative results for users in particular and citizens in general (in the form of a loss of money to the public purse).

As the above examples illustrate, governance failures can occur in various sectors, under different forms of partnership arrangements, and can produce a varied array of consequences. In order for these apparently different situations to contribute to the development of a theory of why governance failure occurs, it might prove to be useful to divide these failures into separate categories according to the way in which failure occurs and the consequences it produces. This is the same approach taken by theories of market and government failure.

To this end, I posit three categories of governance failure: *institutional decay*, in which a governance arrangement enables the erosion of the legal or constitutional structures of the state; *unfair advantage*, in which there is a subversion of public interests to private gains (or vice versa); and *collaboration failure*, in which the collaborative arrangements of governance are permanently disrupted. While each category of governance failure has unique characteristics and associated consequences, they all result in the same terminal position, which is an unsustainable disequilibrium in public-private relations.

Institutional decay corresponds to situations in which a governance regime has a negative and lasting impact on the legal or constitutional structures of the state. Many scholars have warned against the potential deleterious effect that some governance

arrangements might have on the principles of democracy – especially on the accountability of elected officials (e.g. Rhodes and Marsh, 1992: 200; Rhodes, 1994; Stoker, 1998: 19; Klijn and Skelcher, 2007; Koppenjan et al., 2009).

In the democratic ideal, a *demos* can exercise popular control over public policy (Dryzek, 2007: 262). The citizens who make up the (ideal) *demos* do this, in part, by voicing their opinions at the polls: if they approve of a government's policies, government representatives are re-elected; if they disapprove, they can elect new representatives or even a new government (Downs, 1957: 41-42; Habermas, 1994: 3). While the practice of citizens' democratic choice is fraught with procedural and information problems, this is still how citizens and politicians view the rules of the game (Manin, Przeworski and Stokes, 1999).

In Canada in particular, all of the classic texts on Canadian government argue that representation of the public interest is essential to democratic government. J.R. Mallory (1984: 106) writes that "parliament gives legal effect to policy by legislating and by appropriating funds for specific programs" – parliament, and not any single individual or private entity. Dawson's (1963: 3-16) first three factors of Canadian democracy are 1) democratic government, 2) representative government and 3) responsible government. Corry and Hodgetts (1959: 399), assert that "It is widely agreed that public opinion must rule in a democracy", and therefore no matter what laws are made by which governments under whichever parties, in the long run, liberal democracy is founded on the notion that public opinion will steer policy. And more recently, public pressure has been described as the basis for other functions of democracy, such as the critical review of governments by opposition parties (Docherty, 2004). Australian authors agree: Australia was founded on the principle of representative democracy (Thompson, 2001:

658); Australian governments can only be considered legitimate when they are perceived by the electorate as promoting the public interest (Jackson, 1988: 241); and according the Australian High Court, “power in the Australian democracy is derived from the people and exercised on their behalf” (Kirk, 1995: 43).

In a governance arrangement, non-government actors collaborate with government to achieve social and economic goals. However, private sector actors are not subject to the accountability of representative democracy – they are by definition independent actors, perhaps subject to some regulatory constraint imposed by government, but more or less unaffected directly by popular will except through consumer price mechanisms. Furthermore, in many governance arrangements, the private sector collaborator is paid directly by the state (as in private contracts for municipal garbage collection) or there is a strict regulation regime in place (as in taxi services in most North American cities), so the price mechanism of accountability is completely absent. The participation of private companies in the formulation and implementation of public policy in these arrangements can therefore create some fundamental problems for accountability in the function of government.

In fact, using governance for public policy presents several major implications for democratic accountability. First, agreements with private entities are negotiated in private and are not necessarily subject to review by parliament as is normal legislation (Langford, 1999; Greve and Hodge, 2010). For example, the contract governing Ontario’s privately owned and privately operated Highway 407 is sealed from public view (Poschmann, 2003: 14). This creates a possible constraint on public accountability in governance arrangements, since the arrangement cannot be reviewed by the public or by legislators.

Furthermore, a privately held corporation (as opposed to one that is publicly traded on a stock exchange) is not required to publish its financial information – and in some jurisdictions, is exempted from “Freedom of Information” (FOI) laws. An interesting example of this problem occurred in Ontario in 1993, after the province had entered into a P3 with a private consortium (now called Teranet, but then called Real/Data Ontario) to develop an electronic land registry system for the province’s real estate ownership records. Members of the opposition in the Ontario legislature put in a request for information on the finances and ownership details of Real/Data and of the contractual details of the partnership under the provincial Freedom of Information and Protection of Privacy Act, but the request was denied by the government on the grounds that the information of private corporations is private and that releasing the private partner’s internal information was potentially hazardous to its economic competitiveness in the marketplace. After multiple appeals, the Information and Privacy Commissioner upheld the government’s position on most of the information, citing the same economic competition reasons as the government under section 18 of the Ontario FOI Act (Information and Privacy Commissioner of Ontario, 1993).

In other words, private organizations that operate in the realm of public policy are not subject to mechanisms of democratic review. They are independent entities that may operate internally however they please. They are not necessarily accountable to the public in their hiring policies, profit margins, business objectives, or expenses. Of course, public opinion may determine whether or not a particular partnership arrangement is undertaken, cancelled, or renewed, but this requires the unravelling of a principal-agent dilemma in which only the private organization itself has complete access to information about its activities.

Moreover, when collaborative arrangements between the public and private sectors are formal (and admittedly, this is not always the case), they are often formalized through legal contracts. These contracts are binding on governments in ways that legislation is not. The sanctity of private contracts is nearly unquestioned (Hodge and Bowman, 2004) and even majority governments with tremendous popular support will not be able to cancel or reverse them with any kind of ease. This is especially relevant for P3s, since in order to make capital-intensive infrastructure projects appealing to private sector investment, P3 arrangements often involve very lengthy concession periods (Faulkner, 2004; Greve and Hodge, 2010) – long enough to make a return on investment a near certainty (for example, the concession period on the Chicago Skyway toll road is 99 years – see Ortiz and Buxbaum, 2008). These lengthy contracts mean that governments in the future that wish to create public policy will be limited in their choices by legal arrangements made by their predecessors of sometimes as much as several decades. In addition, longer contracts are more likely to be challenged over time, since no contract can safeguard against all possible sources of conflict, and these challenges could result in costly legal action (Hodge and Bowman, 2004: 204).

Another method to entice the private sector to participate in a formal partnership arrangement is through revenue or finance guarantees. For example, the athletes' village housing development for the Vancouver-Whistler Olympics in 2010 was a private sector project whose financing was guaranteed by the City of Vancouver (Anderson, 2009). In particular, P3 contracts often contain revenue guarantees for the private sector partner, meaning that if a certain level of revenue is not achieved by the existing user base, the government partner will provide the difference up to a specified minimum level. Both of these practices mean that governments may be bound to raise taxes or user

fees or to divert budgetary spending from other areas in order to fulfill their contractual obligations with the private-sector partner. The latter, for example, was done on a section of the Trans-Canada Highway in New Brunswick in 2000 (see Richardson, 2001).

In effect, formalizing governance arrangements in public policy with legal agreements is a way of governing by contract rather than by decree, and it compromises the *demos*' theoretical ability to control public policy through elected representatives. One of the key points to creating a collaboration between the public and the private sector, rather than divesting responsibility to the private sector completely, is to maintain public accountability through the government partner (Grimsey and Lewis, 2004: 17). Unfortunately, when these formalized arrangements are kept hidden, outlast even the longest-lived government, and contain clauses that guarantee levels of revenue or finance in times when the funds do not exist, there is potential for partnership arrangements to obstruct the principles of representative democracy and democratic accountability.

To continue in this vein, conflicts over contracts will have to be adjudicated by the courts, and cannot simply be overturned by legislation as previously mentioned. This is especially pertinent when, as argued above, future governments make policy choices in areas related to particular projects, as they may be legally bound to adhere to the policy decisions of their predecessors such that "the latitude of the political executive to independently set agendas and establish major policy directions will inevitably be reduced" (Langford, 1999: 107). All review, interpretation, debate, conflict mediation and substantive changes on contractual partnership arrangements can only be made by the

courts in their adjudication of contract law – legislatures and executives could effectively be shut out of the policy process.

This is most relevant for Westminster parliamentary democracies like Canada and Australia, which are founded on the notion of supremacy of parliament (or provincial/state legislature, as the case may be). In the tradition inherited from Great Britain, the legislature is sovereign, and the courts exist only to apply the law (Mallory, 1984: 310). In federations like Canada and Australia, this tradition is disrupted somewhat by the existence of a written constitution, a document that is considered to be the supreme law of the land (Dicey, 1885: 82; Wheare, 1964: 53-55). While all conflicts involving the constitution are to be resolved by the courts, and while no legislature has the power to enact any law counter to the constitution, this constitution is still supposed to derive its authority from the sovereignty of parliament (Russell, 2004).

In the debates surrounding the entrenchment of the Canadian Charter of Rights and Freedoms, Manitoba Premier Sterling Lyon argued that an entrenched Charter violated the Westminster principle of parliamentary sovereignty in which parliament makes the law and the courts interpret it (Mallory, 1984: 360). This sentiment has been reiterated by Canadian constitutional experts in the three decades since the 1982 patriation of the constitution (see Russell, 2004 for example). In a formalized governance partnership, policies for public service delivery are implemented through contract with a private sector entity, rather than through legislation. Critics of the Charter of Rights, for example, have claimed that the Charter would elevate unelected judges to levels of power above that of the duly elected legislatures (see Manfredi, 1997; Morton and Knopff, 2000 for example), and the same criticisms could be applied to contractual governance arrangements like P3s – that they undermine democratically elected

legislatures by creating an expanded role for the courts in the implementation of public policy.

In the Canadian setting, this debate is more complicated than the above discussion suggests. The principle of parliamentary supremacy derived from the English constitution has created a unique context for a Canadian debate on the role of judicial review (Kelly, 2005: 12). Until the advent of the Charter of Rights and Freedoms, judicial review in Canada was restricted to division of power issues between the federal government and the provincial legislatures, and in all other matters (i.e. the overwhelming majority of matters of legal importance) parliament reigned supreme (MacLennan, 2003: 9). This has created a mountain of accumulated legal precedent favouring legislatures. And despite the image of unelected judges dictating public policy as described above, since the entrenchment of the Charter, Canadian courts have shown a sensitivity to the statutory powers of Canada's legislatures, resulting in a kind of dialogue between courts and legislatures, rather than a new supremacy of the judiciary (Hogg and Bushell, 1997; Kelly, 2001). This dialogue is in addition to the presence of the Charter's "notwithstanding clause", which, despite its ambiguous utility, maintains a symbolic if not legal statement of the superiority of Canada's legislatures over its courts. In short, governing by contract may open some theoretical possibilities for an expansion of judicial decision-making in areas of public policy, by forcing courts to adjudicate the contracts that determine governance arrangements; however, the tradition of supremacy of Parliament may have moderated this effect in Canada, where ongoing judicial-legislative dialogue seems to prevail over the ascendancy of the judiciary.

In Australia, the debate on judicial review has been muted somewhat by two separate factors: first, the absence of a constitutional (or even legislative) bill of rights

means that there is less potential for courts to overrule legislatures than there would be in another jurisdiction such as the United States, where the practice is the subject of ongoing debate (Mason, 1986). In the absence of an entrenched rights document, the High Court has traditionally adopted an approach (or at least, an image) of “strict and complete legalism” in adjudicating laws (Rich, 1993: 202); under this doctrine, the Court has seen itself as mainly restricted to dealing with issues related to the federal division of powers, and political decisions are seen to be the exclusive domain of legislatures (Foley, 2007: 337).

Secondly, and somewhat paradoxically, many Australian constitutional scholars make reference to High Court Justice Fullagar’s assertion that judicial review in Australia is “axiomatic” (Gageler, 1987: 174; McDonald, 2004: 6; Foley, 2007: 281). In these authors’ view, judicial interpretation of legislation in Australia is a fundamental component of constitutional democracy, and further, it was intended to be so by the framers of the constitution – so the practice of judicial review should not be subject to as much debate in Australia as it might be elsewhere (Mason, 1986: 6).

The Australian debate on this topic, as mentioned above, is not as vocal or as alarmist as it has been in Canada or in other countries. According to Gageler (1987), the debate at the constitutional convention on the role of the court was not very intense, because the convention’s delegates accepted that a High Court would be necessary to act as the referee in federalism disputes between the states and the Commonwealth. In addition, the delegates to the constitutional convention expected that Australia’s legislatures would dominate, because they were basing their legislative system on the parliament in Westminster (Gageler 1987: 174). Smallbone (1993) argues that because of the presence of a written constitution, Australia’s legislatures have never been

supreme in the sense that this notion carries in England, so the introduction of rights-based review would not be a major rupture with Australian legal tradition. On the other hand, other authors have argued that the High Court has often shown a deference to parliaments, indicating some belief that political decisions ought to be made by elected representatives (Mason, 1986; Gageler, 1987).

Nonetheless, there does exist some scholarly debate on the desirability of having appointed judges overrule elected legislators in Australia, and also regarding the extent to which this actually happens. This is especially the case since the period in the 1980s and 1990s when the High Court was under the leadership of Chief Justice Anthony Mason, who forged a new interpretation of implied human rights within the constitution (Foley, 2007). Rich (1993) argues that as far back as 1970, an increased sensitivity to human rights at the High Court has produced outcomes that are not very different from those at the United States Supreme Court, which has in the past been seen as highly activist. And most importantly, the landmark *Mabo* decision on Aboriginal land titles in 1992 represented a major shift in judicial review towards the adjudication of rights (Galligan and Russell, 1995: 96).

In short, Australian constitutional scholars do not appear to be highly concerned that the judiciary might co-opt some powers of the legislature or that it could overrule decisions made by elected representatives, because there is no history of rights-based judicial review and because the practice of judicial interpretation of laws is seen as a fundamental part of the Australian constitutional system. Nevertheless, this discussion – as it has in Canada – has taken place almost entirely in a context of human rights; there has been much less attention paid to the potential for the adjudication of contracts for

public service delivery, such as those used in long term infrastructure P3s, to disrupt the interaction between Parliament and the Court.

The underlying problem with the analysis of institutional decay in governance failure is that the use of governance arrangements is relatively new, meaning that it may be too soon to establish whether or not court decisions are influencing public policy in any broad sense. Some court rulings over governance contracts have certainly had very specific consequences, such as the dispute over tolls on Ontario's Highway 407, in which several court decisions prevented the Liberal provincial government from keeping an election promise to lower tolls on the highway (Campbell, 2006). However, larger scale trends are difficult to discern, in part because there simply has not been enough time for a sizeable collection of examples to materialize. Since governance arrangements have only really been on the rise for about 20 years, and since many longer term contracts (in which there is an increased likelihood of conflict, as explained above) typically range from at least 25 years, many of the issues that can be expected from lengthy contractual agreements have yet to surface. In addition, a whole new set of potential conflicts will arise when the first spate of long-term contracts, many of which are for infrastructure P3s, reach the end of their original concession periods. This would include issues related to contract renewal, termination, transfer of assets, and subsequent rounds of competitive procurement to reassign private concessions.

Institutional decay is not the only form of governance failure, however. In some cases, participants in a governance arrangement may be able to exploit weaknesses of the arrangement that can result in advantages gained at the expense of other participants. I have named this mode of governance failure *unfair advantage*.

Broadly speaking, there are three formats for cooperation between the public sector and the private sector. First, the government can intervene in the free market for economic or political purposes, which might result in regulation, mixed enterprise, subsidies for research and development, or a multitude of other arrangements. Second, a private corporation can hire the services of a public agency, such as paying city public works for services on private land development. And third, the government can bring the private sector in to perform functions on behalf of the public sector, through outsourcing contracts, delegation of responsibility, or public-private partnership.

Many governance arrangements take on this last form of interaction, in which the private sector is a willing participant in a collaborative relationship with a government or public sector agency. These relationships are designed to benefit both the public sector and the private entities involved – in the form of the achievement of policy objectives for the public sector and revenue for the private sector actors. Many authors have argued that the general shift to increased governance over traditional methods of government has been a result of policy choices taken by governments (e.g. Pacquet, 1997; Pierre and Peters, 2000), which implies that these efforts are deliberate choices through which governments expect to achieve some goals. And it stands to reason that the private sector will be willing to cooperate only when it believes it can benefit from the arrangement. Mutual benefit has been described as a goal for P3s in particular (Garvin and Bosso, 2008: 176; United Nations, 2008: 80), and there is no reason why the principle cannot be extended to other forms of governance as well.

Unfair advantages occur when a governance scheme ceases to result in a collaboration and instead allows one sector's interests to prevail. For example, when private companies perform public services, they may sometimes succeed in lobbying for

concessions that increase their profits but do nothing to improve the quality of the service (Langford, 1999). This occurred in the case of the Alberta Special Waste Management System north of Edmonton, Alberta, in which the concessionaire successfully lobbied for a plant extension that proved to be worth over \$450 million for the private sector partner but was never used (Boardman et al., 2005: 178-179). In another example, in the California State Route 91 P3 case described earlier, the private partner successfully blocked the government's proposed (and much needed) highway expansion because they were afraid it would have had an impact on their toll revenue on existing express lanes (Siemiatycki, 2010: 51). While this phenomenon could potentially work in either direction, if the subversion of *private* interests for *public* gain can be shown to have happened in any particular instance, although it might technically be considered a governance failure, it might not be considered a "failure" in the broader sense of the word.

By extension, it is possible that once a governance arrangement is in progress, the interests of the private sector partner can induce the government to formulate new policy that would benefit the private partner more than society. According to one point of view, whenever profit is involved there is the potential for the private-sector partner to engage in behaviour that may be contrary to public policy in one or more areas in order to enhance the overall revenue of a particular project (Sawyer, 2009). Under this interpretation, it is likely that the private sector will apply any pressure it can to further its interests at the government's expense. In some cases, the pressure from the private sector will be great enough to influence government decision-making.

A recent example of this occurred in Canada between 2007 and 2010, when the provincial government of Alberta raised royalty rates on oil production. After some

threatening comments delivered through public media outlets (see Jones, 2008 for example), oil companies systematically reduced production until the government was forced to return some royalties to their previous levels (Busby et al., 2011). Obviously, this is a simplification of the incident – the major economic downturn that began shortly after the changes to Alberta’s royalties system surely played a part. However, the rhetoric that appeared in the media certainly contributed to a public perception that oil companies were not content with the new royalties, and this may have had an influence on what was at the time a provincial government under new leadership.

Unfair advantage governance failures are especially pertinent to governance arrangements where the private sector has the capacity to make decisions that could affect public policy outcomes. In the US, for example, private operators of prison facilities can directly control where prisoners are to serve their sentences (Shichor, 1995; Harding, 2000), how many prisoners to assign to a cell (Schwartz and Nurge, 2004: 138), and the quality of medical care that prisoners receive (Blakely and Bumphus, 2005: 80). With this kind of discretionary power over areas that in the public sector would require substantial review and oversight, it is possible for private prison companies to undermine public policy goals (such as limits on prison overcrowding or minimum levels of medical care for prisoners) in order to maximize profit.

Of course, when the private sector partner in a governance arrangement ceases to accrue sufficient benefits from the relationship, it can often exit the arrangement by declaring bankruptcy (Vining and Boardman, 2008). This option is not available to governments. Therefore, unfair advantage governance failures are more likely to become persistent irritants in cases where the imbalance of benefits favours the private sector actors. Given the permanent nature of government, unfair advantages have the

potential to produce long-term and recurring consequences, especially if they are not resolved promptly.

Conflicts created by unfair advantages can result in increased financial costs for governments, sometimes as a result of litigation (Garvin and Bosso, 2008). For example, legal action over contractual disagreements in the CityLink P3 highway project in Melbourne, Australia exposed the Victoria state government to nearly \$180 million in potential damages (Hodge and Bowman, 2004). Also in Australia, in the Sydney Airport Link case that will be discussed in much more detail later, a legal conflict between the public and private sectors resulted in additional costs to the government of about \$145 million. This is public money that could have been spent in other areas, and it represents a further constraint to public policy-making, as governments with increasingly rigid budgets will be forced to reformulate their policy objectives in other areas in order to take these costly conflicts into account. However, like institutional decay governance failures, it may currently be too soon to analyze evidence of unfair advantage, given the relative novelty of public-private partnerships as compared to other, more entrenched, instruments of public service delivery.

In a collaboration failure, productive collaboration between private sector and government actors is halted. In some cases, especially in informal arrangements, this will force the government to step in and reclaim authority over the policy area. However, in more formalized partnerships like P3s, a permanent breakdown of collaboration between partners can result in protracted conflict. As willing cooperation is critical for successful partnership in service delivery, prolonged conflict that disrupts cooperation can have an impact on the attainment of policy goals in a particular area.

As discussed previously, formalized governance arrangements usually require binding contracts that attempt to specify rights, obligations, and courses of action for the partners under all possible situational outcomes. This is, of course, impossible; no contract, no matter how expertly detailed, could predict every potentiality (Hodge and Bowman, 2004: 204). Even under the most carefully designed contract, a successful partnership arrangement will require ongoing and active cooperation, conducted in good faith, between the partners. This active cooperation is necessary to reduce conflict, resolve disputes amicably, and maintain an atmosphere of collaboration that allows the goals of the governance arrangement to be achieved.

Therefore, even when parties are bound by contract, situations where cooperation between partners is significantly diminished can occur. This can affect the operation of the partnership to the point where service is reduced or even halted, such that the public policy objectives of the partnership are no longer achieved. In the Sydney Airport Link case that will be discussed in more detail below, the public and private sector partners engaged in a prolonged conflict over pricing and service delivery that contributed to extremely low usage of the service and ultimately negated the point of having the service in the first place.

Collaboration failure can occur in informal governance arrangements as well, but its consequences will be less directly measurable. Many informal governance systems involve the use of non-state actors operating in horizontal, dynamic regimes called “policy networks” that function under a convention of implied rules rather than binding contract obligations (Van Waarden, 1992; Thatcher, 1998; Sørensen and Torfing, 2007a; Koppenjan et al., 2009). Policy networks are composed of some state actors and institutions but also include non-state organizations, and some authors describe a

spectrum of formality-informality and hierarchy-horizontality, with different networks operating at different points along each continuum (Coleman and Perl, 1999; Rhodes 2006). Nearly all authors agree that the basis for cohesion in policy networks is resource interdependence between network participants (Klijn and Koppenjan, 2000; Adam and Kriesi, 2007; Hertting, 2007; Compston, 2009).

Policy networks are of particular importance to a discussion of the role of the private sector in the governance of state-society relations. While welfare state critics like Savas (2000) take a materialist perspective in arguing that the privatization of welfare activities is a superior and logical next step in the ongoing re-examination of a government's role in directing society, policy network scholars describe an alternative mode of governance in which private sector actors and government agencies collaborate on public policy development and delivery. Instead of a complete retrenchment of the government from social policy formulation and implementation, policy networks offer evidence that it is possible for government entities and non-state actors to cooperate on the conceptual inputs that go into policy-making as well as the technical outputs that are involved in policy implementation. It of course must be recognized that policy network activity rarely takes the form of intelligently structured policy design. Instead, networks reach outcomes through bargaining, negotiation, and coalition-forming (Sørensen and Torfing, 2005: 203).

Two competing models of policy networks exist: resource exchanges, in which actors in a policy network come together to trade resources and influence; and advocacy coalitions, in which coalitions of like-minded policy actors coalesce around specific policy issue areas (Van Waarden, 1992: 494-495; Weible, 2005). The major difference here is that in the case of resource exchanges, the actors in a policy network do not necessarily

hold similar normative beliefs about policy outcomes, but they collaborate nonetheless because they understand that pooling resources is the most effective way to influence policy-making (Compston, 2009). In the advocacy coalitions model, actors with *similar* normative beliefs collaborate to form policy networks from which they attempt to influence policy (Jenkins-Smith and Sabatier, 1994).

In either case, actors in policy networks depend on each other's resources, which can be financial, political, or technical. Mutual interdependence of resources is what inspires the negotiation and cooperation that is the essence of network governance (Klijn and Koppenjan, 2000; Klijn and Teisman, 2004: 148; Sørensen and Torfing, 2007a; Compston, 2009). A defining quality of policy networks is that they are horizontal interactions of (not necessarily equal) participants – unlike the strict vertical hierarchy of bureaucracy (Van Waarden, 1992; Thatcher, 1998: 398; Koppenjan et al., 2009). However, because of the absence of established hierarchy, policy networks are vulnerable to manipulation by governments, especially when a state is required to assert its sovereignty in a policy area (Atkinson and Coleman, 1992; Pierre and Peters, 2000; Koppenjan et al., 2009).

More generally, many authors steadfastly argue that even in a governance mode of policy-making, the state retains the sovereign power to step in and change or enforce policies against the settlements reached by policy networks (Atkinson and Coleman, 1992; Pierre and Peters, 2000; Koppenjan et al., 2009). A potent example of this occurred in Canada in 2010, when the federal government decided to overrule the Canadian Radio-television Telecommunications Commission on the entry of Wind Mobile to the Canadian wireless telecom market (see Mayeda, 2010 for a more detailed report of the incident).

While critics of policy network theory have not doubted the existence of policy networks (Mikkelsen, 2006), their complaints about the theory generally characterize it as essentially descriptive and incapable of prediction (see Dowding, 2001, for example). In fact, what authors tend to refer to as policy networks actually encompass a spectrum of public sector-private sector connections, from loose, informal, fluid membership to tight, official and fixed membership, and with varying degrees of hierarchy and government involvement (Coleman and Perl, 1999; Rhodes, 2006). Policy networks are not one single fixed form of interaction between policy actors; they are multifaceted interconnections of resource-dependent individuals and institutions, and different examples of policy networks will differ along several dimensions of organization. Therefore, a precise description of a fixed policy network archetype of the kind that critics such as Dowding are searching for is not possible. Nor is it desirable: as argued previously, the dynamic flexibility of policy networks is its greatest advantage as an alternative to the top-down hierarchy of traditional government bureaucracy.

Nonetheless, policy network theory does lend itself to useful models of the policy process. There have been empirical tests of policy network theory's predictive powers (e.g. Weible, 2005), including at least one convincing study conducted in Canada (Howlett, 2002). Empirical studies have also been successfully conducted with the policy network as the dependent variable (Jordana and Sancho, 2005 for example). By extension, if it is possible to determine the factors that influence how policy networks function, it is likely that one could determine how they could fail, as well.

As policy networks are informal governance arrangements, it stands to reason that they could potentially result in governance failure. Since the output of a policy network is the aggregate of the interactions of its participants, in order for a network to

exist, it must have at least some participants and they must interact in some way. Even though many policy networks are unorganized and can rely on non-collaborative elements such as competition (Sørensen and Torfing, 2005: 203), the active participation of network members is fundamental to the network's operation. When network actors refuse to participate, a policy network will degenerate into a governance failure, and then either the network will be abandoned or the public sector will be required to exercise some form of "metagovernance" (Sørensen and Torfing, 2007b: 110) to rescue the network by imposing some structure. Governments can encourage network participation by formalizing the rules of interaction, by offering incentives to participate, or by force through regulatory or legislative control.

Koppenjan (2007: 150-151) has theorized that network function depends on a balance between conflict and consensus, both of which are critical elements of network interaction. If there is insufficient conflict, a network will stagnate and become essentially useless, because agonistic interaction, such as competition and bargaining, is crucial for innovation. However, too much conflict will cause the network to disintegrate, because it will prevent interaction entirely or because it will effectively cause network actors to avoid participating. Networks will either reach an equilibrium where they have a balance of conflict and consensus that allows interaction to become sustainable, with the presumption that there are many points along a spectrum in which this can occur, owing to the idiosyncrasies of a particular network's composition and context; or they will gravitate towards one extreme or the other and result in governance failure.

These outcomes of failure as proposed by Koppenjan have different implications for governance: a stagnant or dysfunctional policy network can still produce outputs, but these outputs may not align with a government's (or society's) priorities in that sector,

and without intervention this can result in a long term static position. This is what happened in the automotive industry in the US in the 1990s, when governance arrangements were attempted for the development of high efficiency automobiles (Sperling, 2001; Perl and Dunn, 2007; Grossman, 2009). In that example, hundreds of millions of dollars were spent on a public-private governance regime to develop American-made cars with very high fuel efficiency, but the outputs of the network resulted instead in a proliferation of larger and less fuel efficient sports utility vehicles from American companies and a limited number of fuel efficient models from Japanese manufacturers. On the other hand, a network that has experienced total collapse will by definition cease to produce policy outputs at all.

The extension of this discussion to P3s is somewhat problematic, because at first glance it is unclear whether or not public-private partnerships are a form of policy network. Initial scholarship on the issue seems to suggest they are (see Teisman and Klijn, 2002 for example): a P3 can be viewed as a network consisting of a private sector partner (often actually a consortium of private interests) and some combination of various levels of government and related agencies, collaborating to achieve one or more policy objectives. This multitude of actors on both the public and private sector sides lends itself readily to a model of network governance. On the other hand, the contractual nature of the partnership arrangement negates the supposed advantages of a policy network: dynamic flexibility and absence of hierarchy (Hodge and Bowman, 2004: 205). The binding partnership contract that is an inherent component of P3s will necessarily have an influence on the interaction of P3 partners, which may alter the function of the partnership so as to distinguish it fundamentally from policy networks.

However, while policy networks are informal collaborative arrangements between the public and private sectors, they are complex systems that could include some formalized relationships as well. For example, a private corporation might have a contract with a particular US state for the operation of a single prison within that state, but it might then also be part of a greater network of firms, governments, regulatory agencies, and trade organizations that is collectively responsible for nation-wide prison policy in what some have termed the “prison-industrial complex” (Schlosser, 1998). Therefore, it may be possible to conceive of nested policy networks, in which smaller, tighter units of interaction exist within concentric or perhaps overlapping policy subsystems. Seen from this perspective, P3s may exist as very specific governance arrangements nested within much larger networks whose boundaries may be less precise. While the activity of the actors within the P3 may be delineated by an official contract, their interaction can still contribute to the formulation and implementation of policy within the greater subsystem.

Both the Canada Line and the Sydney Airport Link can be viewed in these terms. In Vancouver, the actors within the official Canada Line partnership have specific duties and responsibilities, but their interactions form only a small component of a greater policy network that governs urban transit in the Metro Vancouver region (which in turn contributes to transportation policy in British Columbia, which in turn forms part of a greater policy subsystem that has an impact on urban development and environmental policy in British Columbia and Canada). The position of the Canada Line as a nested policy network within a greater system of networks is illustrated in Figure 1. In Sydney, the Airport Link P3 was influenced by multiple actors who were situated within a greater governance network, but this network failed to function to its fullest potential.

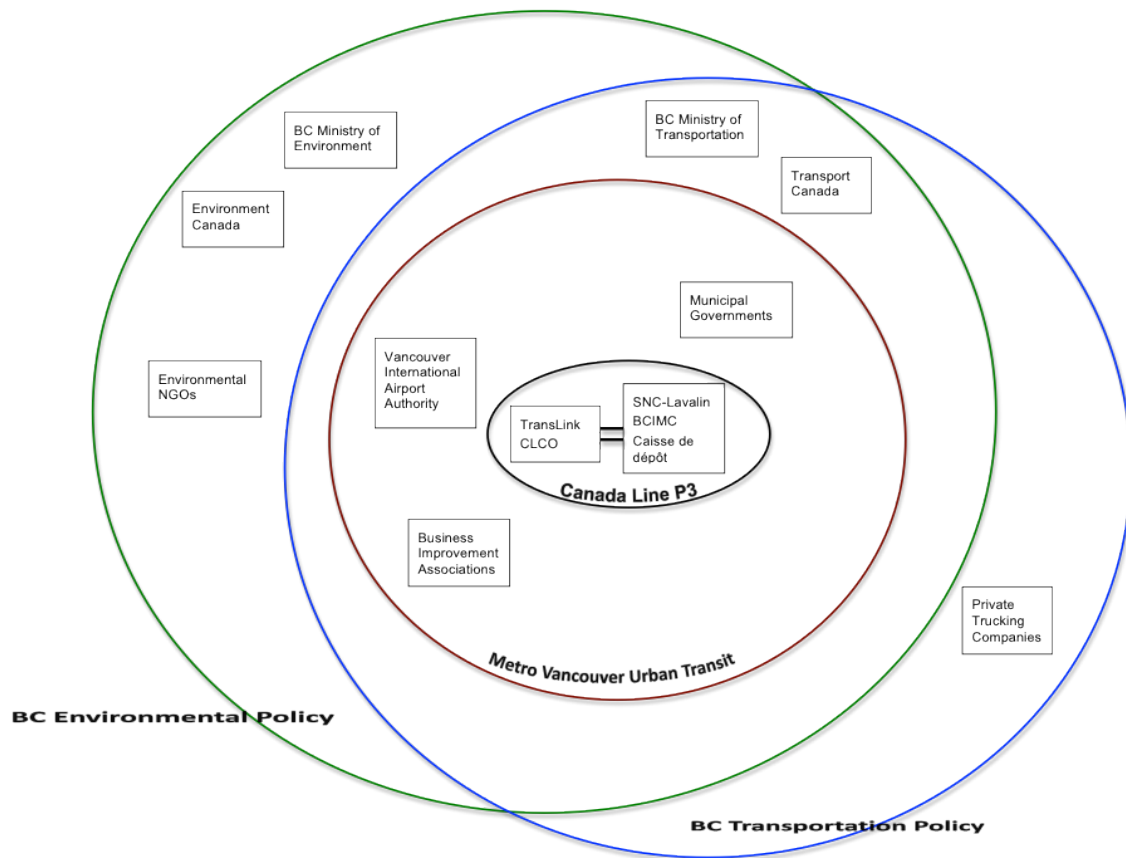


Figure 1. Nested Policy Networks in British Columbia

In summary, collaboration failure can occur in formalized governance arrangements, where it can result in ongoing conflict between partners bound by a contractual agreement, or in informal governance networks, usually called policy networks, where it results either in long term stagnation or in the termination of the network – that is, unless a public sector authority intervenes to stabilize the network and restore collaboration. All three forms of governance failure may have pecuniary consequences, social/political consequences, or both, but regardless of the types of consequences that failure may generate, governance arrangements are considered to have failed when the interaction between the public and private sectors is no longer

sustainable – that is, when it is no longer stable over time and cannot remain faithful to its original objectives without major intervention from external forces (Patashnik, 2003: 207). Because governance includes strategies of public policy, it is also necessary to consider normative justifications of these goals (Kerr, 1976) and the distributional outcomes they produce.

Governance failure can be a terminal position. For instance, in the case of the Bricklin sports car that was produced through a joint venture between the provincial government of New Brunswick and the private sector, governance failure was in fact an end point as it resulted in the termination of the project (Borins, 1986). In some cases, governance failure can have repercussions that are felt beyond the lifespan of the initial partnership, as in the “fast ferry fiasco” in which the province of British Columbia lost nearly \$500 million producing three aluminum ferries that were permanently taken out of service shortly after delivery (Greve, 2011: 955). In this example, a firm public perception of government waste will likely have an impact on future transportation policy in British Columbia for many years into the future.

However, governance failure is not necessarily terminal in every case. It is possible that in certain cases, governance failures might be resolved; this may have happened, for example, in the case of the rail link to Brisbane’s airport (Lilley and de Giorgio, 2004: 39), which experienced disastrously low ridership but has since recovered, due in part to a renegotiated P3 contract. In other examples, such as Canada Post’s entry into the courier industry through its acquisition of Purolator, some minor disputes arose between the public and private sectors that would qualify as conflict, but this did not lead to major consequences for the policy network that could be identified as “failure” (see Toulin, 1999; Nafziger and Wanak, 2009 for example).

In other words, like government failures, market failures, or policy failures, governance failures can vary in degree of failure, magnitude of consequences, and potential for recovery. Some governance failures will have repercussions that have lasting effects, while others can be resolved with only minor consequences. However, the same definition of failure applies to all cases, and even those with the potential for resolution can still be considered failures during the time that the governance arrangement fails to achieve its objectives. From an academic perspective, however, students of governance would probably concern themselves most with governance failures that have permanent and nontrivial consequences. And again, it should be noted that governance failures are not inevitable; rather, there are certain conditions, that when met, will allow failure to occur. As will be elaborated below, the actions of the public sector are crucial to preventing governance failure.

Many scholars (although not all: see Knill and Lehmkuhl, 2002 for example) maintain that despite the shift from government to governance that has occurred over the last 30 years, national governments remain not only relevant, but also retain their position as the dominant authority within the national sphere (Atkinson and Coleman, 1992: 167-168; Pierre and Peters, 2000). This perspective has some appeal: how did many Western democracies make the transition from government to governance, if not through deliberate policy choices enforced by law, such as widespread industrial deregulation and sale of state-owned assets? Governments may have delegated decision-making for some areas of public policy to private entities, but they have never relinquished their legislative capacity or their Weberian monopoly on the legitimate use of violence. Even in residual areas of policy, where governments may not have created or enforced any official rules as of yet, they reserve the ability to intervene should the

need arise. This is illustrated by the example of the internet, which is largely unregulated in Western states but which could be regulated much more forcefully should governments ever decide to – as evidenced by the stricter controls over internet usage in places like China.

In other words, governments are not merely passive bystanders to the effects of governance and to the implications of governance failure. They are active participants in both the development of governance arrangements for public services and for their implementation and ongoing delivery to society. Logically, then, if we are interested in the consequences of governance failure then we are also interested in the public sector's active role in contributing to or in preventing governance failure. Questions about failures in governance should therefore look to the responsibility of the partners in ensuring that governance arrangements succeed, and the public sector, which bears a natural responsibility to its polity, carries a heavier burden in actively endeavouring to prevent governance failure. Therefore, the question "If governance failure does happen, how can it be prevented or avoided?" can be more usefully reformulated as "If governance failure does happen, how can the public sector act to prevent or avoid it?"

Of course, once precedents have been set, and once binding agreements have been signed, the political costs of government intervention in governance arrangements can be significant, especially when intervention strategies can be perceived as reducing economic growth, restricting civil liberties, or increasing public expenditures. In some cases, the state's ability to interfere with a governance system may be restricted to emergency situations, such as in response to terrorist attacks or following a global financial crisis. When it comes to terminating contracts with private corporations, although governments do this on a regular basis, doing so within the legal bounds of the

contract usually entails significant financial penalties. For example, the city of Ottawa was forced to pay \$37 million to a consortium of transportation companies after it cancelled a light rail expansion project in 2006 (Greenberg, 2011). In Australia, Sydney's city council paid \$5 million in an out-of-court settlement after it was sued by a company whose contract to install street lighting throughout the city was cancelled (McClymont, 2007). In a more extreme example, when the Canadian federal government terminated its contract with European Helicopter Industries to replace its aging fleet of Sea King military helicopters, it paid penalties of almost \$500 million (Plamondon, 2010: xv). Governments, especially in countries like Canada and Australia, where private contracts are not protected by the constitution, may have the statutory authority to abrogate contracts without paying penalties (Hadfield, 1999); however, the implications for the reputation of the government as a business partner mean that they would probably reserve this kind of action for only the most dire of national emergencies.

There are two ways to look at this. On the one hand, the state has never abdicated its role as the ultimate authority in national affairs. In the words of Pierre and Peters (2000: 25), "the state, despite persistent rumours to the contrary, remains the key political actor in society and the predominant expression of collective interests." On the other hand, states in an era of governance will be bound by cultural and political forces that will constrain their actions in many circumstances (Mayntz, 1993). Governments will be forced to consider significant intervention in some governance regimes to be a strategy of last resort.

The situation is different on the smaller scale. In the vast majority of governance arrangements, including informal arrangements like policy networks and contract-bound relationships like P3s, governments retain the capacity to exert at least some control.

This is because minor interventions, such as directing contract negotiations or subtle changes to regulation, can be implemented in small, occasional increments that may avoid attention but that can produce consequential results. Although it is true that major intervention could create controversy in some instances, regular small-scale action is a fundamental part of the state's role in governance. This is evidenced by the federal government's periodic intervention in the Canadian mortgage market over the last ten years, for example, which despite some minor disapproval voiced mainly by the construction industry (see Marr, 2012 for example), has been accepted by the private banks without major resistance. Similar examples of incremental rule changes abound in many countries and in many sectors, including financial regulation in the EU (Quaglia, 2012: 521), nutritional information labelling in the US (Kiesel et al., 2011), and tobacco advertising in Australia (Mitchell and Studdert, 2012: 262), just to name a few.

Markets and governments may be independent systems that can in some cases operate autonomously, but governance arrangements by definition require the active cooperation of both markets and governments at the same time. They are not self-sufficient or self-sustaining entities. In many governance regimes, multiple public and private organizations are likely to participate, occasionally through active collaboration but usually by means of agonistic negotiation and competition (Dryzek, 2007: 271). In addition, markets are, also by definition, not centrally controlled, and market actors in a governance regime will not necessarily act as a unified bloc. While each actor in a governance system may derive benefits from the arrangement, a central goal or collective motive for collaboration will not develop spontaneously, not for the system as a whole and especially not among the private sector actors alone. Moreover, in many

cases the public and private sector actors may have different objectives that are not completely in alignment.

Putting these last few points together we find that:

1. Governments have ultimate authority for statecraft, including the ability to intervene in established governance regimes.
2. Although radical intervention by governments in governance systems may be politically difficult, incremental action is not only possible but it is a form of intervention that is widely used by many governments in numerous sectors.
3. Due to the participation of market-based actors, governance regimes have no inherent leadership.
4. Because of the different needs and goals of the public and private sectors, governance regimes may have no central objectives that all participants can agree on.

In short, governments have a direct role to play in governance, and not only as willing participants in a collaborative effort. They must also act as executive authorities with immediate responsibility for the collaboration's smooth operation, in order to direct activity and to determine the rules of participation, even if mostly in small but periodic increments. In addition, governments must function as distant sovereigns with ultimate emergency powers, ready to intervene with radical directives when the situation calls for it. This is because governance regimes, which necessarily involve market-based actors, have no other natural leaders or spontaneous central objectives; the government, as the proximate authority to a governance arrangement and the ultimate authority of the state,

must use its powers to direct governance regimes and to maintain cohesion among the various actors. These roles of the public sector are fundamental to the functionality of a governance arrangement. This applies to governments themselves as well as to public sector agencies to whom they may delegate immediate responsibility for particular areas of public policy or for the implementation of specific projects.

If government responsibility is key to the proper function of governance systems, then it stands to reason that an effective way to achieve governance failure is by reducing or eliminating the public sector's role in directing a particular governance arrangement. Governance systems require sufficient public sector policy leadership, without which they will fail. This can happen through neglect or through error, but when governance failure occurs, it is because the government partners did not supply the amount of leadership that that particular governance arrangement required.

Two questions arise from this discussion. First, are different conditions necessary for each of the forms of failure to occur? Or stated another way, once it is established that public sector policy leadership was inadequate in a given case, what factors will contribute to that failure occurring as an institutional decay governance failure rather than as an unfair advantage governance failure? The answer is that, in the presence of crisis, the structure of the arrangement itself will dictate the forms of failure that are possible. In other words, different kinds of institutional arrangements can create various strengths and weaknesses for governance, which under the stress of exogenous pressures like partisan politics, social pressure, or economic crisis will cause governance arrangements to buckle in different ways. For example, P3 contracts that attempt to concretize controversial political goals and extend for lengthy concession periods may be subject to institutional decay, if a change of parties in power brings in a

government with a reform agenda that is incompatible with the P3 contract; governance arrangements that are hastily initiated by outgoing executives, without due attention to their long-term consequences, may fall victim to unfair advantage if economic conditions change in a way that allows the private sector to exploit them; and cases that depend on active policy networks or on careful attention to ongoing activity may be susceptible to collaboration failure, if the entry or exit of key actors disturbs the network's equilibrium. These are merely examples, however, and other permutations will of course be possible. The form of failure will depend on the weaknesses of the particular structure of a governance arrangement and will vary from case to case. In addition, it should theoretically be possible for more than one form of failure to occur in the same case, as there is no apparent reason why they should be mutually exclusive.

Secondly, how much is “sufficient” leadership? Unfortunately, policy leadership is not something that exists in discrete units. It does not lend itself easily to quantitative measurement, and therefore identifying the critical point at which public sector policy leadership becomes sufficient to avoid a governance failure is likely not possible. The level of intervention that is required by the public sector partners in a governance arrangement will depend on the magnitude of the weaknesses presented by the structure of the arrangement. A public-private partnership for infrastructure involving a long-term contract, high levels of capital investment, revenue guarantees for the private sector, or other elements that are governance pressure points might require hands-on leadership of day-to-day activities and substantial planning and research; in other sectors, such as telecom, in which market principles are more influential because of the direct relationship between producers and consumers, a governance arrangement may function with only some legislated rules and a public sector oversight body. Public sector

policy leadership will be crucial in either case, but the level of involvement of the public sector will depend on the demands of the arrangement.

Governance failure can lead to significant financial loss, opportunity cost, and depletion of resources. It can create distrust between public and private sector actors that may lead to an unwillingness to collaborate in the future, which would significantly limit the state's ability to provide public services in an era where a reliance on governance strategies has become the norm. More directly, a failure in a particular governance arrangement means that the objectives of that arrangement are not being met, which implies that some objective of public policy has not been achieved. On a macroscopic level, governance failure can directly erode the powers of democracy by undermining the ability of elected representatives to enact and enforce legislation. Governance failures can also represent financial loss for private sector partners, which may have an impact on the general economy.

Governance can be useful for achieving policy objectives, and in some countries market-government collaboration has produced periods of sustained economic growth and improvements in living standards for citizens. Governance regimes can be sustainable for long periods of time as well. However, markets and governments do not always interact harmoniously, and governance can fail. Although the logic of governance requires the public sector to cede some control over public policy to private entities, in general, public sector policy leadership is required to prevent governance failure from occurring.

There are various ways that the public sector can employ policy leadership and avoid failure in governance arrangements. In the chapters that follow, I will examine two

very similar cases of public-private partnerships in the transportation sector, one of which experienced collaboration failure due to a lack of public sector policy leadership. In the other case, three different policy leadership strategies – employed simultaneously – prevented governance failure from happening.

Chapter 4.

Case Studies

The collaboration of markets and governments that has been referred to as governance is in reality an entire universe of policy instruments that employ a variety of possible collaborative arrangements. For an empirical study on governance and the consequences of governance failure, it would be most instructive to focus on a specific family of governance instruments. Here, I analyze public-private partnerships in one particular sector, transportation. In addition, I have identified two cases of transportation P3s that, because of their structural and political similarities and because of their widely divergent outcomes, present a unique opportunity to analyze cause and consequence in governance failures.

This dissertation focuses on public-private partnerships in the provision of transportation infrastructure. Transportation infrastructure, such as roads, highways, bridges, tunnels, and public transit are often thought of as the responsibility of government (Needham, 2007: 17; Garvin and Bosso, 2008). This reality has become even more evident since the most recent economic crisis: as Canadian governments at all levels were intervening to lessen the damage to the economy, British Columbia's finance minister wrote that "one of the most powerful ways to boost economic activity during tough times is to invest in infrastructure projects" and that these projects would be

“investments that use taxpayers’ money to support economic growth and improve the quality of life” (Hansen, 2009). But despite these assertions of *public* investment, private investment in transportation infrastructure through P3s has occurred in many countries in the Western world over the past 25 years, and the trend is accelerating (Siemiatycki, 2010).

Transportation is a sector that is directly linked to a variety of areas of public policy that can have a meaningful impact on the direction of society. These are areas in which many Western governments, historically and currently, have stated policy goals. They are also areas of public policy in which important segments of the population have shown concerted interest, and in which many governments have kept activist policy agendas. Courses of action that affect transportation – including the decision to employ P3s – will therefore undoubtedly have political motivations and political consequences.

Transportation infrastructure has been and continues to be used as a tool of public policy, and therefore as a means of governing. Throughout modern Western history, transportation infrastructure has been built for the purpose of managing the economy on a macro scale. This practice was used to great effect in England in the 1750s, when public development of the national road network propelled England into the industrial revolution (Szostak, 1991). France used the same principle in the 1800s, first with its own road network and then with railway infrastructure (Jones, 1984). In 1956, the US enacted the Federal-Aid Highway Act (which kick-started a major investment program in the American interstate highway system) in order to stimulate economic growth (Rephann, 1993: 438). In all of these cases, the mobility of people and goods was seen as a lubricant for economic progress.

Transportation policy can be used to manage more specific aspects of the economy as well. Investment in public transit has been shown to reduce income inequality in urban areas (Sanchez, 2002) as lower-income workers are provided with an inexpensive means to get to employment opportunities. Public transit also has a wealth redistribution effect, as a larger number of non-users (mostly wealthier people who can afford car travel) participate, both through general taxes and through targeted taxes on fuel, in the subsidy of transit for a smaller number of users (mostly lower-income people who cannot afford to own cars). And most pertinently, transportation policy will be crucial in the coming century as governments across the Western world attempt to limit their dependence on unpredictable (and in the case of the US and most of Europe, foreign) oil resources (Vuchic, 1999: 17).

In addition to economic concerns, transportation policy is vital for public health issues, environmental protection and most recently, for a government response to climate change. The dispersal of automobile-dependent residential neighbourhoods around major city centers, known as urban sprawl, has been linked to the depletion of natural resources, noise pollution, air pollution, water pollution, greenhouse gas emission, loss of productivity, and destruction of wildlife habitat, among other ills (Kunstler, 1993; Cieslewicz, 2002; Frumkin et al., 2004; Muñiz and Galindo, 2005; Cabana and Wagner, 2006; Plantinga and Burnell, 2007). Better intercity trucking policies and “smart growth” urban policies that promote density and efficient use of space will be crucial in curbing the damaging effects of human activity on the natural environment. Transportation infrastructure (or more aptly – what kind of infrastructure to build and where to build it) is an important piece of the transportation policy puzzle.

And lastly, transportation choices can make for effective social policy decisions. Many cities are highly stratified according to income groups; in the US especially, this problem connotes racial segregation (Vuchic, 1999: 3) – although this is a pertinent issue in Canada as well, as poorer immigrant families mainly settle within the inner suburbs of major cities (see Murdie and Ghosh, 2010, for an example involving Toronto’s Bangladeshi community). Mobility of poorer classes has been related to social cohesion, through the inclusion of the poor in economic and social activity (Pickup and Giuliano, 2005: 39-40).

Transportation policy choices have been shown to have real consequences on the shape of transportation networks (Perl and Pucher, 1995). In the US, for instance, highway planning and home-owner tax credits have shaped urban centers and produced sprawling suburbs (Wiewel and Persky, 2002). Historically, streetcars were essential to the popular appeal of urban centres, and local trucking helped to form those centres as it allowed commerce to move away from harbours and railway stations, meaning that transportation needs have in many cases decided how cities were shaped (Vuchic, 1999: 5-7; Squires, 2008). In the last 30 years, the governance of transportation infrastructure has become a topic of interest, as many governments in the 1980s and 1990s privatized railways, airlines, ports, airports, and ferries (Hakim et al., 1996). In an era where public-private partnerships are becoming popular, transportation infrastructure is likely to provide good examples and pertinent insight into greater issues of governance.

P3s have been in use in the transportation sector for many years, and continue to be a popular method of service and infrastructure delivery in many jurisdictions. In Canada, road and bridge infrastructure is the preferred mode, and examples abound:

the Confederation Bridge link between Prince Edward Island and New Brunswick (Garvin and Bosso, 2008: 162), Vancouver's "Sea-to-Sky" highway from Vancouver to Whistler (Cohn, 2008), the Golden Ears bridge linking Maple Ridge and Langley, British Columbia (Greater Vancouver Transportation Authority, 2006), Edmonton's Anthony Henday Drive Ring Road (Alberta Transportation, 2012), and Ontario's Highway 407 (Mylvaganam and Borins, 2004) to name a few. Australia has a history of using P3s for transit, including Brisbane's Airtrain, Sydney's light rail system, and passenger rail in Melbourne (Williams et al., 2005), as well as for roadways: the Cross City Tunnel in Sydney (Siemiatycki, 2010), the CityLink system in Melbourne (Hodge and Bowman, 2004) and the Clem Jones and Airport Link tunnels in Brisbane (Mols, 2010) were all P3 projects.

In this dissertation, I will use a "most-similar systems" research design to compare two cases of P3 delivery of transportation infrastructure. The most-similar-systems case study approach for comparative analysis has been well documented (King et al., 1994; Peters, 1998; Burnham et al., 2008) and is widely accepted as an effective method in qualitative research. Ironically called "method of difference" by John Stuart Mill (Peters, 1998: 29), the most-similar-systems approach seeks to isolate the cause of an outcome by controlling for the effects of as many exogenous variables as possible. The variable that is not accounted for can then be shown to be the cause of that outcome (Burnham et al., 2008: 75). The study of politics is not, however, a deterministic science; finding two cases that are completely identical in all details except for one will be impossible in most non-trivial comparisons. I have chosen two cases that are extremely similar on a wide variety of factors, and while this may not be as rigorous as it could be in the physical sciences, the logic of Mill's method of difference still applies to

this study. Given the similarities of the cases, the things that stand out as being exceptionally different are likely to be the causes of the difference in outcomes.

Furthermore, the purpose of comparing cases in more than one country is to allow the results of my research to be generalized beyond the national context. In other words, if my conclusions apply in Australia as well as in Canada, then there is good reason to believe that these conclusions are not simply a result of the influences of Canadian political culture or of the domestic Canadian institutional framework. In other words, the point of comparing different countries is to produce more useful results that hopefully apply to multiple jurisdictions. No doubt, political processes and their outcomes are influenced by numerous factors that interact with each other in complex associations, making direct causal statements difficult to obtain or to prove conclusively (Zuckerman, 1997). Nonetheless, my findings will contribute to the “gradual accretion” of accumulated knowledge of public policy formulation and implementation (Peters, 1998: 4), and comparing across national boundaries is an effective method of producing generalized conclusions that are useful to scholars in multiple jurisdictions and different geographical locations.

An effective cross-national comparison will make use of separate jurisdictions that are different enough to enable generalization across national boundaries, but that are similar enough that it is not possible simply to dismiss different policy outcomes as attributable to substantially divergent political cultures or institutional systems. Of course, Canada and Australia each have unique national political issues, such as Québec nationalism in Canada or Australia’s proximity to political instability in developing Asian countries; however, these major differences do not play a significant role in the cases under study in this project. Canada and Australia are therefore good candidate countries

for comparison because they offer the ability to strengthen a most-similar-systems case study while still allowing for cross-national generalization.

The Canada Line and the Sydney Airport Link are therefore ideal cases for the purposes of this study. The Canada Line and the Sydney Airport Link are both cases of public-private partnerships in transportation infrastructure; they were proposed and built under exceptionally similar political contexts and to remarkably similar technical designs, which makes for a robust most-similar-systems research approach; they occurred in different countries, which will enable conclusions that can be usefully generalized across national boundaries; they developed over different time periods in circumstances that can be considered “functionally equivalent” (Peters, 1998: 25), so conclusions derived here can also be generalized across temporal boundaries; and most importantly, the Canada Line and the Sydney Airport Link produced opposite outcomes, as the Canada Line experienced substantial success while the Airport Link resulted in governance failure. Therefore, these two cases have a considerable capacity to produce a convincing most similar systems comparative case study on the determinants of governance failure in public-private partnerships.

It should be clear at this point that the best way to accomplish the empirical goals set out in this dissertation is through a small-n qualitative case study approach. Quantitative approaches are effective for counting events or particular outcomes with a view towards determining causal factors, but for the purposes of analyzing governance in P3 arrangements, this would require a large number of very similar P3 projects, which simply do not exist. While P3s and other alternative service delivery mechanisms are becoming pervasive in many countries, they continue to take on a large variety of forms; this would significantly confound a quantitative analysis aimed at analyzing the

interactions between actors involved in networked relationships. In addition, there is a substantial amount of useful information that can be learned from the opinions and interpretations of outcomes held by individuals who were integral to the events in question, and this interpretive account of the events and relationships as the key actors perceived them would be missed in any quantitative analysis.

Small-n case studies, especially ones where the cases are selected based on their outcomes, are sometimes criticized for not being generalizable (Shively, 2005: 108-109; Burnham et al., 2008). In truth, large-scale quantitative studies are more robust in terms of providing generalized rules that apply to specific processes. However, as mentioned above, the factors that contribute to governance failure in P3 arrangements are complex, they involve interpretation of human interaction, and there are few comparable cases, which makes quantification difficult. An in-depth analysis of two particularly similar cases that produced very different outcomes should provide convincing conclusions as to how these different outcomes were possible. The lessons derived from these two cases may then be applied to other cases elsewhere. Case study methods of this kind, including the selection of cases based on outcomes, has been argued to be effective for determining causal factors in qualitative research (King et al., 1994; Peters, 1998; Burnham et al., 2008).

The two cases compared here are the Canada Line in Vancouver, Canada and the Sydney Airport Link in Sydney, Australia. Both of these are major pieces of urban transportation infrastructure. Both were implemented through public-private partnerships in which private sector consortia invested substantial amounts of capital in exchange for sole responsibility for construction and 30-year operating concessions. However, the

case of the Canada Line was largely a success while the Sydney Airport Link experienced collaboration failure.

The Canada Line, previously known as the Richmond-Airport-Vancouver Line or RAV Line, is a 19-kilometre rail rapid transit line that connects downtown Vancouver to the Vancouver International Airport and to Richmond, British Columbia, a nearby suburb. It has 16 stations, all of which opened for operation on the same day on August 17, 2009. At about \$2.5 billion, the Canada Line is the biggest infrastructure project ever undertaken in the province of British Columbia (British Columbia, 2009).

The Canada Line is fully integrated into Greater Vancouver's public transit network. In addition to major connectivity with surrounding bus routes (many of which feed directly to the line), the Canada Line functions as an extension of Vancouver's SkyTrain urban rail network: passengers can use the same ticket products on the Canada Line that they would purchase for SkyTrain, and Canada Line stations are placed in locations that facilitate connection to the other lines when possible. However, the Canada Line does not use the same technology as the rest of SkyTrain, and the vehicles are not interchangeable. Consequently, for operating purposes the Canada Line is a stand-alone branch of a greater urban transit system.

Studies into the possibility and desirability of a rapid transit connection between Vancouver and Richmond date back as far as 1970, but it was only after the creation of the Greater Vancouver Transportation Authority (GVTA) in 1999 that real efforts began to take shape (RAV Project Management Ltd., 2003: 20). Prior to 1999, public transit in the entire province of British Columbia was run by B.C. Transit, a provincial Crown corporation headquartered in the provincial capital of Victoria (Harcourt and Cameron,

2007). From its inception in 1999 until it was restructured in 2007, the GVTA (also known as TransLink, and now officially known as the South Coast British Columbia Transportation Authority) was governed by a board of directors composed entirely of mayors and city councillors from Greater Vancouver's 21 separate municipalities, meaning that executive decision-making for public transit was relocated in 1999 from the province to the metropolitan region. One of the priorities that emerged from the newly regionally-directed TransLink's first Strategic Transportation Plan in 2000 was the creation of a Richmond to Vancouver rapid transit link (RAV Project Management Ltd., 2003: 21).

The Canada Line was the result of the collaboration of a number of independent organizations from the public and private sectors. Many actors, including governments, public sector agencies, and private corporations had a vested interest in the outcome of this project. Many of these relationships were formalized through written agreements, creating an intricate web of roles and responsibilities for the participating organizations.

On the private sector side, several private corporations placed bids for the right to design, build, finance, and operate the Canada Line. There was a multi-stage, multi-year public tender process in which the number of competing candidates from the private sector was progressively reduced at each stage. The winning proponent, a consortium consisting of the Québec-based engineering firm SNC-Lavalin, the British Columbia Investment Management Corporation (British Columbia's public sector employee pension fund) and the Caisse de dépôt et placement du Québec (Québec's public sector employee pension fund), signed a contract to build the Canada Line and operate the service until the year 2040. The private sector partners, acting through a special purpose corporation called InTransit BC, in which each partner has a one-third

share, invested \$132 million in equity and \$659 million in loans from international banks (Canada Line Rapid Transit Inc., 2006: 12). InTransit then contracted SNC-Lavalin to lead the construction phase, and later created a separate subsidiary named Protrans BC to manage the subsequent operation of the line.

Although final authority for the Canada Line falls to the provincial government, the public sector “partner” is actually a group of participants as well. The province, the federal government, the city of Vancouver, the Vancouver Airport Authority, and TransLink all contributed funding to the project. Additional stakeholders, such as the Vancouver Port Authority and the City of Richmond, were included for consultation purposes at many crucial decision making junctures. Although funding arrangements with all major funding partners are formalized through signed agreements, the actual contract between the public and private sectors for construction and operation of the Canada Line was signed only between InTransit BC, the GVTA/TransLink, and Canada Line Rapid Transit Inc. (also known as CLCO, an abbreviation of “Canada Line Company”), the public sector project management company that oversaw the project (and which has since been dissolved). In fact, while the public sector funding agreements provide a brief written record of the funding partners’ commitments, the bulk of the collaborative efforts and interaction between the public sector organizations with respect to the Canada Line happened exclusively through the project management company, CLCO. Despite falling under the jurisdiction of either the provincial or federal governments, all of the public sector organizations involved in the project operate as autonomous public sector agencies. CLCO brokered their cooperation and handled interaction with the private sector proponents as well.

The construction phase of the Canada Line project was structured as a fixed-price design-build contract, which means that the private contractor was responsible for engineering and construction and all costs associated with those activities except for some costs that were specifically allocated to the public sector partner. The public sector funding partners, through CLCO, made periodic milestone payments to InTransit throughout the construction period. In this way, construction risk was intended to be divided such that the bulk of the risk was carried by the private sector partner (Canada Line Rapid Transit Inc., 2006: 12).

For the 31-year operating phase, Protrans BC is responsible for the operation of the line, but they must work in close contact with TransLink, as the Canada Line is an integrated component of the regional transportation network. Payments are made regularly from TransLink to Protrans BC, 70% of which is calculated based on the “availability” of service, 20% on “quality”, and 10% on “achievement of ridership forecasts” (Canada Line, 2006). However, specific details and the formulae used for calculation are not publicly available, as they are considered to be commercially sensitive information and have been redacted from public copies of the Canada Line concession agreement (see RAV Project Management Ltd., 2005a: Schedule 11, for example). TransLink retains ownership of the fixed assets, including the tunnels and most of the stations, while InTransit owns the rolling stock (Canada Line Rapid Transit Inc., 2006: 6). The Vancouver International Airport owns the fixed infrastructure on Sea Island in addition to Bridgeport Station in the city of Richmond, but leases it to TransLink for a nominal amount (Canada Line, 2006). Again, complete details of the financial arrangement are confidential and are kept hidden from public view.

Partnerships BC, a provincially-owned corporation whose mandate is to “encourage the development of the public-private partnership market in British Columbia” and to “structure and implement public-private partnership solutions which serve the public interest” (British Columbia, 2007), served as advisor to both the public and private sector partners. Partnerships BC aided in the preparation of the public sector comparator, a financial analysis tool that is commonly used for “value for money” analysis of P3 projects (Siemiatycki, 2010: 48). Although most of my interview respondents suggested or directly commented that the role of Partnerships BC in the Canada Line process was minimal at best, this still represents an added complexity to the diverse nature of the partnership arrangement for Canada Line.

The Canada Line has enjoyed popularity with the general public since it was announced as a transportation priority. Surveys continuously showed it was a popular choice for public investment in transportation infrastructure, in Vancouver and in Richmond, as well as in other suburbs of the Greater Vancouver area (Kirk and Co., 2003; Synovate, 2003, 2004; Braid, 2004). Contrary to evidence that transportation megaprojects frequently fail to attain their forecast ridership levels (Flyvbjerg et al., 2003), the Canada Line was successful from the beginning: in 2010, after one year of service, its daily weekday average was 104,000 passengers per day – well beyond its predicted level for 2010 and more than 4% above its expected average for 2013 (Sinoski, 2010). In other words, the public’s initial enthusiasm for the Canada Line continued into its operating period, and the expert consultants who prepared ridership estimates and polling data were proven to be correct in how high the demand for the line would be. In addition, the line opened for service several months early, and numerous

reports of its being “on budget” (e.g. British Columbia, 2010) have never been forcefully disputed.

This popularity comes in spite of considerable controversy over the design and procurement of the system that nearly caused the project to be cancelled in its early stages. Friction between the province and the assembly of mayors of the metropolitan area of Vancouver (then called the Greater Vancouver Regional District, or GVRD, but now referred to as Metro Vancouver) appears to be an inherent element in provincial-municipal relations in British Columbia, even before the creation of the GVTA or the inception of the Canada Line, and irrespective of the political parties in power (Harcourt and Cameron, 2007). This inter-governmental friction reappeared during the early stages of the development of the Canada Line, when disagreements over the funding structure of the project were made public. After the province announced that provincial funding for the Canada Line would be contingent on the project’s structure as a P3, both Vancouver’s city council (Bula, 2003a) and the Greater Vancouver Regional District (Bula, 2003b) voted in favour of the project but publicly opposed the P3 requirement, while the board of directors of the transit authority, TransLink, voted in favour of the P3 format. Several further dramatic votes at the regional level followed, in which the board of TransLink twice voted not to continue the project and then later revived the debate so as to be able to vote on it a third time. The project was narrowly approved, and in the end, the requirement of a P3 architecture for the project was formalized in the provincial funding agreement (British Columbia, 2005).

In addition to the debate over the use of a P3 structure, the conflict between the levels of government contained further political motivations. According to Larry Campbell, then mayor of Vancouver, although local politicians who favoured the political

left were opposed to the use of P3, those on the right were dissatisfied with the proposal's expanding costs, and there was generally a sentiment among the region's mayors that the Richmond-to-Vancouver line was being prioritized ahead of rapid transit projects to other municipalities that had been considered more important in the region's strategic transportation plan (quoted in Bula, 2004a). However, the increased publicity for the Canada Line that was produced by this antagonism between the provincial and municipal or regional levels of government arguably allowed for increased public awareness of the project, as the debate was covered extensively by the local media (e.g. Boei, 2004).

A further public debate on the project concerned the route and alignment. The provincial government, the project management team, and the TransLink executive all advocated a grade-separated rail line down Cambie Street in Vancouver, which is a central traffic corridor with a wide boulevard and with several major destinations, such as shopping districts and hospitals (RAV Project Management Ltd., 2003). Many critics favoured a less expensive at-grade light rail system that would have followed an abandoned freight right-of-way along the more residential Arbutus Street (Krangle, 2003). Ironically, serious consideration of the light rail option is what led the local governments to return to the province's original recommendation (including the P3 requirement for provincial funding), since consultant reports on ridership for the light rail alignment were considerably lower than those that had been reported for a dedicated right-of-way along Cambie Street (Bula, 2004b). While the Canada Line has variously been referred to as "light rail" (e.g. Demetri, 2007), it is not light rail in the sense that this term is usually used in transportation planning circles, where light rail denotes at-grade systems in which tracks are embedded in paved motorways and trains sometimes or

always share the right-of-way with automobile traffic (Ruffilli, 2010: 2). The Canada Line is grade-separated along its entire length, either in tunnel or on elevated guideways (except for a short stretch at Vancouver International Airport, where the Canada Line runs at-grade alongside Grant McConachie Way. However, the Canada Line does not intersect or interfere with automobile traffic at any point along this segment of the line).

And lastly, the decision to use a grade-separated alignment along Cambie Street produced its own controversy. CLCO and TransLink had frequently stated that any tunnel through residential districts in Vancouver would likely be bored, in which machinery is lowered into the ground, a tunnel is excavated under the street, and the operation emerges at the other end without much disturbance to street-level activity except at the locations of the stations. However, as the P3 for the Canada Line incorporated a design-build component, the private sector proponents had the freedom to propose their own technology and construction methods if that would lower their costs without deviating from the project's essential elements. In fact, the winning private sector bid proposed to use the "cut and cover" method for tunnelling in residential Vancouver, in which a deep trench is exposed in the middle of the street, the tunnel's concrete structure is poured from the top, and then the road is closed and paved once the tunnel (or a section of the tunnel) is completed. Cut and cover is far less expensive than tunnel boring, but it is dramatically more intrusive to the daily lives of people and businesses in the area.

Neither CLCO nor TransLink made any initial public announcements that the final chosen method of construction was different than what had been suggested earlier. Instead, an image of the tunnel alignment was released to the public in January 2005 that showed a stacked tunnel arrangement, which would not have been possible to

construct through tunnel boring, and this prompted public declarations by local residents and political opponents that they had been deceived (Boei, 2005). Angry business owners along Cambie Street took the matter to court in an attempt to halt construction of the line, but they were ultimately unsuccessful, as their appeals went as far as the Supreme Court of Canada but were dismissed at that level. After the construction began, one store owner managed successfully to sue CLCO and TransLink for \$600,000, alleging that construction of the Canada Line ruined her business and caused her a financial loss of about \$1 million (see *Heyes v. City of Vancouver* 2009 BCSC 651). However, this ruling was overturned on appeal (*Susan Heyes Inc. (Hazel & Co.) v. South Coast BC Transportation Authority* 2011 BCCA 77), and further appeal was refused by the Supreme Court of Canada in 2011 (Ivens, 2011). A separate class-action lawsuit along the same lines is now in a difficult and ambiguous position.

In Sydney, a rail connection between the city's Central Business District and the international airport had been discussed since the 1950s (Jones, 2000: 14). However, infrastructure development stalled in Australia in the 1970s and 1980s (Cardew, 2003), and by the time the Sydney Airport Link was opened in May of 2000, it represented the first major extension to Sydney's rail network since the East Hills Line was completed in 1976 (Scardilli, 2000).

The Sydney Airport Rail Link (also previously known as the New Southern Railway) is a ten-kilometre tunnel connecting the East Hills Line of the CityRail urban rail network to Sydney's Central Business District. It comprises four independent stations and a fifth interchange station, and was constructed using a mix of bored tunnel and cut and cover methods. The Airport Link should be considered a technical achievement, as

it was, at the time, the largest tunnel ever bored by tunnel boring machine in Australia (Jones, 2000: 67).

The Sydney Airport Link project had several objectives. In addition to providing a direct rail connection between the airport and the city, the Airport Link allows trains originating from suburban stations on the East Hills Line to bypass the congested rail corridor at Central Station. This increased capacity for the rail network is often cited as being as important a motivator for the Airport Link as the actual connection to the airport (e.g. Kinhill Engineers, 1994), since the convergence of the various rail lines near Central Station was becoming problematic. Several subjects interviewed for this study, from both the private and public sectors, commented that achieving the benefits of increased capacity at Central was a primary objective of the plan for an Airport Link.

In addition, urban development has been a publicly-stated objective of the Airport Link from the project's inception. The area through which the majority of the line was built had very little residential and retail commercial capacity in 1990; it was mostly home to industrial development and underdeveloped brownfield land. Planning documents identified redevelopment of these areas (aptly referred to as Sydney's "central industrial area") as a priority for the Airport Link project (New South Wales, 1993: 40; Kinhill Engineers, 1994; New South Wales, 1994). Politicians in the state legislature frequently made reference to urban development goals as well: Bruce Baird, then Minister of Transport, argued that the Airport Link "would revitalise that area in terms of opportunities for medium-density housing" (Baird, 1992b: 7511). One interview subject recalled that the name "Green Square", which was originally intended for one of the Airport Link's stations but now also applies to the neighbourhood in which the station is located, was invented to make the area enticing to families who might want to live there.

By all accounts, then, one goal of the project was to allow improved public transportation to stimulate residential development along the Airport Link's route.

Proposals for the Airport Link were subject to significant public dialogue. Announcements from the state government about progress in planning for the rail connection to the airport were frequent in popular media for several years before the P3 contract was finalized. A public debate took place on the choice of heavy rail versus light rail modes of service delivery, with the government favouring heavy rail despite resistance from a vocal group of light rail advocates (e.g. Baird, 1991; Horrigan, 1991). Community groups were enlisted for support, including the Wolli Creek Preservation Society (Jones, 2000: 20) – a group that successfully lobbied for changes to the design of the M5 east freeway and whose members were later involved in a successful legal challenge to a toll road P3 in Sydney that set a precedent for Australian constitutional law (see *Truth About Motorways v. Macquarie* [2000] HCA 11).

In addition to public dialogue, the state government attempted to create an intergovernmental collaboration by requesting funds from the federal department of transport, but was ultimately unsuccessful. Because the federal and state governments were under different party banners at that time, it may have been that partisan politics, both on the part of the state and the federal government, contributed to the Australian federal government's refusal to contribute to the Airport Link project. This is certainly suggested by comments delivered in the state's Legislative Assembly (see Humpherson, 1994: 179 for example). This inability of the state government to form any kind of association with Canberra for support for the Airport Link is symptomatic of the New South Wales state government's failure to promote inter-organizational networks surrounding the project. As in the Canada Line case, issues of intergovernmental

relations in Sydney were therefore an important factor in the development of the Airport Link project.

The Airport Link project began in 1989, when an Australian development company called CRI first brought an unsolicited offer to the state government to connect the airport to the city by means of existing freight rail lines (Moore, 1990; Scardilli, 2000). Shortly after this, the state government approached Transfield, a larger development company also based in Sydney, to see if they could provide an alternative offer, which they did. It was quickly decided that CRI's proposal was too limited as it failed to solve the Central Station congestion problem, and that the Transfield proposal had too wide a scope as it intended to construct a new tunnel from the airport straight through the Central Business District and then under the harbour all the way to North Sydney (Larriera, 1991). In both cases, the proposals required considerable public sector funding, which was anathema to the state government as they had previously suggested publicly that the Airport Link could be built entirely with private finance (Lewis, 1990). The state premier at the time, Nick Greiner, contacted the two companies and suggested they collaborate on a compromise offer; this later proved to be a minor irritant to all parties involved, as the New South Wales Independent Commission Against Corruption (ICAC) initiated an investigation into impropriety in the tendering process that delayed the Airport Link project by about a year.

Fortunately for the Airport Link and for everyone involved, the premier and the government were eventually exonerated after a report by a mediator recommended they continue with the project as planned. Ironically, although the anti-corruption investigation was intended to protect transparency and accountability within government, the Independent Commission Against Corruption refused to release the mediator's final

report to me upon request under the state's Government Information (Public Access) Act. An account of the incident reported in Jones (2000: 21-22) leaves many questions unanswered, such as why mediation was required, and also why the mediator, former New South Wales Supreme Court Chief Justice Sir Laurence Street, was able to conclude that the negotiations between the state government and the private sector to develop the Airport Link ought to continue as intended. This opacity, combined with comments from several interview subjects who stated that there was no official tendering process whatsoever, suggests the absence of a formal, accountable, private sector competition for the P3 contract.

In the end, CRI dropped out of the project and Transfield partnered with French construction giant Bouygues, at Transfield's invitation, to form the Airport Link Company, which was a special purpose vehicle incorporated solely for the Sydney Airport Link Project. Transfield and Bouygues each invested \$8 million in equity and \$15 million through the sale of corporate bonds, for a total of about \$46 million, and provided a further \$300 million in finance through National Australia Bank (RailCorp, 2005: 5). The state government of New South Wales was required to provide \$900 million for the tracks and tunnels and for the interchange station at Wolli Creek (Morris, 1995b; 1996a), which instigated much partisan posturing in the state legislature as the government had previously promised no public funding for the project whatsoever. These figures are summarized in Table 2.

Capital Funding Contributions for Canada Line and Airport Link					
		<u>Canada Line</u> (Vancouver, Canada)		<u>Airport Link</u> (Sydney, Australia)	
		2011 Canadian Dollars (millions)	% of Total Capital	2011 Canadian Dollars (millions)	% of Total Capital
Public Sector	Federal Government	495	19.3	0	0.0
	Provincial/State Government	450	17.6	900	72.2
	Municipal Governments	32	1.2	0	0.0
	Transportation Authority	444	17.3	0	0.0
	Total Public Sector	1421	55.5	900	72.2
Private Sector	Partner 1 (equity)	44	1.7	8	0.6
	Partner 2 (equity)	44	1.7	8	0.6
	Partner 3 (equity)	44	1.7	0	0.0
	Subordinated Debt (corporate bonds)	0	0.0	30	2.4
	Bank Loans	659	25.7	300	24.1
	Total Private Sector	791	30.9	346	27.8
Other	Airport Authority	350	13.7	0	0.0
	Total	2562	100.0	1246	100.0

Table 2. Capital Funding Contributions for Canada Line and Airport Link.

The partnership agreement for the Airport Link was signed between the Airport Link Company and a state-level government corporation called RailCorp (then known as the State Rail Authority) that was in charge of rail operations for all of New South Wales. RailCorp would own the tracks and tunnels, and service on the line would be provided by RailCorp's own trains through their local subsidiary, CityRail. The Airport Link Company would own and operate the four independent stations for 30 years after they opened for service, after which time the entire asset would be transferred back to RailCorp. The Airport Link Company contracted the construction of the stations and the tunnels, as well as the construction of the interchange station at Wolli Creek, to the Transfield/Bouygues Joint Venture (RailCorp, 2005). Shortly after construction was completed, Bouygues asked to be released from the agreement, and Transfield purchased their share of the Airport Link Company for an undisclosed amount.

From the beginning, the plan was to repay the private sector's investment through premium fares charged directly to the Airport Link's passengers. Every iteration of the proposal included a plan for extra charges to passengers (e.g. Larriera, 1991; Coultan, 1992b). Since the service opened in 2000, passengers at the two airport stations have been paying both the regular CityRail fare and an additional "station access fee", which as of 2012 was in the range of \$12 – about 250% – above the regular fare component. These high extra fares have been a sticking point for all parties and stakeholders since the Airport Link opened (see Booz and Co., 2010 for example); however, they are the only form of revenue assigned to the private sector through the P3 contract. Since 2011, the station access fees for the two non-airport suburban stations

have been subsidized by the state government for all passengers, and this has resulted in a rise in patronage at those stations by 50-70% (Saulwick, 2011b).

Original patronage estimates for the Airport Link put daily ridership at 46,000 passengers per day, with a forecast rise to 65,000 daily passengers by 2013 (Kinhill Engineers, 1994: 1-3). These estimates were proven to be significantly optimistic after service began: after 3 months, the Airport Link averaged only 10,500 daily riders (Wainwright, 2000a). In November 2011, after 11 years in operation, Airport Link Company recorded its highest ever ridership levels at about 30,000 passengers per day (while public statements regarding patronage have not been made since 2005, this information was provided to me personally by an interview respondent familiar with the Airport Link Company). This indicates that the situation has improved substantially, but still has not even come close to meeting the original estimates.

Since ridership was so poor, and since fare surcharges were its only source of revenue, the Airport Link Company defaulted on a loan payment to National Australia Bank in November, 2000 – only 6 months after it began operating (Wainwright, 2000d). After Transfield (by then the sole parent company of Airport Link) refused to cover the payments, the bank foreclosed on the loan and appointed receivers, who later sold the company to Westpac, another Australian bank. Several interview subjects commented that the bank made a considerable profit on this sale, indicating that although ridership numbers were still nowhere near their original estimates at the time of sale, there were investors who believed the system would eventually be profitable.

These financial troubles of the Airport Link incited a bitter dispute between the state government and the Airport Link Company that took five years to resolve. The

Airport Link Company argued that RailCorp had allowed service on the Airport and East Hills Line to sink to a level below the minimum acceptable standards as set out in the P3 contract, and that this had significantly deterred potential customers from using the line. This included the number of trains passing through the Airport Link stations each day, how closely the trains kept to their schedule, how clean the trains were, and how new the equipment was. In addition, the Airport Link Company contended that RailCorp had not adequately advertised or promoted the Airport Link, and that this refusal to provide in-kind support contributed to the low ridership levels. Some of my interview respondents also suggested that labour union leaders, opposed to the P3 structure of the Airport Link which they saw as a product of anti-labour ideology, willfully sabotaged the smooth functioning of the Airport Link stations through theft of safety equipment and other activities. RailCorp and the state government, for their part, maintained consistently that the high fares for Airport Link – set by the Airport Link Company through the station access fees – were the sole cause of low ridership.

Both parties must have been reluctant to take the matter to court, because although it was not finally resolved until 2005, the dispute was settled without judicial intervention and without nationalization of the Airport Link by the state. A new financial agreement was crafted in which the Airport Link Company would continue to set and collect station access fees, but the structure of the revenue-sharing arrangement was altered so that the private partners would receive an additional \$145 million over the course of the concession. This compromise had the benefit of avoiding a direct compensation payment from the public sector to the Airport Link Company, which would have had immense political consequences for the state government. In addition, increased revenue potential for the private sector had the effect of improving the

financial value of the Airport Link Company, which is a benefit to the Airport Link Company and its investors.

The matter is now considered settled and my interview respondents from both the public and private sectors reported that the Airport Link Company currently enjoys a professional and amicable relationship with both the state government and RailCorp. This relationship was undoubtedly enhanced by the state government's decision in 2011 to subsidize the station access fees at the two non-airport suburban stations for all passengers, which as mentioned previously, led to a jump of at least 50% in patronage. As of 2012, the station access fees were still being charged directly to customers at the domestic and international airport stations, although several interview subjects appeared quite confident that the state government would eventually subsidize the fees for all passengers at these stations as well. As noted above, although fares have continuously risen since the Airport Link first opened for service in 2000, patronage has improved throughout this time.

In Chapter 3, governance failure was defined as a failure of a market-government collaboration to achieve specific policy objectives, within a normative framework justified by the policy's distributional outcomes. In the Sydney case, partnership with the private sector did not achieve the project's publicly-stated policy objectives; in fact, in addition to the failure to achieve the intended goals of the project, the Sydney Airport Link P3 resulted in unstable antagonism between the public and private partners, indicating a collaboration failure mode of governance failure, as well as negative distributional outcomes for residents of the Greater Sydney area and taxpayers in New South Wales in general.

As described above, the Airport Link had three main objectives: to provide a transit connection between Sydney's central business district and the airport, to relieve congestion at the Central Station rail junction, and to stimulate urban development in Sydney's southern industrial suburbs. As evidenced by the extremely low ridership levels, the Sydney Airport Link is not a popular transit option for commuting between downtown and the airport. The fact that, after 12 years, patronage was not quite half of what it was expected to be indicates that the policy objective of constructing a useful transit connection to the airport has not been realized. It is not useful to society, because it is so expensive that it deters potential riders – for groups of people travelling together, taxis have at times been more economical than riding the Airport Link (Knight, 2000). In addition, this public transit option is burdensome to the airport's 16,000 employees, who receive no discount and must pay full price on the Airport Link if they choose to use transit to get to work (Booz and Co., 2010). This has been especially onerous since the Airport Link concession agreement required the government to cut bus service to the airport (Saulwick, 2011c).

As for the other two objectives of the project: land development along the route has been slow (Cummins, 2006). This is an expected outcome of the low patronage experienced by the system. And although the Airport Link's tunnel does provide for increased capacity in the Central Station area of the urban rail network, this part of the infrastructure was entirely paid for by the public sector. The final P3 agreement delegated responsibility for the stations to Transfield (Railcorp, 2005), but responsibility for the tunnels was always in the hands of the government. In short, the Sydney Airport Link P3 did not achieve two of its three main policy objectives at all, and the third one –

increased capacity for the rail network – was achieved in spite of the partnership, not because of it.

The public and private sector partners have consistently blamed each other for the fact that patronage on the Airport Link has been well below any estimate for every year that it has been in service, with the private sector pointing to poor quality service and bad advertising in the early days of operation and with the public sector arguing that the private surcharges were too high. The public sector could have offered to improve service, it could have integrated the Airport Link's marketing strategy with publicity for its own CityRail network, and it could have offered to subsidize fares on a temporary basis or provide other incentives to promote ridership. The private sector could have reduced its short-term profit projections in order to allow for lower fares that would have encouraged more riders. However, these and other similar solutions would have required better collaboration between the public sector and private sector partners. This collaboration did not happen.

Once the Airport Link Company was declared insolvent, the government could have purchased the assets for a price that was only slightly higher than the capital investment provided by the private sector in the first place, according to several of my interview respondents. Having done so, they could have set the fares at the same level as the rest of the urban rail system, and therefore encouraged ridership. However, this would have required the state government to negotiate settlements with the private sector partner regarding the value of the assets, the transfer of ownership, and the transition to service integration with the rest of the publicly-run system. This would have represented a level of engagement and cooperation with the private partner that the public sector was clearly not willing to provide. The state was also not willing to acquire

responsibility for the assets or the service at the Airport Link stations, presumably because this would have encouraged a public perception that they were accepting responsibility for the financial and ridership failure of the system.

Instead, the state government's approach was to decline to participate with the private sector partner in resolving its patronage problems, and to allow the bank to foreclose on the Airport Link Company's debt. This event resulted in legal action from National Australia Bank, which then forced the state government into a position where it had no choice but to negotiate with the bank's receivers for a new P3 concession agreement. While the state's strategy up to this point had been to avoid engaging with the private sector, the bankruptcy of the Airport Link company placed them in a position where they were forced to negotiate, because of the legal partnership requirements stipulated by the P3 contract. According to interview subjects, whereas the struggling Airport Link Company had been in a desperate situation and was willing to negotiate, the bank was patient, had little to lose, and had deeper pockets, which meant that it would strike immediately with legal action and could afford to wait for the most favourable outcome. This course of action resulted in financial penalties for the public sector.

The Airport Link therefore qualifies as a governance failure, and more specifically, a collaboration failure. Because the partners were not able to collaborate sustainably, the governance arrangement did not realize its public service objectives of providing a useful rail transit option from Sydney's central business district to the airport and encouraging urban development in some of Sydney's underdeveloped industrial suburbs. Although the project did increase rail capacity on the urban rail network, this was an achievement of the public sector and not of the partnership.

The Canada Line, by contrast, and despite considerable controversy, achieved all of its stated policy objectives and maintained productive cooperation between the public and private sector partners throughout its development and into its operating period. The line was constructed as designed; it was completed on time and on budget (Yaffe, 2010); it was in use during the Olympics; it was partially financed and is operated by the private sector; and since it has met and surpassed all ridership forecasts (Hager, 2011), the Canada Line has achieved its functional objective as a major component of Vancouver's urban rail network. In addition, impending housing and commercial construction along the Canada Line's route means that the government's urban development objectives will soon begin to be realized as well (Sinoski, 2010). While the project did experience substantial conflict, this conflict did not prevent the project's objectives from being achieved. And while it is arguable that construction of the Canada Line produced unacceptable disruption to business owners and residents along the construction route, it would be difficult to conclude that this resulted in a governance failure, because a) the system remains popular as evidenced by high ridership levels, and b) a business owner who claimed her business was destroyed by Canada Line construction did not win her high-profile lawsuit, meaning that the courts have proclaimed the construction techniques of the Canada Line to be acceptable and legitimate. In other words, the verdict in the courts as well as in the court of popular opinion (attestable through ridership levels and opinion polls) appears to be that the Canada Line P3 can be normatively justified. Since it achieved its stated objectives and did so within the bounds of publicly-acceptable norms, the Canada Line cannot be considered a governance failure.

Although the Canada Line and the Sydney Airport Link are exceedingly similar cases, they do have a number of physical and operational differences that need to be addressed. Most prominently, the Sydney Airport Link uses a premium fare system to charge users extra fares directly, which results in significantly higher fares for use of the Airport Link than for similar travel on the rest of the rail network. These extra fares are the sole source of revenue for the private sector partner and serve to pay the cost of operating the service, repay the capital investment, and provide a return on investment for the operator's shareholders. When it opened, the Canada Line charged most users the same fares as they would have been charged for a similar trip on the rest of the system, except for travel beginning and ending on the airport arm, which was free, and except for cash fares paid for trips originating at the airport, which incurred a \$5 surcharge.⁵ This surcharge was intended to act exactly like the station access fees in the Sydney case: it has been exclusively returned to the private partner as a revenue-generating device. However, the key difference between the two extra charges results from the fact that in Sydney it is the private sector who sets the price, which means it is virtually unlimited. In Vancouver the public sector sets all prices, including the airport premium (known as the YVR AddFare), and this extra charge is further limited by the fact that the public sector transportation authority is prohibited from profiting by it (YVR, 2005). High fares on the Sydney Airport Link undoubtedly contributed to lower patronage levels, so the arrangement that allowed the private sector to set the station access fees is a crucial factor in understanding how governance failure occurred in the Sydney case.

⁵ Fare reform for Vancouver's entire public transit system was studied in 2007 (Austin, 2007) and is expected to be implemented in 2013. This could potentially included changes to the Canada Line's fare structure.

In addition, there were some jurisdictional differences that created slightly different political conditions in Sydney from those under which the Canada Line was conceived. For one thing, the local transportation authorities in the two cases had very different political mandates (although highly similar operational functions). TransLink in Vancouver is a mainly independent organization that is somewhat protected from political intervention. It sets its own priorities and long-term strategic planning, controls its own budget, and enjoys some independence in selecting its executives (though not its board of directors). It is, of course, ultimately a statutory creation of the province and is therefore subject in the end to the will of the provincial government; this is best exemplified by the restructuring of TransLink's board of directors that was imposed on it by the province in 2007. The provincial government also has legislative control over TransLink's revenue sources, which allows it to use less coercive measures to negotiate with the organization, as it did when it cancelled the parking stall tax in 2004 (Steffenhagen, 2004) or when it announced the P3 financial architecture of the Canada Line when that project began. In Sydney, RailCorp is operationally independent, but over the last 15 years it has been subject to multiple restructuring and rebranding efforts by the state government. The state government has also replaced the transportation authority's executive officers, especially the chief executive, on numerous occasions. Individuals interviewed for this research indicated overwhelmingly that during the Airport Link project's development the transportation authority was entirely dependent on the state government for direction. This, again, is symptomatic of the New South Wales state government's general inability to sustain the kind of inter-organizational network that might have prevented a governance failure. This will be examined in more detail in the next chapter.

And lastly, the Sydney Airport Link was built through mainly industrial areas, in which the state was intending to promote urban development (Kinhill Engineers, 1994). Urban development has been a stated goal of the Canada Line and its construction as well (see RAV Project Management Ltd., 2005b: 6 for example), but the fact remains that many areas in which the Canada Line construction took place, such as the downtown core, the mixed-use residential and commercial area known as Cambie Village, and the shopping district in the city of Richmond, were at a more advanced stage of development than those of the Sydney Airport Link. This allowed for disturbance to residents and business owners in the Vancouver case that was not very likely to occur in Sydney in the areas through which the Airport Link was built. However, even though the conflict that occurred in Vancouver over construction-related disruption to local businesses was unique to that case, the way in which it was handled by the project management firm known as CLCO provides an informative example of conflict mitigation to prevent governance failure that would not have been possible for the Sydney project and its participants.

Other commentators have reviewed both the Canada Line and the Sydney Airport Link, and they have not all reached the same conclusions regarding success and failure. In the case of the Canada Line, in addition to technical articles on construction techniques, there have been a number of academic pieces that have appeared since it was announced. Many of these have only made passing commentary about the P3 aspect of the project (e.g. Hatzopoulou and Miller, 2007; Vining and Boardman, 2008), or have concentrated on very specific issues like racial discrimination among construction workers (Shantz, 2011), but there have been several works that have focused on the Canada Line as a case study in the complex relationships of governance.

These studies have made important contributions to our understanding of P3s in general and of the Canada Line's position in the greater political context of governance; however, the story is incomplete as it has been related to date.

Siemiatycki (2006; 2007) and Hutton (2012) both argue that the use of a P3 arrangement for the design, procurement, and operation of the Canada Line has and will continue to increase conflict, both between the project's partners and between the government and the general public. As Siemiatycki (2006) sees it, the P3 arrangement presents an inherent contradiction: P3s should enhance responsible governance practices by encouraging competition between non-political private sector actors; however, private sector competition requires trade secrecy, which undermines accountability and transparency. Although commercial confidentiality is considered necessary for allowing P3s to operate as intended, Siemiatycki (2007) finds that confidentiality privileges can be abused. In the case of the Canada Line, according to Siemiatycki, this resulted in decreased legitimacy through an exaggeration of the financial benefits and probability of success (both financial and ridership) of the line, and led to feelings of disenfranchisement among stakeholders.

Hutton (2012) argues that the Canada Line project was from the beginning a tenuous coalition of unwilling partners, each jockeying for position in an arena where the provincial government maintains a stranglehold on decision-making capability. The creation of the project management corporation CLCO, therefore, is an institutionalization of this conflict, which according to Hutton manifested itself most palpably in the ordeal that occurred early in the project as the city of Vancouver, TransLink, and Metro Vancouver alternately voted for and against approval of the Canada Line. For Hutton, the traditional powers of the provincial government and its

constitutional superiority over local authorities mean that contractual arrangements like P3s, where provincial authority is less explicit and where government organizations at different political levels are forced to maintain the appearance of cooperation, will amplify conflict between these actors.

Other authors have claimed that the P3 aspect of the Canada Line did not increase conflict, either between P3 partners or between government and the general public. Regeczi (2008), in a study comparing P3 and non-P3 infrastructure in Canada and Hungary, finds that avenues of communication between network participants in P3s are not necessarily obstructed. What's more, Regeczi argues that this free-flowing communication, along with the fact that the government partner in a P3 can maintain a central position in the network, means that accountability, transparency, and legitimacy can be preserved in P3s and that this was the case for the Canada Line.

Cohn (2008) takes the middle ground. He contends that conflict was mitigated in the case of the Canada Line by the fact that much of the political aspect of the project was removed. This is because the use of a P3 arrangement changes the rules of the game, by delegating more power to apolitical, technically expert, bureaucrats. For the development of the Canada Line, according to Cohn, the Liberal government in British Columbia intentionally selected a P3 arrangement in order to push a capital-heavy infrastructure building agenda at the same time as they intended to develop a low tax, low spending, small government image. While the political executive maintained control as it ultimately decided which projects to procure as a P3 and which not to, the power of the bureaucracy was magnified by the contractual nature of P3s – combined with a deliberate framing of policy decisions as a choice between having a P3 project or not having a project at all. By redirecting decisions to the bureaucracy in this way, the

political level could be removed from the narrative of the development of the Canada Line; however, it also reduced the legitimacy of the project as unelected technocrats were given decision-making capabilities that they could exercise beyond the reach of public discourse.

As I will show in the next three chapters, this analysis is incomplete. Both Siemiatycki's focus on a small group of disgruntled business owners and Hutton's assessment of CLCO as an institutionalization of conflict are unfortunately narrow views that do not capture the bigger picture of the network of interaction between participants in the Canada Line project. An alternative viewpoint would be that the network of actors created for the Canada Line was a complex and expertly-managed organization of interaction that effectively suppressed conflict and delivered a product that has been and continues to be extremely popular. This is especially evident when the Canada Line is compared to a similar project that experienced governance failure, such as the Sydney Airport Link, in which conflict was unquestionable and legitimacy was widely disputed. In fact the participants in the Canada Line, and especially the public sector that Siemiatycki and Hutton are so critical of, managed to mitigate participant conflict that could have proven disastrous. This is evidenced by the outcomes in the case of the Airport Link.

Likewise, Regeczi's analysis that the Canada Line did not reduce channels of communication, and therefore overall accountability and legitimacy, is also incomplete because he does not take into consideration the agency of the public sector actors who endeavoured to make this possible. As with Siemiatycki's and Hutton's arguments, Regeczi lacks the comparison between the Canada Line and a similar case that experienced governance failure that would allow him to examine the factors that enabled effective communication and network interaction in the case of the Canada Line. Cohn's

analysis, while astute, suffers from the same problem: he sees the removal of the political level as an unfortunate loss of legitimacy, whereas by comparison to a case like the Sydney Airport Link it becomes clear that this is likely what prevented the Canada Line from descending into a scenario of governance failure.

Like the Canada Line, there is only a small selection of academic scholarship available regarding the Sydney Airport Link. Several reports consider the Airport Link in passing while commenting on greater political issues surrounding the use of P3s in Australia (e.g. Searle, 1999; Cardew, 2003; Watson, 2003). Lilley and de Giorgio (2004) review the Airport Link case and conclude that “failure” was due to incorrect ridership forecasts and poor contract design, but they do not elaborate on how these errors came to be committed or how the dynamics of interaction between the partner organizations may have contributed to outcomes. Ng and Loosemore (2007) present the Airport Link as a case study in risk management, but again they do not consider the internal mechanisms of the partnership arrangement.

Early on, before the contract was officially signed, Walker (1994) published an in-depth analysis of the financial arrangement of the Airport Link. This report, which was widely cited in the news media at the time (see Morris, 1994b for example), concluded that the deal unfairly disadvantaged the public sector. However, Walker did not have access to the official contract details and was working solely with a preliminary feasibility study. In addition, many of my interview respondents, from both the public and the private sector, commented that Walker’s analysis was incorrect. This is corroborated by the fact that the original private sector partners did not realize the fantastic gains at the financial expense of the government and taxpayers that Walker’s study predicted they would. Although the government did end up contributing more money than it had

intended to, and although many private investors did turn a profit on various aspects of the project, Walker's analysis of the relationship between the actors did not turn out to be correct, and his predictions of the financial outcomes did not materialize as he envisioned.

In short, what is lacking from the existing body of academic literature is a study that analyzes the networked interactions in a public-private partnership to try to determine if certain relationships or mechanisms can become causal factors for governance failure. The best way to do this would be to compare a P3 project that resulted in a governance failure with a similar project that did not, thereby isolating the important causal factors as best as possible. To date, this has not yet been done. In the next three chapters, I begin to fill this gap by presenting three methods of strategic public sector policy leadership that were used in the case of the Canada Line to prevent governance failure. These methods were not employed in the case of the Sydney Airport Link, and as will be seen presently, this contributed to the divergent outcomes in the two cases.

Chapter 5.

How to Avoid Governance Failures: Robust Policy Networks

In the present climate, networks are crucial to the formulation and implementation of public policy. This is because, in the 30 or so years since governance arrangements have become popular, much responsibility for policy has already been delegated to autonomous public sector organizations, to state-owned corporations, and to private sector entities. In many sectors, governments would be ill advised to ignore the input or the demands of these other actors, because doing so can lead to governance failure. On the other hand, as the originator of public policy and the ultimate authority for statecraft, the public sector has a responsibility to participate as a key player in policy networks. In the current era, states must balance authority and control with the sharing of responsibility among state and non-state actors (Atkinson and Coleman, 1992: 155).

In a P3 project, the public sector in general (and especially governments in particular) can make significant efforts to prevent governance failure by managing the policy network in which the P3 operates. This includes not only active participation as a full member of the network and direct efforts to strengthen overall cohesion within the network, but also deliberate positioning as an ultimate authority in the policy area. In fact, in the case of the Sydney Airport Link, the state government of New South Wales

completely ignored any potential policy network and attempted to implement the Airport Link P3 without stakeholder collaboration. They did not encourage cooperation among the various interested groups in the local urban transportation policy network, and the project suffered for it – first with extremely low ridership and then with financial disaster and a protracted legal conflict between the public and private sectors. In the case of the Canada Line, the provincial government of British Columbia promoted and manipulated their associated policy network expertly, which helped institutionalize cooperation and thus prevented a governance failure from happening.

From the beginning, the government of British Columbia strived to achieve a cohesive and functional policy network for the development of the Canada Line. In a remarkable display of foresight, the government assembled representatives of all of the public sector entities that would have an interest in participating in a rapid transit extension to Vancouver International Airport and to the suburb of Richmond, and created a steering committee in 2002 to oversee the project definition phase. This steering committee included the CEO and the Director of Planning of the regional transit authority, TransLink, as well as representatives from the provincial Ministry of Transportation, the federal government's Western Economic Diversification branch, the federal Ministry of Transportation (Transport Canada), the regional metropolitan council of Greater Vancouver, the Vancouver Port Authority, the City of Vancouver and the City of Richmond, and Vancouver International Airport (RAV Project Management Ltd., 2003: 28). Well before the private sector was ever engaged, the relevant public sector organizations in British Columbia's transportation policy network were already interacting and communicating on a united vision for the project.

Furthermore, the Canada Line project exhibited exceptional outreach to the general public at every stage of the project's development. Four major rounds of public consultation occurred: during the project definition phase in 2003, during the pre-design phase in 2003-2004, and twice during the design phase in 2005 (RAV Project Management Ltd., 2005c). Representatives from local advocacy groups were frequently directly invited to participate in events, and the Canada Line's project managers participated in other groups' events: in one example, CLCO sent their own representatives to open meetings held by the Environmental Youth Alliance, a local non-profit community sustainability group (Cornerstone Planning, 2003; InTransit BC, 2006). In addition, there was a separate public consultation for the airport arm of the project in 2005, as well as further public outreach conducted as part of the private sector's Best and Final Offer (BAFO) bid (RAV Project Management Ltd., 2005a, Schedule 6). While these last two were not conducted by the government or its agencies, it is likely that the culture of public consultation that was adopted early on by the public sector inspired these other organizations to follow suit.

In addition to outreach to the public, the Canada Line promoted reciprocal communication with the business community. Business liaison committees were created in Vancouver and in Richmond, in which representatives from various local business improvement associations, the Canada Line project management company, municipal governments, and the private sector P3 partner met to discuss strategies to support businesses disturbed by the construction of the Canada Line (Sanatani, 2007). Despite the fact that some business owners were not satisfied with these efforts (culminating, as described earlier, in major legal action), business associations continually praised the efforts of the Canada Line's business liaison program and denounced reports of friction

between the project and the business community as “misleading” (Bellett, 2007a). One interview respondent related a story of a community-based petition to change the recommended location of the Yaletown station (one of the stations located on the edge of Vancouver’s downtown core): the Canada Line project management company, in response to what turned out to be a substantial amount of support for this petition, invested considerable money in examining the possibility of relocating the station, going as far as to commission an engineering report and a cost-benefit analysis. After reading the results of the report, which revealed the new location to be significantly more expensive, the community relented and the station was built in the originally designated location. While the petitioners did not ultimately get their way in this example, my interview respondent claimed that the Canada Line project managers took their request “very seriously”, held extra consultations, and commissioned extra reports to satisfy their concerns.

Again, while some of these efforts may not have been directly initiated by the provincial government, the multilateral cooperation that was prioritized early on by the government undoubtedly contributed to a culture of collaboration later in the life cycle of the project. All of my interview respondents commented that not only was public outreach for the Canada Line exceptionally high for a project of this nature, but that communications between and relationships among the various stakeholders – including the business community – was better than expected, with lower levels of inter-organizational friction than they had seen on other projects in their experience.

In addition to directly fostering inter-organizational communication and information sharing, the British Columbia provincial government did not attempt to suppress any controversy or debate surrounding the Canada Line project. The polarized

tone of the debates, in which expert opinions clashed and elected politicians alternately voted for and against the project, ensured that it received prominent coverage in the local media (see Bula, 2003b; Lee, 2004b for example) and the provincial government did nothing to silence it. Public statements in this time period were often dramatic, such as comments from the Chair of TransLink after one particularly difficult meeting that the Canada Line “is dead now...This is a huge lost opportunity. We gave away a billion dollars” (Boei, 2004).

It is true that the multi-lateral institutional composition of the Greater Vancouver metropolitan region facilitated this debate. Then, as now, the provincial government was not the only government with jurisdiction over transportation in Vancouver. The City of Vancouver and the City of Richmond are active players in the local transportation policy network. Additionally, the mayors of the 21 municipalities in the metropolitan region sit on a council (then called the Greater Vancouver Regional District, now called Metro Vancouver) that contributes greatly to policy decisions in this area. And the local transit authority, TransLink, was at the time governed directly by Metro Vancouver mayors and city councillors and had its own internal policy objectives to create and achieve. So in this sense, the provincial government was constrained by other legitimate players who controlled transportation policy direction in the region to some extent.

However, this perspective is incomplete. For one, it is a well-known outcome of Canadian constitutional jurisprudence that provincial governments have complete control over cities within their jurisdictional boundaries. Some provinces have wielded this power in its ultimate capacity, creating and eliminating cities and municipal governments as they see fit. Ontario and Québec, especially, have not shied away from this tactic even in the face of substantial public animosity (Kushner and Siegel, 2003; Mévellec, 2009). The

relationship between Canadian provinces and their municipalities is complex and involves a host of political and administrative issues, such as the downloading of responsibility for service delivery to local governments with a concurrent elimination of their policy authority; nonetheless, provincial control over municipal governments is widely considered politically legitimate, and municipal governments are therefore considered weak by Canadian legal and constitutional standards (Sancton, 2012).⁶ If the British Columbia provincial government had wanted to avoid a public debate on the Canada Line at the local level, it could easily have stifled the regional or municipal governments by threat or by direct force. Instead, it allowed the debate to carry on in full view of the local media, even to the point where the actors involved believed the Canada Line project would be cancelled in its entirety (Boei, 2004).

In addition, the provincial government acted as the sole negotiator with the federal government. Interview subjects unanimously commented that they and their organizations had little or no contact with the federal government at any point in the Canada Line's development process. Through a hardline negotiation strategy, Premier Gordon Campbell lobbied the federal government over two years to increase its financial commitment to the project from \$330 million to \$495 million (O'Neill, 2004). This is a testament to efforts at the provincial executive level, since in the end the federal government was the single biggest funding contributor for the project (hence the name "Canada Line", which was applied at the federal government's request). While the ruling party in British Columbia and in Ottawa at the time were both called the Liberals, the two

⁶ The City of Vancouver is unusual in that it is governed by the Vancouver Charter, a provincial statute that delegates specific authority to Vancouver's city council for a number of policy areas. However, the Charter is legislative, not constitutional, and can be altered unilaterally by the province, as has been done on numerous occasions (e.g. Lee, 1988; Skelton, 2004; Lee and Rolfson, 2009)

parties are not organizationally or politically connected, and the provincial government's efforts to secure federal funding should be viewed as the result of effective negotiation.

This is a typical outcome of intergovernmental relations in Canada. As mentioned above, the provinces have frequently asserted their constitutional authority over cities, which has resulted in municipal governments that are largely subordinate to their provincial masters, and a federal government that has had little success in directing policy at the urban level in Canada, at least in terms of direct legislation and programming. However, the federal government has, especially since the 1990s, used its powers of spending under the aegis of fiscal federalism to support infrastructure development in Canadian cities (Stoney and Graham, 2009; Sancton, 2012: 308-310). In other words, the Canada Line developed under some dynamics that are standard for Canadian urban governance: the municipal councils were completely subordinate to the provincial government; there was very little direct contact between the federal and municipal levels; and the federal government, after intense negotiation with the province of British Columbia, agreed to a substantial financial investment in a municipal infrastructure project – although this was framed as a contribution to regional economic development. In the end, the provincial government played these dynamics to its own advantage, but in doing so it fostered an arena of collaboration between the various levels of government.

However, in promoting a cohesive policy network for urban transit in Vancouver, the provincial government did not presume to dictate policy directly or to command the various participants to act under specific directives. Instead, the province maintained the illusion of a hands-off approach, mainly using pressure, suasion, exhortation, and carefully veiled threats to achieve the results it desired. For example, not only did the

provincial government not stop the local-level political debate on the Canada Line, it categorically refused to enter the debate in its full capacity. In the provincial legislature, there is virtually no discussion of the topic before 2003, which is conspicuous as there would have been a lot of planning in the years 1999-2003 when TransLink was getting off the ground and a Richmond-Airport-Vancouver rapid transit project was becoming a real priority. From the time it was elected in 2001, the Liberal government continually disavowed any responsibility for decision-making for the Canada Line. In the legislature, Premier Campbell frequently referred to the Canada Line as a TransLink project, not a provincial government one, and definitely not an official part of the 2010 Winter Olympics bid (e.g. Campbell, 2004: 11310). Kevin Falcon, the provincial Minister of Transportation during most of the Canada Line's development, argued that the province's role was strictly as a funding body and no more – and that the province was therefore not liable for any decision-making, access to information, cost overruns, or negotiation with the private sector (Falcon, 2005: 1283). In October 2009, after the Canada Line had opened for operations, then Minister of Transportation Shirley Bond told the legislature that the provincial government did not have a single full-time employee dedicated to the Canada Line, whereas it had at that point 12 full-time employees dedicated to the region's next big transit project, the Evergreen Line (Bond, 2009). These sentiments were reiterated in statements that provincial politicians made to the press during this time as well: when asked to comment on a regional-level vote to discontinue development of the Canada Line project, Kevin Falcon told *The Vancouver Sun*, "It's their decision. We'll move on." (Boei, 2004).

The provincial government also refused to interfere with the governance of TransLink during this time period. As mentioned previously, TransLink's board of

directors at the time was composed of mayors and councillors drawn from a weighted average of representatives from the Metro Vancouver regional city councils. According to the law that established TransLink (*Greater Vancouver Transportation Authority Act* 1998, s.8), the provincial government had the right to appoint three members of its own to TransLink's board as direct representatives of the province; however, from 1999 until the law was amended in 2007, these positions were never filled. It is typical of the provincial government's modus operandi with respect to the Canada Line that they never appointed provincial representatives to the regional transportation authority's board of directors – even when doing so would have ended the divisive debates that were perpetuated at this level during the development period of the project (several votes were close enough that three partisan board members could have tipped the balance).

However, in a demonstration of the province's total legislative dominance of TransLink, the provincial government amended TransLink's statutory framework in 2007, *replacing its entire board* with independent directors in a restructuring that prevents local politicians from becoming directors. The new law, the *South Coast British Columbia Transportation Authority Act*, decrees that eligible appointees to the board of directors must not "hold elected public office of any type" (s.170). It is extremely telling that the provincial government held this kind of legislative and coercive power over the transportation authority but decided not to use it to force a conclusion to the public debate over the Canada Line, even when it is clear from later actions that this could have immediately supplied the province with a favourable outcome. When they finally exercised their statutory powers, the provincial government did not replace any of TransLink's executives. This move ensured continuity of personnel at the highest levels of responsibility within the organization, but still enabled the government to remove

interference from local governments from the management of regional public transit. These efforts represent a masterful display of political astuteness that allowed the transit authority and the local governments to interact freely and conduct a high-profile public debate during the development of the Canada Line, while at the same time deflecting blame away from the provincial government. Once the debate had been resolved and the Canada Line contracts had been signed, the government moved swiftly to restructure the organization.

Furthermore, despite its desired image of a decision-less, powerless, hands-off funding source, the provincial government expended considerable energy in directly manipulating the policy network and the Canada Line project from its inception. To begin with, executives at TransLink and CLCO were selected not only as highly skilled and experienced professionals, but also as well-connected industry insiders who were personally networked with senior executives across the private sector. Many of them were experienced with P3s and sympathetic to the provincial government's position. Several of these individuals went on to work for the private sector after the completion of the Canada Line, and some were directly hired by SNC-Lavalin, the private partner in the Canada Line P3. This is a testament to their merit as professionals and technical experts, as well as to their personal connections within the network. Several of my interviewees confirmed that many of the high-level figures in the Canada Line project were personally familiar with each other, as they had worked together on Vancouver's previous rail extension, the Millennium Line, or on other projects.

Secondly, the province made development as a P3 a strict condition of their funding contribution for the Canada Line. They repeatedly – but indirectly – manipulated the debate process by declaring no provincial funding would be available for any

alternative technologies (such as light rail) or alternative financing structures (such as raising property taxes) and by offering to take over the project in its entirety if TransLink decided not to proceed. They also increased their contribution to allow the project to proceed as a P3 after the Best and Final Offer bid came in lower than expected (Bula and Beatty, 2004).

Third, the province gave Partnerships BC, a provincial Crown corporation whose role is to promote and facilitate P3 development of infrastructure in British Columbia, administrative oversight for the P3 aspect of the Canada Line's development. This is stipulated in the province's funding agreement for the Canada Line project (British Columbia, 2005). However this was probably just posturing, as multiple interview respondents, including several senior officials, commented that Partnerships BC's role in the Canada Line project was extremely minimal, especially compared to their influence over other P3 projects in the province. Nonetheless, whether they exercised their authority or not, Partnerships BC was technically given "watchdog" status over the P3 development process for the Canada Line, and this is another example of how the provincial government asserted its authority over the project without resorting to direct intervention. In a similar, and more blatant example, the provincial funding agreement contains a clause reminding the participating organizations that the provincial government continues to be the final legal authority over the Canada Line and can overturn any element of the project that falls within its legislative jurisdiction (British Columbia, 2005: 36-37). Again, this clause was never used, but it clearly gives the province the appearance of supreme authority.

Fourth, the province made certain that the Canada Line would not be seen as an Olympics project. In addition to statements made in the legislature and to the media as

discussed above, the provincial funding agreement made the relationship explicit: “The concession agreement must stipulate that the concessionaire may not use ‘2010’ or any Olympic mark, or link the project in any way to the 2010 Olympic games in its communications or advertising, unless separately licensed or otherwise approved in writing by the Games Committee.” (British Columbia, 2005: 18). These efforts ensured that all public debate regarding the Canada Line would be confined to that issue and would not allow any controversy surrounding the Olympics to have an influence.

Fifth, the provincial government actively prioritized the Canada Line over other projects, including the Evergreen Line to the north-eastern suburbs and the proposed rapid transit line to the University of British Columbia – both of which were designated by TransLink and Metro Vancouver as higher priorities than the Canada Line. Despite publicly stating otherwise, the Canada Line may have been prioritized in part because of its usefulness for the Olympics; however, my interview respondents suggested that the Canada Line was sent to the front of the queue because it was viewed as financially sustainable through high initial ridership levels, and was therefore a good candidate for a public-private partnership. Prior to 2001, all transit infrastructure had been funded 100 percent by the provincial government. The Canada Line was the first major public transit project to be built after the Liberals were elected to the provincial government in 2001. It is therefore likely that the Canada Line was prioritized because it provided the provincial government with a flagship project through which it could demonstrate the application of public-private partnerships. This would have been useful, as Cohn (2008) has argued, to enable the provincial government to appear to be an infrastructure builder without being perceived as a big-government spender.

And lastly, the province created Canada Line Rapid Transit Inc. (CLCO) as an independent project management company with oversight responsibility for the project, and gave it substantial authority over the design, procurement, and financial close of the P3. Several interview subjects from several different organizations commented that this arrangement forced TransLink to accept policy decisions it would otherwise have wanted to alter. According to interviewees, if TransLink had been solely responsible for Canada Line, it would have managed the project very differently: more money would have been spent on station design, extra stations, access to the system, connectivity with existing infrastructure, and a variety of other items related to the public service aspect of the Canada Line during its operating period. This is because, as the organization responsible for the functionality of the Line within the larger transportation network, TransLink was more concerned about the operating period than the construction period. However, the terms of the arrangement with the other network participants, including the provincial government, the Vancouver Airport Authority, the private sector, and CLCO, TransLink was compelled to compromise. This compromise and cooperation was institutionalized by the creation of CLCO and by the P3 structure of the project.

Many external actors publicly recognized the provincial government's position of authority over the Canada Line. According to one high-ranking official, the private sector consortium that was to become the Canada Line's P3 concessionaire refused to sign the concession agreement with CLCO or TransLink, even though these organizations were fully authorized to close the deal. The private sector insisted that the provincial government sign the document. Likewise, the second lawsuit against the Canada Line, in which the owner of a business located along the construction route sued the Canada Line and the City of Vancouver for loss of business due to construction disturbance,

failed because the courts recognized the statutory authority of the government to create a nuisance in the interests of the greater common good (*Susan Heyes Inc. (Hazel & Co.) v. South Coast B.C. Transportation Authority*, 2011 BCCA 77, para 151-164). Despite its desire to be perceived as a neutral financial guarantor and nothing further, the provincial government acted, and was accordingly recognized, as a responsible and active authority over the Canada Line.

Additionally, by all accounts, the involvement of the Airport Authority in the project was crucial to its success. All of my interview respondents who were familiar with the early (i.e. pre-2002) stages of the Canada Line agreed that it was unclear if the project would go ahead as a Richmond-Vancouver transit line, but as soon as the Airport Authority expressed an interest in funding an airport connector, the concept suddenly became much more viable. As a major funding partner, the Airport Authority owns all of the infrastructure on Sea Island (the island where the airport is located) as well as the Bridgeport interchange station. It has exclusive commercial rights over all retail and advertising in its stations, as well as special consideration for parking along the airport arm of the system, so as not to compete with its airport parking revenue. The Airport Authority is a not-for-profit organization, but it is not a Crown corporation; when I asked Tony Gugliotta, Senior Vice President of Marketing and Business Development for the airport, to assess the airport's relationship with the private sector partner for the Canada Line, he was quite insistent that the Airport Authority *is* a private sector partner within the Canada Line partnership.

Interview respondents also commented that strong local political champions, like Richmond Mayor Malcom Brodie and former Vancouver Mayor Larry Campbell, were crucial to the project's becoming a reality. The fact that the province was willing to work

with multiple actors, including local politicians and the airport, and to take their concerns seriously, is a testament to how much the provincial government valued the network and its participants. When asked about the involvement of the City of Vancouver, for example, many interview respondents commented that the City was treated as a full project partner, to the extent that both the City of Vancouver and the City of Richmond were invited to participate in the procurement phase, which was unusual. This is especially intriguing considering that the City of Vancouver provided a very small capital contribution (around \$30 million, mainly for the construction of an extra station) and that the City of Richmond did not contribute any capital funding at all.

Admittedly, the majority of the province's actions in fostering and managing an effective policy network occurred before the project's financial close with the private sector. After the contracts were signed, collaboration was mainly either stipulated by contract or managed independently by CLCO. However, the ease with which the project was managed by the terms of the P3 contract and by the project management activities of CLCO is a direct result of actions taken by the province during the design and procurement phase to secure a functioning and effective network of participants. With a robust policy network like the one the province created and fostered, and with a recognized supreme authority in the provincial government, the project was able to stabilize, and the potential for further conflict was minimized.

In Sydney, the New South Wales state government did not pursue the same course of action with respect to the Sydney Airport Link as the British Columbia government did with the Canada Line. Conversely, as will be elaborated below, throughout the design, procurement, and even into the operating phase of the Airport Link project, successive governments of New South Wales persistently ignored any

potential policy network participants, did not foster collaboration, and attempted to manage the project alone but without regard for other actors who had a vested interest in the project and without effective displays of authoritative leadership. Although the Airport Link project was technically under the authority of RailCorp, the state government intervened throughout the course of the project's development and many of my interview subjects reported that organizational boundaries between the Ministry of Transport and RailCorp were not respected. This resulted in a poorly designed P3 contract, a financially unstable private partner, and a highly adversarial and partisan approach to the entire project that permitted a protracted and costly legal dispute to occur between the government and the private sector. Ultimately, the Sydney Airport Link resulted in a governance failure. This is directly attributable to actions (or better stated, inactions) taken by not one but by two different state governments of different political parties.

To begin with, the Sydney metropolitan region does not have any form of institutionalized collaboration among municipal councils. As a consequence, cooperation or alignment among local governments is a responsibility of the state government. In 1990, when the Sydney Airport Link project was initiated, there were more municipal governments in the region than there are now, as municipal mergers have been employed, ostensibly to improve economic and bureaucratic efficiency (Dollery et al., 2008). However, throughout the development of the Airport Link, no attempts were made to unite the interests of local councils.

In fact, several interview respondents commented that the local governments were either deliberately shut out or otherwise completely ignored. One interview subject told me that the city councils were "useless" and cooperation with them would have been pointless. Another interview subject claimed that the City of Sydney was very much

against the extra fares that were proposed (and are still in use) on the Airport Link, but that their concerns fell on deaf ears; this same respondent told me that the city council of Botany Bay (the area that contains Sydney International Airport) was highly in favour of an airport link but that no one considered their support to be necessary or desirable. The message appears to be that although municipal councils seem to have voiced concerns or preferences, their input was not validated in any way by the state government, and so they were left out of the process. There is no official document or news report that provides information on any activity having to do with the Airport Link that was performed by a municipality.

Likewise, the state did not manage to get the federal government to participate in the project, either politically or financially. In all likelihood, this was due to partisan reasons, since at the time the Airport Link was under development, the New South Wales state government was a Liberal/National party coalition, while the federal government was under the Labor banner (and later, when the Airport Link was under construction and after it opened, these positions were reversed). Nevertheless, the state government's strategy was apparently not to negotiate, but rather to ask for money repeatedly from the federal Minister of Transport, and then to get denied several times, which they may have viewed as an effective way to exploit partisan differences to shame the federal government and build sympathy for their own party. However, from a reading of Hansard and news reports from that time period (see Morris, 1994a for example), this tactic does not appear to have worked, as the federal government staunchly refused to get involved in the project and the New South Wales Coalition government was subsequently voted out of office at the next state election. Following this, these dynamics of non-cooperation between the state of New South Wales and the federal

government continued when the state government was taken over by the Labor party and the government in Canberra had switched to Liberal.

These outcomes are not entirely surprising, as federal/state/municipal interaction is not automatic in Australia. Intergovernmental relations in Australia, unlike in Canada, is highly adversarial, especially in the last 20 years, in which there have been significant efforts by the federal government to centralize national policy in various areas of concurrent constitutional powers (Hollander and Patapan, 2007). Although there has been some effort at increased intergovernmental cooperation since 2001, historically Australian federalism has been marked by “suspicion and hostility” (Painter, 2001: 145). Even in times when party labels are in alignment, states have better chances at cooperation with each other than with the Commonwealth government (Tiernan, 2008: 131). This would make federal-state collaboration much more difficult to achieve in New South Wales than federal-provincial collaboration was in British Columbia. Moreover, Australian cities are entirely subordinate to their state governments, and there is no tradition of federal intervention in municipal affairs (Gleeson, 2001: 141). This means that any involvement of municipalities in the planning of the Airport Link would have required active engagement by the state government – which as has been discussed above, was not attempted.

Furthermore, and highly conspicuously, the Sydney International Airport was not involved in the development of the project. One of my interview respondents observed that the airport was involved very early on, but after some disagreement with the state government regarding design details such as the location of and accessibility to the airport stations, the airport authority became reluctant to participate further. From that point on, the airport was not involved in the Airport Link development, to the extent that

the state and the airport took on a somewhat antagonistic attitude towards each other over the project. For example, after the Airport Link began operating in 2000, the state rail authority, RailCorp, intended to distribute flyers advertising the Airport Link service to airline passengers arriving in Sydney at the airport, but the airport authority refused to grant permission for this activity (Wainwright, 2000c). In addition, a lack of involvement from the airport prevented the kind of fare structure that might have saved the project from economic failure, such as mandatory fare inclusion in airline tickets. This would have eliminated the need for the station access surcharges that continue to inflate the ticket price of the Airport Link (and that therefore drive down ridership), but there is no way that this could have been accomplished without collaboration from the airport authority. There was also, and continues to be, no opportunity for the state government to force the airport to acquiesce to the state's policy preferences, because Sydney International Airport is under federal jurisdiction, and because since 2002 it has been owned and operated by the private sector.

And finally, the managers of the Airport Link project did not undertake the kind of extensive and robust public consultation on the project's design parameters that was conducted in Vancouver for the Canada Line. The private sector partner ran some limited publicity drives to local residents who they believed might be affected by construction, and there was some effort to engage with local community groups such as the Wolli Creek Preservation Society, as mentioned in the previous chapter. However, an organized and appropriately funded program of community consultation and engagement was not undertaken for the Sydney Airport Link. Admittedly, this is typical of the Australian context, in which urban planning has a history of being conducted with minimal direct input from the public (Gleeson, 2001: 146; Lahiri-Dutt, 2004: 16-17);

nonetheless, this is yet another facet of the state government's unwillingness or inability to engage a policy network that would have been necessary to support the development of the Airport Link.

As a result, there was effectively no network that was actively forming policy regarding a rail link from Sydney's central business district to the Sydney International Airport. There were, however, many interested actors, including the airport authority, the local municipal councils, the federal government, several private companies, the regional transit authority, the state rail transportation authority, and the general public. In other words, the potential for a collaborative governance network existed, but a lack of leadership on the part of the state government prevented the policy network from forming. Instead, the New South Wales state government attempted to handle the project alone. This may have been an effective means of service delivery in another era, but in the current period of network governance, in which multiple organizations are active in a policy area and in which partnership with the private sector is a desirable objective, failure to engage with potential collaborators can have unforeseen consequences. In this case, it resulted in a badly designed P3 arrangement and a failure to achieve the goals of the project, both in material terms and in terms of public-private collaboration.

There is little doubt that the state government considered itself alone on the public sector side of the Airport Link equation. Although there was, and still is, an active state-level rail authority in New South Wales, multiple interviewees commented that RailCorp was directly run by the New South Wales Department of Transport throughout the development of the Airport Link. There is no distinction made in most official documents – except, tellingly, in the final renegotiated concession agreement that was

released in 2005 – between the responsibilities of the state government, RailCorp, and the local rapid transit authority, CityRail, in the planning and development of the Airport Link (see New South Wales, 1994, for example). Government figures made numerous comments to the press speaking as if the Airport Link were a purely government project (see Coultan, 1992b for but one of copious examples). Since the beginning of the project, the media have persistently referred to the state government, CityRail, and RailCorp interchangeably in the context of the Airport Link (e.g. Wainwright, 2000d). This is in stark contrast to the Canada Line case, where the difference between government, TransLink, and CLCO was constantly stated in documents and in public statements to the media.

In addition, the state government restructured the rail authority several times during the years the Airport Link was in development. Shortly before the Airport Link was announced, the state government divided the State Rail Authority's business into separate corporate divisions for passenger and freight, creating CityRail as an internal division of the State Rail Authority responsible for urban rail in and around Sydney (Moore and Lagan, 1989). In 1996, after the Airport Link project was underway, the state government enacted legislation to restructure the State Rail Authority again, this time establishing CityRail (and its regional counterpart, CountryLink) as an independent corporation under the authority of State Rail and, more importantly, privatizing freight rail operations in the state (Morris, 1996b). After the Airport Link had opened for service, the state government merged two formerly independent rail services companies into the Rail Infrastructure Corporation. The two former companies, which had been created earlier in the 1996 restructuring, were respectively responsible for tracks and rolling stock maintenance, and these duties were taken over completely by the new corporation

(Wainwright and Connolly, 2000). In 2004, the rail authority was restructured yet again: this time, the State Rail Authority and the Rail Infrastructure Corporation were reunited to create a single entity, RailCorp, now again responsible for the entire rail network, including passenger service under its CityRail and CountryLink subsidiaries (Jacobsen, 2004). With four major restructurings in 16 years, there was very little institutional continuity over the time period in which the story of the Sydney Airport Link was unfolding.

Continuity of personnel at the rail authority was also a problem in this time frame. Senior executives were frequently fired or transferred, often by direct intervention from the state government (see Morris, 1997 for example). In the fourteen years between the announcement of the Airport Link project in 1990 and the conversion of the State Rail Authority to RailCorp in 2004, State Rail had no fewer than ten different chief executives. Several of these, like John Brew in 1995, Len Harper in 1996, and Simon Lane in 1998, were fired by the Minister of Transport or directly by the Premier (Morris, 1995a; 1997; Wainwright, 2000b). This gives an average tenure of about 17 months; by contrast, the CEO of State Rail Authority before this time period, Ross Sayers, remained in the position for four years (1988-1992) before returning to work in the private sector (Coulton, 1992a). By comparison, in British Columbia, TransLink has had four CEOs since its inception in 1999, for an average of 3.5 years each: Ken Dobell was CEO from 1999 until he was made Deputy Minister to the Premier in 2001, then Pat Jacobsen from 2001-2008, then Tom Prendergast, who was head-hunted to be the CEO of the largest transportation authority in North America, New York City's MTA, followed by Ian Jarvis, who has been in the office since then.

The problem of continuity of personnel was true even at the political level, where not only was there an alternation of parties in power, but the Department of Transport cycled through five ministers between 1995 and 2008, for an average of only 2.6 years each. Furthermore, more than one minister was forced out of office, including Brian Langton, who was found by the Independent Commission Against Corruption to have lied about amounts charged to his travel expense accounts (Humphries, 1998). By contrast, in the 11 years that the Liberal party has been in power in British Columbia, Kevin Falcon was Minister of Transportation for five years, from 2004-2009.

In the state legislature, both in the lower Legislative Assembly and in the upper Legislative Council, the Airport Link has always been discussed as if it were an exclusive project of the state government, with no attention given to input from or responsibility of RailCorp or CityRail. Moreover, a reading of Hansard reveals that throughout the lifespan of the project, various government figures claimed responsibility not only for the project itself but for specific milestones (e.g. Baird, 1992a: 790; Langton, 1997: 9725). The government, no matter which party was in power, regularly used the Airport Link project as a partisan wedge issue, with statements from the Liberals proclaiming that the Airport Link “will bring Sydney into line with many major overseas cities. When the Labor Party was in power it did not attempt to provide future vision on Sydney’s needs as an international city. It did nothing except run the railways into the ground” (Baird, 1992a: 790) and from Labor calling the Airport Link “undoubtedly one of the worst decisions by a Liberal-National Government in the history of New South Wales” (Watkins, 2005: 18616). Both parties frequently tried to claim credit for the Airport Link’s successes and tried to blame the opposition for its failures. While this may seem like a standard feature of parliamentary government, it should be remembered that in the British Columbia

legislature, the ruling Liberals continuously disavowed any responsibility for the Canada Line, calling it a TransLink project from the start (however accurate this may or may not have been).

This custom continued even after the legal dispute occurred between the public and private P3 partners over the Airport Link's financial troubles. The restated stations agreement, which was signed after a resolution to the legal dispute was reached in 2005, specifically says that it is an agreement between RailCorp and the Airport Link Company, and goes further to state that "The Crown in the right of New South Wales is not party to any project document. RailCorp is a State Owned Corporation and does not represent the Crown. The Crown has not underwritten any agreement or guaranteed RailCorp's performance under any Project Document." (RailCorp, 2005: 22). However, John Watkins, then Minister of Transport for New South Wales, spoke to the Legislative Assembly as if the government had renegotiated the Airport Link contract itself (Watkins, 2005: 18616). Quite possibly, the government was responsible for the negotiation process but the final agreement was signed only by RailCorp. However, my interviews with senior officials suggest that in fact RailCorp has mainly been directly managed by the state political executive. Further evidence of this is the fact that in 2011, the state government (and not RailCorp) announced that it would be subsidizing the station access fees at the two non-airport stations on the Airport Link's route (Saulwick, 2011a).

Consequently, the Airport Link provided an unparalleled opportunity to exploit partisan differences. Because there was no involvement of network participants, it was phenomenally easy to characterize the Airport Link as either a government triumph or an opposition failure, no matter who was in power or when the supposed triumphs and failures occurred. There were no other actors to share the credit or the blame. According

to one interviewee, this would not have been possible if the private sector had not been involved to the extent that they were, because their involvement allowed Labor to vilify the Airport Link Company and its investors as servants of the previous Coalition government out to steal from the honest taxpayer. This meant that government errors or miscalculations could be depicted as artifacts of an unfair P3 contract that favoured the private sector.

The most unfortunate consequence of this approach is that it ensured that the Labor government that inherited the Airport Link in 1995 would under no circumstances collaborate with the concessionaire beyond the absolute barest minimum requirements. The more the Airport Link experienced financial and operational trouble, the more the Labor government could effectively portray the Airport Link as a colossal failure of the previous Coalition government. According to several interview respondents, this partisan approach produced such a political advantage that the state government was led to a position where it could not be seen to cooperate with the private sector, not even to help the concessionaire mitigate its financial losses due to poor ridership levels. For example, the refusal of the state government to collaborate with the Airport Link Company on advertising was described by one of my interview subjects as “Not much short of open hostility.” Most critically, the government refused financial support for the Airport Link Company after extremely low patronage forced it into bankruptcy, and it further refused to consider nationalizing the Airport Link outright. This meant that instead of dealing with a small, cash-strapped, and desperate corporation, the state government was compelled to negotiate with the National Australia Bank and its appointed receivers, who took an aggressive stance, launched an immediate legal action, and could readily afford to wait until it received the best possible settlement. In a sense, according to one interview

subject, although this produced the best political outcome for the Labor party, it produced the worst possible outcome for the Airport Link, for the partnership, for the users of the service, and for the taxpayers of New South Wales.

In short, the British Columbia provincial government recognized that there were numerous useful – but conflicting and competing – participants in the Canada Line’s overall transportation policy network. The province succeeded in fostering a cooperative network of policy actors while positioning itself as an outside, yet ultimate, policy authority – while simultaneously managing the network through suasion and direct manipulation. This led to a working network partnership and a P3 that consistently exhibited relatively little conflict. This allowed the province to attain its primary objective, which was to build an infrastructure megaproject on time and on budget and as an Olympic games bonus. It was mainly a balancing act – displaying active authority and achieving political objectives while at the same time nurturing cooperation within a multifaceted network of numerous participants.

In Sydney, the New South Wales state government tried to manage the project in its entirety from the beginning, with little or no regard for the existence of or cooperation among network participants. When conflict arose primarily due to a faulty ridership forecast, the P3 arrangement became an adversarial and partisan environment that was self-sustaining, as it yielded perceived political advantages. There was never an attempt to foster any kind of policy network whatsoever – and yet there were multiple organizations operating within the policy sphere.

Can governance fail? Quite apparently it can. As discussed in Chapter 4, the Sydney Airport Link was intended to fulfill three purposes: to increase capacity on the

urban rail system, particularly around Central Station; to promote urban development in Sydney's nearby industrial suburbs; and to provide a useful rail link from the central business district to the airport that would take automobile traffic off the road network. The point of the P3 arrangement was to attempt to achieve these goals through a collaborative public-private governance arrangement. However, patronage on the Airport Link has been dramatically below estimates for all years that the line has been in service, meaning that the utility of the line as a rail link to the airport is impaired. Commuters are not using the system to the extent that was intended. As a result, urban development in the suburban areas served by the Airport Link has been slow to reach its expected potential (see Munro, 2007 for example). The problems experienced by the governance arrangement for the Airport Link project are directly responsible for the project's failure to achieve its objectives. And while it is true that the goal of increased capacity for the rail system was achieved, since the private partner was only responsible for the stations and not for the tunnel, it is debatable as to whether or not this achievement can be attributed to the project's governance arrangement. In short, the specific misuse of governance for the Airport Link is the reason that the project failed to achieve its goals.

Therefore there can be little doubt that the partnership for the Sydney Airport Link suffered a governance failure. The antagonistic relationship between the state government of New South Wales and the private sector Airport Link Company ensured that collaboration between the P3 partners was obstructed. This unwillingness to collaborate is exemplified by the protracted legal dispute between the state government and the concessionaire. In British Columbia, these exact forces were substantially reduced by the provincial government's active management of the related policy network

– its efforts in fostering collaboration and presenting itself as a recognized authority succeeded in preventing the kind of governance failure that occurred in Sydney. In the Vancouver case, all of the project’s objectives, including delivering a useful extension to the urban transit network and promoting urban development, have been achieved and can be attributed to the governance arrangements of the project.

When asked why the Airport Link failed, my interview respondents invariably gave the same answers. Those from the private sector unanimously agreed that the private investors should not have been allowed to take on the patronage risk, and that the government refused to cooperate on a solution to the ridership problem. Respondents representing the public sector all blamed the high station access fees. Interview subjects from both sides agreed that the government-sponsored ridership estimates were flawed.

However, these are proximate answers, not ultimate ones. Explaining the failure of the Airport Link in terms of high station access fees does not answer the fundamental questions, such as why this fee structure was adopted in the first place. Why was the Airport Link P3 allowed to be designed so badly? Why did conflict over ridership result in an extended legal battle, and why was it not resolved quickly and amicably? In short, what are the underlying factors that allowed this governance failure to happen?

The failure of the New South Wales state government to foster an integrated and functional policy network is one of the key reasons why governance failure was possible in the Sydney case. In the next chapter, I will explain how a lack of experience in the implementation of public-private partnerships was a factor that contributed to the project’s outcome, and how effective learning, from an international body of policy

experience in the use of P3s, prevented a similar outcome of governance failure from occurring in the case of the Canada Line.

Chapter 6.

How to Avoid Governance Failures: Making Use of Policy Learning

Where do governments get ideas about the kinds of policies to pursue? While internal policy innovation can occur, not all policies are domestic inventions. It is possible for policy goals and instruments to be transplanted from one location to another, from one time period to another, or from both (Dolowitz and Marsh, 1996: 344). Moreover, lessons drawn from documented experiences in other jurisdictions can be instrumental in producing successful public policy outcomes. In Sydney, decision makers did not use or were not able to use past lessons from international examples to help design the Sydney Airport Link P3, and the project resulted in governance failure. In the case of the Canada Line, knowledge about how to manage public-private partnerships, including specific techniques for interaction with the private sector, with stakeholders, and with the general public, was taken from other jurisdictions' past experience in a successful attempt to produce a stable and enduring partnership.

There is substantial disagreement as to how to categorize the various possible ways that policy can be transplanted across time and space, and numerous terms with somewhat overlapping definitions have been proposed to help identify dimensions and degrees of movement. These include: policy transfer (Dolowitz, 2003), policy learning (Braun and Benninghoff, 2003), policy diffusion (Simmons and Elkins, 2004), policy

convergence (Bennett, 1991b), lesson-drawing (Rose, 1991; 1993), copying (Birrell, 2010), emulation (Studlar, 2006), and prospective policy evaluation (Mossberger and Wolman, 2003). Unfortunately, the range of related concepts is broad, and precise distinctions between these concepts are not properly described.

To complicate matters further, different authors use the same terminology to mean different things, and others use different labels for the same concepts. Davies and Evans (1999), for example, use “policy transfer” as an umbrella term meant to encapsulate many different ways through which policies can be transmitted from one location to another. Dolowitz (2003) uses the same term, “policy transfer”, to refer more specifically to the learning that takes place as one jurisdiction attempts to reproduce the successes of a policy used in another jurisdiction. Rose (1991; 1993) refers to this concept as “lesson-drawing”, while Jenkins-Smith and Sabatier (1993) use the term “policy-oriented learning” to mean the same thing. Braun and Benninghoff (2003) simply call it “policy learning”. Marsh and Sharman (2009) mainly prefer “policy diffusion” as the general umbrella term for many different mechanisms of policy movement, but they also employ “policy transfer” interchangeably with “diffusion” (although they do explain early on that they are less concerned with labels than other authors have been). Stone (2004) uses “policy diffusion” to refer specifically to the process through which similar policies can spread across multiple jurisdictions, but Studlar (2006) uses “policy convergence” interchangeably with “policy diffusion” in this context as well. Despite attempts to unify the concepts into one grand theory (e.g. Bennett and Howlett, 1992; Marsh and Sharman, 2009), no convention on labeling has emerged.

The proliferation of confusing terminology notwithstanding, one thing that authors mainly agree on is that policies can be, and often are, transferred across jurisdictions,

across time periods, or across both at the same time. The principal debates in this area are then mostly about how this transfer of policy can occur, how much transfer actually takes place, and what are its consequences. While some authors refer to policy transfer as if it were occurring directly between countries (e.g. Meseguer, 2005), or between institutions (e.g. Lodge, 2003), many others acknowledge that there are a variety of policy actors engaged in the transfer of ideas and instruments, including politicians, bureaucrats, political parties, NGOs, the media, and corporations (Stone, 1999: 55).

Here, the general concept of the use of “policies, administrative arrangements, institutions etc. in one time and/or place...in the development of policies, administrative arrangements and institutions in another time and/or place” (Dolowitz and Marsh, 1996: 344), whether through copying, emulation, learning, inspiration, coercion, or any other means, will be referred to as *policy transfer*. As this suggests, there are many ways in which policy transfer can occur, such as:

1. Policy actors actively set out to learn about policies in other jurisdictions, and then either copy them or deliberately attempt to avoid their mistakes. Whether or not, and to what extent, these policy actors are able to make rational evaluations of other jurisdictions’ policies is open to debate, as they will be influenced by ideologies, policy legacies and other path dependencies, institutional inertia, and biases attributable to their local political culture (Lodge, 2003; Helderman et al., 2005).
2. Policy actors examine past policies from within their own jurisdiction, and learn from domestic mistakes or successes (as rationally as possible within the constraints imposed by their own local context, as above).

These actors then either innovate to correct perceived errors (Rose, 1993: 90-94) or reintroduce past policy.

3. Policy actors pretend that they are copying successes from other jurisdictions or other time periods (i.e. that they are learning from international examples of successes and failures), but actually they are intentionally adopting policies for ideological reasons (e.g. Lingard, 2010).
4. Policy actors recommend relaxing regulation or changing tax laws in order to become more economically competitive with other jurisdictions. This is often referred to as a “race to the bottom” (Marsh and Sharman, 2009: 271).
5. Countries are pressured into adopting policies by international organizations such as the International Monetary Fund (IMF), or by other countries, or by the international community (Dolowitz and Marsh, 1996: 347-348).
6. Countries adopt policies through treaty arrangements with other countries, such as the North American Free Trade Agreement (Clarkson, 2002).
7. Countries adopt policies because policy actors believe they need to keep up with international trends (Bennett, 1991a: 43).

Undoubtedly, there are many other ways for policy transfer to occur, and this list is not by any means meant to be exhaustive – it is merely intended to demonstrate that policy transfer can take on many forms. Fortunately, different kinds of policy transfer can

probably be grouped into a finite number of categories, which could prove useful for analysis. In this vein, Marsh and Sharman (2009: 271-272) suggest four different categories, according to the mechanism of policy transfer: learning, competition, coercion, and mimicry. Other authors see policy transfer as more of a continuous spectrum, rather than as discrete categories: Dolowitz (2003), for example, argues that modes of transfer should be viewed as ranging from completely coercive to completely voluntary, with most forms of transfer falling somewhere in between the two extremes. Either way, scholars mainly agree that policy transfer consists of multiple related phenomena, and that they should be separated for analysis.

Policy learning, in which active evaluation of past international or domestic examples is performed in order to draw lessons for public policy development (i.e. the first two points on the above list), is probably the most studied form of policy transfer. The majority of the academic scholarship on the subject treats learning as a dependent variable – in other words, authors are mainly concerned with how learning takes place, what kinds of policies are learned, and what sorts of things can impede or encourage the learning of policy from other time periods or jurisdictions. As public-private collaboration is still evolving, both in terms of technique and in frequency of use, it is reasonable to assume that policy actors in some countries will look to international examples of policy instruments that have been tested in other jurisdictions for guidance on the use of these instruments within their own domestic spheres. Unfortunately, the consequences of policy learning – what learning can mean for specific policy areas and the impact of learned policies on political systems in general – is a much less studied topic.

The central debate regarding policy learning is whether or not policy can actually be learned, in the sense that there exists objective evidence that points toward

successes or failures in the jurisdiction of origin that could be evaluated the same way by any observer. Some studies have taken extreme points of view: Sanderson (2002) adopts the positivist epistemological position that policy learning is a quantitative task based on the use of econometrics and statistics, able to scientifically measure inputs and outputs to improve public service delivery through the discovery of fundamentally objective evidence; Lingard (2010), on the other hand, presents a case from Australia in which he shows that what was reported as objective policy learning for improving standardized testing of high school students was actually an adoption of an American policy for purely ideological reasons. Most often, scholars take a less extreme approach, and it is frequently argued (e.g. Braun and Benninghoff, 2003; Lodge, 2003) that policies can be transferred through a process that incorporates at least some amount of rational learning as well as some influence from other forces (such as path dependencies, political culture, or specific ideological direction from the political executive). This is known as “bounded” rationality (Dolowitz and Marsh, 2000), a term originally coined by Herbert Simon (e.g. Simon, 1972) to express imperfect knowledge in game theoretical decision-making.

Bounded-rational policy learning can have an impact on the outcomes of particular policies. In the case of the Sydney Airport Link, decision makers did not (and to an extent, could not) actively seek lessons from other jurisdictions, and their inability to draw from potential lessons is one reason that project resulted in governance failure. In the case of the Canada Line, efforts at policy learning – bounded-rational though they were – contributed significantly to the successful results of the partnership arrangement.

In Sydney, policy learning did not take place. This is partly due to the time frame: when the Airport Link project was first announced in 1990, P3s were not yet widely

known – although some transportation infrastructure P3s had already been initiated, such as the Dulles Greenway outside of Washington, D.C., which began in 1988 (Garvin and Bosso, 2008: 167). According to several interview respondents, public-private partnership was a new model at the time that the Sydney Airport Link project was first developed, and neither the government nor the private sector had enough experience with partnerships to manage them successfully. The phrase “growing pains” was used frequently by interview respondents to refer to the beginning of the project.

Perhaps because of these “growing pains”, the kinds of policy learning strategies that later strengthened the Canada Line were not employed for the Sydney Airport Link. For example, research for the project was mainly conducted by local consultants or directly by the State Rail Authority (e.g. Kinhill Engineers, 1994), instead of by consultants with a wider range of international experience. The result of this research was a single ridership report that dramatically overestimated patronage on the system (one interview subject from the private sector revealed that this ridership estimate was considered suspect from the beginning, and the private partners calculated their station access fees with the expectation that patronage would be lower than expected). Admittedly, in the early 1990s it would have been difficult (though not impossible) to locate individuals or even organizations with substantial expertise in public-private partnerships, as there simply had not been very much time for this kind of experience to appear.

Likewise, although the top State Rail Authority personnel, as well as the project’s private sector executives, had had lengthy and impressive careers in transportation, few of them (if any) had relevant experience with public-private partnerships. Dick Day, who was instrumental in the development of the Airport Link, had a multi-decade-long career

in state rail planning that progressed through various levels of planning and management. Max Moore-Wilton, who filled a number of senior management positions in the civil service, both at the state and federal levels, and at one time was director general of the Department of Transport of New South Wales, was also highly influential in the Airport Link project. David Iverach, who was the CEO of the private sector Airport Link Company from 1996 until its bankruptcy in 2000, had been director general of the Department of Transport of New South Wales from 1985 to 1989. These people had extensive and accomplished careers as transportation planners and managers, but they did not have experience with public-private partnerships. Instead of searching for individuals with experience with P3s, the New South Wales government continued to appoint executives from within its own ranks to positions of authority over the Airport Link project.

Similarly, the State Rail Authority did not have the opportunity to tap into a work force experienced at delivering major urban transit infrastructure. The Airport Link was the first major expansion to Sydney's urban rail network since the 1970s (Jones, 2000: 7). And although the Sydney Harbour Tunnel was already under construction when the Airport Link was first announced, it was a road tunnel, not a rail project, and it therefore had a different set of requirements. State Rail did not have a readily available pool of personnel experienced with rail megaprojects, so it would have been difficult for the project's leadership to draw upon lessons from their own local experience.

As a result, the Airport Link project proceeded in a way that many of my interview subjects – who were closely involved with the project at the time – now consider to be deeply flawed. Most strikingly, the Airport Link did not have a competitive tender process of any kind. Rather, as previously mentioned, the original concept was introduced to the

government by the private sector unsolicited, and multiple private proponents were invited to collaborate. This is in many ways the opposite of a competitive tender process; not only were the various private competitors asked to unite their efforts, but their bids – and the eventual design of the system – were developed in collaboration with the public sector under the guidance of the state government’s Department of Transport. More specifically, the original private sector partners, Transfield and CRI, signed a memorandum of understanding with the State Rail Authority to develop the Airport Link project together (Kinhill Engineers, 1994). According to interviews, planning was led by a dedicated unit at the State Rail Authority, supported by a similar planning division at the New South Wales Department of Transport. According to one interviewee, there was considerable “alignment” between the public and private sectors at this stage of the project’s development.

Because of this, the New South Wales Independent Commission Against Corruption ordered that the development of the project be stopped in 1994, right before the concession agreement was ready to be signed. One of my interview subjects, who was familiar with the affair, told me that around the time of the ICAC investigation the New South Wales Treasury Department had advised the government to cancel the entire project, as Treasury was concerned about cost escalation directly attributable to the lack of a competitive tender process. When the private investors were informed of this, they threatened legal action, and in order to reduce the risk of substantial financial loss to the government, the mediator engaged by ICAC recommended that the project continue as planned. When asked to comment on the lack of competition in the procurement process for the Airport Link, another interview respondent simply replied that “P3s aren’t done like this anymore”.

It is not surprising, then, that many interview subjects – both from the public and the private side of the Airport Link project – felt that the private sector had had too much control, especially in the early days of project development and contract negotiation. One respondent commented that the private sector consortium’s “voice was too strong” and that the State Rail Authority’s was too weak. Although it may be possible to attribute this to the personalities of the individuals in positions of authority (as many of my interview subjects suggested), it is equally likely that the absence of competitive tender allowed the private investors to gain control over the project in a way that would not have been possible in a more structured endeavour like the Canada Line. For example, referring back to Table 2 in Chapter 4, the Airport Link project proceeded with the private sector proponents only contributing about 1.2% of the total capital outlays of the project; by contrast, the private sector in the Canada Line project contributed equity that was worth more than 5% of total project cost. One interview respondent who is familiar with current international practice suggested that low levels of equity like the private sector’s contribution in the case of the Sydney Airport Link are often not allowed any more, as governments increasingly demand more money up front from private investors in order to ensure that they maintain a long term interest in the project.

Consequently, the most frequent comment from interviewees was that the private proponents in the Airport Link project were too heavily focused on the construction period, where investors believed they would return the most secure and quickest profit. Operation was seen as less immediately profitable, and so a successful operating period was not prioritized. One interview respondent from the private sector provided an illustrative example of this attitude in action: in order to minimize construction costs at the Domestic Terminal station, elevators were not extended to the departures level –

even though it could be shown that this would have attracted more customers and would have required only a marginal increase in costs. High station access fees, which indisputably contributed to the disastrously low patronage that the Airport Link experienced, are another symptom of this problem. Several interviewees suggested that if the private sector had been concerned about the operating period, they may not have set the fees as high as they did.

There are other, additional, aspects of the Sydney Airport Link project that show an incomplete understanding of P3 governance. The most prominent of these is the fact that the state government of New South Wales did not successfully collaborate with other governments and organizations that would have had an interest in a rail link to Sydney Airport. As explained in the previous chapter, the Sydney Airport authority was not a formal (or even informal) part of the Airport Link P3; however, they have continuously shown an interest in the Airport Link, and have engaged in substantial efforts to have the station access fees reduced, including lobbying the state government and commissioning research into the effect that reducing fares would have on ridership (e.g. Booz and Co., 2010). Similarly, the federal government and the municipal councils were not involved in the project and did not contribute funding.

In addition, the Airport Link project did not engage with the public or with the business community to a degree that would have made a contribution towards a successful governance arrangement. While information was shared with the public, it was mainly in reference to construction schedules and traffic disruptions. There was, according to one interview subject, a consultation event for local businesses, but it was not an ongoing institutionalized component of the project. Another interviewee described the State Rail Authority's efforts to engage local environmental groups as disorganized

and “clandestine”. In addition, the private sector was entirely responsible for communication with the public. One interviewee claimed to be “disappointed” that these efforts were not more evenly shared between the private and public sectors.

And lastly, and perhaps most importantly, the New South Wales state government’s approach to compromise over changes to the Airport Link project is indicative of the shortage of experience that contributed to the project’s failure. For example, the entire finance arrangement for the Airport Link was dictated by the private sector: according to one interview respondent with in-depth knowledge of the subject, when Transfield and CRI proved unwilling to finance the project entirely by themselves, they were asked how much capital they would be willing to provide. The figure they came up with, about \$300 million, was then used by the Treasury Department to determine the private sector’s ownership involvement in the project. Since it was calculated that construction of the stations would cost about that much, ownership and operation of the stations was relegated to the private sector. The state government then decided to supply the rest of the project’s funding on its own. This put the state government in a position in which it would be responsible for the cost of any changes to the design of the system – which were inevitable, since the activity that was the easiest, the least expensive, and having the smallest scope had already been delegated to the private sector partner.

By contrast, policy transfer in general, and policy learning in particular, are integral components of the story of the development of the Canada Line. From the beginning, the aim was to learn about international P3 experiences on which the Canada Line project could be based. To this end, the Canada Line’s project managers commissioned numerous consultant reports on a wide variety of topics, including

ridership forecasting, alignment, economic feasibility, and environmental considerations. Many of these reports were prepared by consulting companies with an international presence, such as Halcrow, IBI Group, KPMG, PricewaterhouseCoopers, and Booz Allen Hamilton (e.g. IBI Group, 2001; Halcrow Group Limited, 2003; PricewaterhouseCoopers, 2003). By 2001, these consultants had likely accumulated considerable international experience on public-private partnerships, and would have been able to employ this experience in the preparation of advice for the Canada Line's decision makers.

Secondly, direct investigation of past experience in other jurisdictions was conducted by public sector employees working on the Canada Line project. For example, it was acknowledged early on that tunnel excavation would very likely disrupt business activity along the length of the route. Business Liaison Committees, in an effort to mitigate the impact of construction, were charged with maintaining communication with local businesses, as well as providing support through improved signage and advertising so that the public would be aware that businesses were still in operation during the construction period. According to interview respondents, this model was based on practices that had been used successfully in Toronto, Boston, and Los Angeles during recent infrastructure expansion in those cities. This also indicates that the Canada Line's decision makers searched for lessons from beyond the narrow limits of airport rail projects.

Third, substantial professional experience was accessed through the hiring of individuals who had worked on public-private partnerships in other jurisdictions at the executive level. Pat Jacobsen, CEO of TransLink from 2001 to 2008, had previously been Deputy Minister of Transportation in Ontario, where she helped develop the \$3

billion Highway 407 P3 for the Ontario government. Jeff Hewitt, Senior Vice President Engineering for Canada Line, had been a senior engineer on the massive Taiwan High Speed Rail P3. Ron Aitken, who was a project manager for TransLink during the Canada Line project, had previously been Director of Project Management for Bombardier, a Canadian company that had (and still has) considerable experience in international P3 endeavours. In this way, significant accumulated experience with international practice in public-private partnerships was available at the highest levels of decision making.

Relatedly, the Canada Line project had access to considerable professional experience on public transit infrastructure megaprojects that had been built in British Columbia. Jane Bird, who was CEO of Canada Line Rapid Transit Inc., had been an executive on the previous extension to Vancouver's urban rail system, the Millennium Line. Dan Doyle, whose 36-year career with the British Columbia Ministry of Transportation started in an engineering position and ended as Deputy Minister, later sat on the board of directors of CLCO as well as Partnerships BC, and was an instrumental figure in the 2007 restructuring of TransLink. Larry Ward, who held several executive positions at TransLink before becoming Chief Operating Officer of Protrans BC (the private operator of the Canada Line), had also been involved with the Millennium Line at the executive level. And John Eastman, who was Senior Vice President Technical for Canada Line Rapid Transit, had been the lead project manager for the Millennium Line, and before that he had been a senior engineer on the first arm of Vancouver's SkyTrain system, the Expo Line.⁷

⁷ This information was revealed by interview subjects, but not necessarily by the individuals named here.

As a result of this accumulated experience, the Canada Line was an exceptionally well-organized and informed project. A vast amount of research was done by consultants, by Canada Line project management, and by the cities of Vancouver and Richmond. This included multiple ridership forecasts, based on data on traffic patterns in the Vancouver region (e.g. Halcrow Group Limited, 2003), financial feasibility studies (PricewaterhouseCoopers, 2003), station design and placement reports (Spaxman Consulting Group, 2003), and extensive public consultation efforts (e.g. Kirk and Co., 2003). All of this research was conducted before the private sector partner was brought on board, and most of it before the tender process even began (see RAV Project Management Ltd., 2003). The project was so thoroughly prepared for the private sector that the Request for Proposals included a draft contract, on which the final concession agreement was based (compare RAV Project Management Ltd., 2004a with RAV Project Management Ltd., 2005a, for example).

In other words, knowledge about international P3 examples allowed Canada Line to run a sophisticated development process. For example, the Canada Line's private sector procurement was conducted as a multi-stage, multi-year tender. At each stage, some competitors were eliminated and continuing candidates were invited to strengthen their proposals. The process was competitive, and collusion between the private sector bidders was not allowed (although each of the bidders was a consortium composed of several separate companies). A retired Canadian judge, Ted Hughes, was engaged to ensure that the procurement process was conducted fairly (see RAV Project Management Ltd., 2004b, for example). This represents a highly evolved P3 development process, especially in comparison to an earlier P3 procurement like the

Sydney Airport Link, which did not abide by a rigid structure and did not have multiple competitive stages.

During the Canada Line's development, considerable effort was taken to include as many stakeholder parties as possible. Notably, this included the cities of Vancouver and Richmond, who were given more or less equal status with the federal government and the Vancouver Airport Authority, despite the fact that the City of Vancouver provided a much smaller capital contribution than any of the other funding partners and that Richmond did not contribute financially to the project at all, as previously mentioned. Many of my interview subjects, representing various organizations, commented that the cities were considered full partners and that there was no appreciable hierarchy among any of the stakeholder parties. Interviewees reported especially favourably on the level of engagement that the Canada Line had with the City of Vancouver, and several confirmed that even after the contract with the private sector was signed, cooperation with the city governments was crucial to the success of the project. This refers to small details, such as the city's quick provision of permits for construction purposes and road closures, as well as more serious cooperation such as the relocation of the Broadway-City Hall station, or the redesign of the southern tunnel portal, both of which the City of Vancouver requested and the project's management implemented. This positive relationship with multiple partners and stakeholders ensured support from a wide group of institutional participants, and like the tender process, is indicative of an advanced understanding of the prerequisites for a successful P3 project.

The Canada Line's developers also interacted greatly with the public, which benefitted the project in several ways: it allowed for very reliable ridership forecasting; it provided political legitimacy for the project (see Synovate, 2004 for example); and it

likely contributed to containing backlash from business owners whose businesses were disrupted by construction efforts. Although there was major legal action on this matter from businesses in the Cambie Village area, the plaintiffs represented a minority of businesses and only along one section of the construction route. In any case, the official position of the Cambie Village Business Association was that “reports of business closures along Cambie Street as a result of the Canada Line construction are misleading and present an inaccurate picture of the neighborhood” (Bellett, 2007a). According to one interview subject, the Cambie Village Business Association originated with the Canada Line’s Business Liaison program – in which case it is possible that the efforts in public consultation for the Canada Line actually increased cohesion and strengthened social capital among the local business community. Because public consultation and contact with the local business community was not as thorough in the Sydney case, they would not have been able to realize the same benefits that accrued to the Canada Line project. However, it should be noted that because the areas under construction for the Sydney Airport Link were not as heavily developed as they were in the case of the Canada Line, this may have been less of an issue in Sydney.

And finally, when the private sector in Vancouver was unable to meet the project’s funding requirements, the project itself was altered. Stations were removed from the design, a connector to the cruise ship terminal was cancelled, and the Richmond terminus was built as a single track instead of a double track, among other things (Canada Line Rapid Transit Inc., 2006). In addition, interview respondents commented on how some aspects of the project were reallocated to TransLink’s operating budget, such as the bicycle path under the Canada Line’s Fraser River crossing.

In other words, the approach to the private sector's involvement for the Canada Line was very different than that of the Airport Link. In Vancouver, when faced with lower-than-expected private finance, the project scope was reduced to meet the financial requirements. In Sydney, the same issue was addressed by increasing the scope and thereby increasing the public sector financial contribution. This is exemplified by the re-addition of the Wolli Creek interchange station, which was negotiated out of the Airport Link project because of the way the private sector's capital contribution was allocated, but which was then added back into the project at full cost to the state government. From one perspective, the apparent eagerness of the government of New South Wales to get the Airport Link project done at any cost may have given the private sector partner a disincentive to negotiate or compromise, whereas the pragmatic and patient approach adopted in Vancouver – as learned by observing the past experiences of other P3 projects – resulted in a stable and successful partnership arrangement.

But in addition to active evaluation of lessons from international experience, the concept of a P3 finance and operation structure for the Canada Line was copied from other jurisdictions in Canada and elsewhere when the provincial Liberal Party came to power in 2001. Before that time, partnership with the private sector had not been formally adopted for the Canada Line. In fact, in the 20 years after a rapid rail transit line connecting Vancouver and Richmond was first mentioned in the debates of the provincial legislature of British Columbia in 1973, private finance was not seriously considered. This includes the time period after active planning for the project began in 1990 under the Social Credit government of Bill Vander Zalm (Johnston, 1990: 11026).

In 1993, New Democrat Minister of Finance (and later Premier) Glen Clark announced that private finance and operation – in other words, public-private partnership

– was being considered for this transit project (Clark, 1993: 7889). However, the government at the time had their reservations about using a P3 for urban transit, citing concerns that partnership would not reduce the debt burden on the province and that it could require onerous government guarantees to the private sector in order to be feasible (Clark, 1995: 15950). Research on the potential for a P3 finance and operating structure for the project was continued by the newly established transit authority in 2000 (RAV Project Management Ltd., 2003), and a consultant report in 2001 listed the “exploration of possible private sector partnerships and financing strategies” as one of the principal goals of the project (IBI Group, 2001), but no final decisions were made. In addition, the P3 model had a significant opposition, especially at the municipal and metropolitan levels (e.g. Bula, 2003b). So although the P3 format had been proposed and investigated, it was not sufficiently accepted by policy makers prior to 2001 to ensure at that point that it would be used for the project.

In 2001, the Liberal Party was elected to office in British Columbia, and from the beginning of their mandate they made market liberalization a priority in many sectors. This included deregulation, the downsizing of government operations, increased engagement with the private sector, and public-private partnerships, all of which was especially targeted at the transportation sector (Perl and Newman, 2012). It is not surprising, then, that despite the controversy surrounding the use of P3 for the Canada Line, and in spite of the uncertainty maintained by previous governments about the benefits of partnership with the private sector for this project, the provincial Liberal government in 2002 clearly mandated that the Canada Line would proceed as a P3 or it would not proceed at all. One of my interview subjects revealed that although there was substantial resistance to the P3 format, both within TransLink and at the GVRD,

opponents were told that “you can have nothing, or you can have a P3 RAV, your choice”.

As the Sydney case confirms, P3s for the development of transportation infrastructure had been attempted outside of British Columbia prior to 2002. In fact, many other jurisdictions, including European countries, US states, and other Canadian provinces, had already experimented with P3 infrastructure development with mixed results (e.g. Bradford, 2003; Garvin and Bosso, 2008; Koppenjan and Enserink, 2009). Additionally, the provincial Liberal government directly mentioned the use of P3s in other jurisdictions as a model for their use in British Columbia, in Throne Speeches (e.g. British Columbia, 2002: 10). Also, British Columbia collaborated with other Canadian provinces on the development of P3s in the transportation sector (Western Transportation Ministers Council, 2005). It would seem therefore, that the use of P3s for transportation infrastructure was not a made-in-BC policy option; rather, the use of P3s was under skeptical consideration for many years until the provincial Liberal government took steps to import P3 ideas from other jurisdictions.

Therefore, while the use of P3s in British Columbia is certainly an example of policy transfer, it would be much more difficult to show that there was any kind of learning involved at this level. This is because the attention given to P3s by the Liberal provincial government, including the establishment of Partnerships BC and the requirement of P3 for the Canada Line, were the result of actions that came directly from the political executive. There is no public debate or evidence of deliberation that would be required to show that alternatives were considered and rejected. In other words, although it is likely that politicians in British Columbia knew of the use of P3s for transportation infrastructure in other parts of the world, and based their decisions on

these international examples, there is insufficient evidence to confirm that formal evaluative efforts were conducted. More likely, this is an example of the ideological transfer of policy ideas without learning.

Learning did occur later, however, as evidenced by the flurry of consultant reports and direct investigations that were conducted in an attempt to establish best international practice for the project after the decision to use the P3 format was made. This is what Dolowitz and Marsh (2000) and others mean by policy learning through “bounded rationality”: the provincial government mandated a P3 structure for the project, and once this was accepted, policy makers were free to learn from international examples within the constraints imposed by the P3 model. Given these constraints, a purely rational exploration of all policy options for the Canada Line was not possible; instead, choices for policy direction were limited to those that had shown positive results in other time periods and in other locations *within the P3 format*.

In his analysis of the banking sector in the UK, Hall (1993: 278) defines policy learning as “a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information.” Hall’s analysis was directed at state-level paradigm changes, such as the market-oriented paradigm brought forward by the Liberal party in British Columbia following their election in 2001, rather than at specific policy instruments like public-private partnerships, but the principle is the same. As Dolowitz and Marsh (2000: 12) have noted, programs for the implementation of specific policies can be transferred in the same manner as broader policy paradigms. In the case of the Canada Line, there was a deliberate attempt to adjust the techniques used to implement the project, including many aspects of the P3 arrangement, in response to past international experience. In the case of the Sydney Airport Link, similar attempts at

learning from international experience were not undertaken, in part because of the much smaller body of experience that was available at the time that the Airport Link was developed. Put plainly, there was less international evidence on successful strategies for P3s available to policy makers responsible for the Sydney Airport Link than there was for decision makers involved in the Canada Line. The Airport Link's planners would have had to work harder to make the most of whatever evidence was available. This kind of situation, in which new policy problems emerge on an international scale, can create serious obstacles to learning from lesson-drawing (Rose, 1993: 83).

One corollary of this last statement is that the Canada Line had access to an international body of experience precisely because early attempts at transportation P3s like the Sydney Airport Link encountered difficulty. As lessons about successful strategies for P3s accumulated over time, there would have been a larger bank of ideas for the Canada Line's decision makers to draw on than that available to policy makers in the case of the Airport Link. In other words, the success of the Canada Line may have been contingent on the failure of other similar projects in other jurisdictions, upon which policy makers in Vancouver were able to draw lessons. This suggests that as policy lessons accrue over time, jurisdictions with similar norms and ideological frames of reference will converge on similar policy options. In fact, this phenomenon (called policy diffusion or policy convergence by some authors) has been observed previously (Stone, 2004; Studlar, 2006). From this approach, the problems that the Airport Link and other projects from the same time period experienced were necessary steps in the global evolution of transportation P3s.

As explained earlier, the re-introduction of public-private partnerships, in transportation as well as in other sectors, represents a fundamental shift in the way that

public services are delivered and therefore how the state is democratically directed. The shift to governance is a structural change to the way that the state allocates scarce resources. It would seem improbable that such a change could happen without friction. Policy learning can therefore be seen as a requirement for success in P3s because the adoption of P3s and other collaborative policy instruments cannot be expected to fall into alignment with previous modes of public service delivery without producing some degree of conflict.

In Sydney, the state of New South Wales attempted to introduce P3s into the transportation sector without the benefit of and employment of knowledge of previous examples of similar policy instruments. The result was a poorly designed governance arrangement that produced a chain of events leading to governance failure and subsequent long-term consequences for state-level politics: a lack of competition for the private component of the P3 led to a powerful private sector partner that was able to influence the terms of the arrangement; a lack of foresight into the financial model of the partnership allowed the project to proceed with a very low equity contribution from the private sector, which led to a prioritization of more immediate avenues for profit – such as favouring the construction period over the operating period; this focus on quick profit motivated the private sector to set the station access fees so high as to deter customers; inadequate research on the demand for the service produced a faulty ridership forecast, which, combined with the high fees, meant that the Airport Link would be severely underused for more than a decade; this led to financial difficulty for the private sector partner, which led to legal action against the state, which resulted in financial loss to the state government and ultimately to the people of New South Wales. In contrast to this, policy makers responsible for the Canada Line project made extensive use of bounded-

rational policy learning to produce a sophisticated P3 arrangement that safeguarded the project against many of the pitfalls that were experienced by the Airport Link.

In addition to learning from previous examples of P3 arrangements in other jurisdictions, policy makers involved with the Canada Line produced a substantial domestic innovation in P3 implementation – the use of an independent, collaboratively-structured project management corporation to direct the design and procurement phases of the project. This will be the subject of the next chapter.

Chapter 7.

How to Avoid Governance Failures: Collaborative Project Implementation

In Chapter 6, I explained how policy makers responsible for the Canada Line were able to prevent governance failure in part by learning from an international body of experience in decision making for P3s. Sometimes, however, policy problems do not have a record of established solutions, either internationally or domestically. In these cases, policy makers must innovate their own solutions and thereby become trend-setters (Rose, 2004: 108).

The Canada Line project was faced with a problem that is increasingly common in the era of governance: there were multiple organizations, from both the public and private sectors, who were either interested in, or were partly responsible for, policy areas that were affected by the project. Ten years prior to the Canada Line, policy makers responsible for the Sydney Airport Link attempted to solve this same problem by ignoring stakeholders and imposing traditional government hierarchy on the various actors involved in the project. As a result, the state government of New South Wales took primary responsibility for the Airport Link project, and centralized decision making and interaction with the private sector through the state's Department of Transport. As a consequence, it was politically advantageous to use the Airport Link as a partisan wedge issue in the state legislature, which required the government to avoid collaboration with

the private sector partner so as to maximize conflict, which could then be blamed on the opposition (who had initiated the Airport Link project when they had been in government). While central government authority may have been a conventional strategy in the days when welfare state programming and government intervention were on the rise, in the current era, the trend is toward devolution, decentralization, and inter-organizational governance – which means that command and control government strategies are no longer as effective for policy formulation and implementation. In Vancouver, policy makers adopted a different approach to this problem, and created an independent project management company to oversee the entire project from concept to operation. This company, called CLCO (short for Canada Line Company), established as an independent, separately-incorporated subsidiary of TransLink, helped the Canada Line avoid the governance problems that afflicted the Sydney Airport Link.

CLCO was instrumental in preventing governance failure. First, CLCO allowed the provincial government to create the impression that the government was nothing more than a funding party, when in fact much of the project, including its alignment, technology, and financial structure were dictated by the provincial government. This had political benefits (such as the deflection of negative feedback away from the province) as well as legal benefits (such as reduced liability against lawsuits). Second, by institutionalizing cooperation among the public and private organizations involved in the Canada Line project, CLCO was able to prevent conflict among the parties involved in the project, minimize partisan politics, lock out lobbying, and prevent disruptions due to the electoral cycle. This institutionalization of cooperation was critical to an ongoing successful partnership. And lastly, the creation of CLCO as an amalgam of the various interests represented by the public sector meant that it was held accountable to a

multitude of political masters. As a result, CLCO was highly sensitive to the political repercussions of its actions, which led to an abundance of caution in decision making for the Canada Line that assured that the project would avoid major political and partisan criticism.

Despite its image as a mechanical instrument of project management, CLCO was as much a political vehicle as it was an administrative device. An illustrative example of CLCO's political function relates to the official name of the organization. Upon creation, it was known as Richmond-Airport-Vancouver Project Management Ltd., as the project was originally referred to as the Richmond-Airport-Vancouver Rapid Transit Project or RAV Line, both in official documents and in the provincial legislature. From 2002 until 2006 the company was frequently referred to as RAVCO, short for Richmond-Airport-Vancouver Company. However, as part of the agreement to secure federal funding for the project, the federal government insisted that the project be renamed the "Canada Line". In 2006 the company officially changed its name to Canada Line Rapid Transit, Inc. to reflect this change, and has been referred to as CLRT or CLCO in various sources since. My interview subjects most frequently referred to the company as CLCO, and since most of these individuals were familiar with the project either at the executive or the political level, that is the abbreviation that I will adopt here.

The name change from RAVCO to CLCO is significant because it served to lend official support to the notion that the Canada Line was not a project of the provincial government of British Columbia. The provincial government had been using the RAV acronym on all documents and in all publicity until the funding agreement with the federal government was signed. Calling the project the "Canada" Line allowed them to give an official name to their stance that the project was not under their control (see

Falcon, 2007: 6461 for example). In fact, the naming of the project and of the project management company quickly took on a partisan flavour to it, since after 2006 the opposition in the legislature and other outspoken critics referred to the project as “RAV Line” and the company mainly as RAVCO, while the government and all parties attached to the project referred to the project as “Canada Line” and the company as CLCO. For several years it was possible to identify the Canada Line’s supporters and detractors simply by which name they chose to use to describe the project.

As discussed in Chapter 5, the provincial government of British Columbia went to great lengths to create the impression that it was not in charge of the Canada Line project. In addition to copious statements both in the legislature and in media outlets that the Canada Line was not a provincial government project (e.g. Boei, 2004; Falcon, 2006: 4529), the province refused to appoint directors to the board of TransLink, which it was statutorily entitled to do, especially when doing so would have ended the debate over the construction and financing plans for the Line; instead, they left those positions vacant. They declared the project functionally and politically distinct from Vancouver’s 2010 Winter Olympics bid (Auditor General of British Columbia, 2003: 40), thereby divorcing the Canada Line from that other, high-profile project that was most certainly under the province’s direct control. And most pertinently to this discussion, they ceded all administrative control and considerable decision making to CLCO, who oversaw the design of the system, the public consultation efforts, public relations, and negotiation with the private sector (including the entire procurement process). Functionally, this gave the appearance that the province was bankrolling the project but had no further input.

This impression of the provincial government as a detached funding agency yielded significant political benefits. First and foremost, it granted the provincial

government immunity from the divisive debates that were held at the municipal and regional levels over the financing of the line. While the province clearly favoured a P3 financing structure for the project, the illusion that the final decision was in the hands of the metropolitan government allowed the province to avoid any backlash from opponents of P3s (when the proposal was approved) or supporters of P3s (if the Line had been rejected). This is equally true for the technology of the Line (street-level light rail versus automated and grade-separated rapid rail) and the alignment (tunnelling under Cambie Street as opposed to using an existing, but more remote, right-of-way along Arbutus Street), both of which incited a vigorous and bifurcated public debate. Because the municipal councils, through the regional metropolitan government, felt that they had the authority to approve or reject the project, the province was spared from the animosity that developed as the issue generated considerable polarization (see Bridge, 2003 for example).

Likewise, having CLCO take complete control over the administration and management of the project meant that the province could not be blamed for any discontent caused by the development of the project itself. This applies to accusations of impropriety in the procurement process (since the British Columbia public sector pension fund was one of the private investors of the Canada Line; see Gentner, 2006: 3935), but would also include decisions about the route, the location of stations, and the design of the stations or trains, which in any project of significant public interest are bound to appeal to some and provoke dissatisfaction in others. But most importantly, allowing CLCO to present itself as the project management authority of the Line meant that the province was indemnified from responsibility over the inevitable disturbance caused to residents and businesses by the system's construction. Most of the Canada Line's

presence in the city of Vancouver was constructed using the “cut and cover” method of tunnel excavation, which causes appreciable levels of dust, noise, increased truck traffic on residential routes, reduced availability of parking, road closures, and reduced pedestrian access. One section of the route required blasting with dynamite (RAV Project Management Ltd., 2005d). The disturbance due to construction, which continued for more than three years, was the motivation for all of the major lawsuits that were directed at the Canada Line.

The use of CLCO as the organization responsible for Canada Line provided some legal benefits for the provincial government as well. For one thing, it shielded the project from the automatic auditing responsibilities of the provincial Auditor General. Since CLCO was incorporated as a 100% subsidiary of TransLink, it was effectively a private corporation at arm’s length from the government, and was not subject to the automatic auditing that applies to normal government activity (Strelieff, 2004). In fact, while the project has been proclaimed many times to have been “on time and on budget” (e.g. Yaffe, 2010), a formal audit has never been released to the public.

Secondly, CLCO effectively protected the provincial government from liability against lawsuit. There have been three major lawsuits against the Canada Line, as discussed previously: first, the “Do RAV Right Coalition”, a group of business owners in the Cambie Village area of the Canada Line’s construction route, sued the Project Assessment Director of the provincial Environmental Assessment Office, claiming that he had erroneously granted an environmental assessment certificate to CLCO to allow it to begin construction on the Canada Line. That staff member at the Environmental Assessment Office was the only representative of the province named in the suit, and

CLCO was implicated as a respondent responsible for the Canada Line. No other parties were identified.

In the second lawsuit, the owner of a maternity clothing store on Cambie Street sued CLCO, the City of Vancouver, TransLink, the province of British Columbia, the Canada Line's private sector partner, and the government of Canada. In this suit, the business owner contended that the change of construction method from deep-bore tunnelling to cut and cover caused a significant disturbance to her business and that she should be awarded financial compensation. Although the case progressed through two appeals to the Supreme Court of Canada, it was dismissed at that level and decided in favour of the Canada Line. Nonetheless, in the original judge's decision, all claims against the provincial government were dismissed because *CLCO was actually the legal owner of the Canada Line* and the province could not be shown to have been an active partner in the project beyond its financial contribution (*Heyes v. City of Vancouver, 2009 BCSC 651*: para 168). This aspect of the original decision was upheld on appeal. The class-action lawsuit that followed this one was based on a similar argument, but as of the end of 2012 it had not yet gone to trial.

However, there is good reason to believe that the provincial government of British Columbia was in fact the paramount authority with responsibility for the Canada Line, despite its desire to appear to be otherwise. First, as discussed in Chapter 5, Canadian provinces have complete constitutional supremacy over city governments, and this includes the regional government of Metro Vancouver, as well as TransLink (which at the time was considered subservient to the metropolitan government). Secondly, the province has statutory power over TransLink, as the transportation authority was in fact created by provincial statute. This power was demonstrated quite palpably when the

province restructured TransLink's board of directors in 2007. And regardless, total legal superiority of the province over CLCO, TransLink, and Canada Line is written into the Provincial Funding Agreement (British Columbia, 2005: 36-37) and the concession agreement with the private partner (RAV Project Management Ltd., 2005a: 42). In fact, the statutory authority of the province over TransLink is what enabled the Court of Appeals judges to rule in favour of the Canada Line in the second lawsuit: because of the province's statutory authority over transportation, TransLink was able to create a nuisance while implementing public policy, and no one deserved compensation for this nuisance (see *Susan Heyes Inc. (Hazel & Co.) v. South Coast BC Transportation Authority 2011 BCCA 77*, para 146).

In addition, Partnerships BC, a provincial Crown corporation, was given the authority to supervise the Canada Line project and to advise the province on decision making. As has been mentioned, many interview subjects did not believe that Partnerships BC held very much authority over the project nor did they interfere very often in the workings of CLCO. Nonetheless, their technical responsibility was noted in the Provincial Funding Agreement (British Columbia, 2005: 28). And as much as CLCO was positioned as the entity with ultimate responsibility for the Canada Line, the private sector, as mentioned earlier, refused to sign the final concession agreement with them, insisting on signing with the province instead.

Furthermore, the provincial government asserted its authority over the Canada Line on several occasions, often creating momentous turning points in the project's development. For one thing, the provincial government declared its funding contribution to be contingent on the project's being financed as a P3; by doing so, when it was clear from public statements that municipal politicians were against P3 financing, the province

established what would end up being the most important aspect of the structure of the project. This decision, and the provincial funding proposal that followed it, also effectively rearranged the transportation priorities list for TransLink and for the Metropolitan government. If the province had not put its foot down on the P3 issue, but had instead offered unconditional funding and let TransLink set its own priorities, Vancouver would have had a non-P3 extension to its northeastern suburbs instead of a Canada Line to Richmond and the airport – as the northeast extension was the next project on the regional transportation plan, and because the majority of local politicians were against P3 financing.

There were several other occasions in which the province's interference in the Canada Line project also proved to be highly influential. After the metropolitan politicians voted against the Canada Line in 2004, the provincial government persuaded them to reconsider their decision, first by cancelling the parking stall tax that was supposed to fund public transit service enhancements (Bula, 2004a), and then by offering to take over the Canada Line project in its entirety (Read et al., 2004). One of my interview subjects commented that this last proposal was not taken advantage of because the province had indicated that it would only take care of procurement and construction, but that the operation of the system would still be left to TransLink. However, the fact that the province was willing and able to make such an offer indicates their level of confidence with their legislative superiority to the transportation authority and the metropolitan governments. This superiority was exercised further when the province altered its financial contribution to enable the project to proceed after the Best and Final Offer bid came in lower than anticipated, and also when the province negotiated a

federal financial contribution. If not for the provincial government's active participation and leadership, the Canada Line would likely never have happened.

The province of British Columbia's strategy of positioning itself as a hands-off funding entity while presenting CLCO as functionally in charge of the Canada Line had some very direct political implications. Because CLCO was largely seen as being the prime decision making body for the project, any discontent surrounding the project was directed at CLCO and not at the government. In this way, political penalties were not paid by the governing party. However, CLCO was a special-purpose vehicle, and after the Canada Line went into operation, it was dissolved. Therefore, any public dissatisfaction with the Canada Line disappeared with the dissolution of CLCO. Moreover, any lasting praise that the Canada Line garnered – either in its construction phase or later in its operating phase – accrues directly to the provincial government because CLCO is no more. In other words, CLCO deflected blame away from the government while it existed, but then when the project turned out to be a budget and patronage success, CLCO was gone and the provincial government could take the credit. Likewise, if the project had been a bust, the government could easily have blamed TransLink, which was after all the legal owner of CLCO (although the collaborative inter-organizational nature of its board of directors ensured that TransLink did not control CLCO's policy direction). Meanwhile, the province had never relinquished its supreme statutory authority over the project and its policy area – but it used mostly indirect means to enforce its most controversial decisions and was therefore able to escape public discourse on the topic.

CLCO also had the function of institutionalizing cooperation among the multiple public sector and private sector organizations that were involved with the project. This

was mostly due to the structure of the corporation. CLCO was, as has been mentioned, 100% owned by the regional transit authority, TransLink. However, CLCO's board of directors was made up of representatives from all four of the funding partners: TransLink, the provincial government, the federal government, and the Vancouver Airport Authority. Because these organizations were forced to collaborate on decision making for CLCO, their cooperation over the Canada Line was ensured through its institutionalization in the structure of the project.

Several interview respondents commented on the ability of CLCO to resolve conflict between the various partners. Because all contact among the public sector partners, between the public sector and the airport, and between anybody and the private sector proponent was conducted through CLCO, there was very little potential for friction to arise. All communication had to be done through an independent body that was jointly controlled by all parties, so again, collaboration was an institutionalized part of the development process. One interview subject commented that there had been some tension between the private sector and TransLink, due to mutual suspicion over the terms of the P3 agreement, as well as some general dissatisfaction from TransLink over the fact that it was not in control of the project. However, this same interviewee claimed that CLCO was instrumental in eliminating this friction, because it ensured that TransLink and the private sector had very little contact. Also, the multipartite nature of CLCO meant that although TransLink was not totally in control, neither was any other single entity – it was a combined effort. This assuaged feelings of discontent at TransLink.

Part of CLCO's function, therefore, was to broker the divergent interests of all the parties involved in the Canada Line project. This not only refers to the official partners as

mentioned above, but includes unofficial partners, such as the City of Vancouver and the City of Richmond, the business community, and the general public, as well. As discussed in previous chapters, CLCO engaged heavily with the public in consultation over the design of the system, and created a highly effective business liaison program that was mostly well received by the business community, especially in the downtown core of Vancouver and in Richmond. Moreover, the existence of CLCO allowed the City of Vancouver, which was not an official funding party and therefore had no authority over the project, to have access to the private sector proponent at the highest levels of decision making.

Of course, CLCO was only in existence during the design and construction phases of the Canada Line project. Once the Line went into operation in 2009, CLCO was disbanded and responsibility for liaison with the private sector reverted to TransLink. However, the P3 arrangement governing the operation and maintenance of the Canada Line is intended to last for 30 years of operation. It is not difficult to believe that the collaboration that was established and fostered by CLCO had the effect of creating an institutionalized collaborative relationship between TransLink and the private operators that will last into the operating phase.

The use of CLCO had other benefits as well. Because the board of CLCO was composed of directors representing multiple organizations, the company was required to be responsible to a variety of sometimes diverging interests. In other words, CLCO was compelled to appease numerous masters with sometimes differing political requirements. As a result, CLCO proceeded with an abundance of caution, frequently surpassing its minimal legal obligations on many policy decisions in a variety of areas. If

CLCO had been responsible to only one government or organization, this may not have been necessary.

For example, CLCO decided early on that it would combine the federal and provincial environmental assessment processes, and ensure that the project was compliant with the more stringent of the two. In fact, the provincial environmental requirements were stricter, and they were also not legally required because the line was shorter than the 20 kilometres necessary to invoke the provincial assessment process (federal environmental assessment would have been required regardless, since the route crossed a federal waterway and terminated on federal land at the airport). Nevertheless, CLCO elected to go beyond its minimum legal requirements and harmonize the two environmental applications (RAV Project Management Ltd., 2003: 65). In another example, CLCO requested that the provincial auditor general review the Canada Line's competitive procurement process "as an added accountability measure that is consistent with best emerging practice" (RAV Project Management Ltd., 2005e: 3). This was in addition to the review of the procurement process that had been conducted by the Canada Line's "Fairness Auditor", retired Canadian judge Ted Hughes (see Hughes, 2003 for example).

After the Line went into operation, and CLCO was dissolved, TransLink continued the practice of proceeding with an abundance of caution on policy decisions. In October 2009, TransLink applied to the regional Transportation Commission (an independent provincial office with oversight responsibilities for public transit decisions) to approve its proposed surcharge on Canada Line trips to the airport. Previously that year, the Transportation Commissioner had ruled that this was not necessary – that TransLink could levy a surcharge on airport trips without applying to the Commission for approval

(TransLink Commission, 2009). Nevertheless, TransLink pushed forward with its application for review, which in the end was only partially approved by the Commission (monthly pass holders were exempted from the proposal).

Although CLCO's board of directors was composed of representatives from the various public sector funding organizations, one of the central conditions of the CLCO board was that no elected officials should sit as a director. Many of the directors were independent representatives chosen as technical experts (such as Eva Matsuzaki, a prominent Vancouver architect who had worked on the iconic Provincial Courthouse building in downtown Vancouver) or as experienced members of the business community (like Larry Bell, who served on numerous corporate boards and was CLCO's chairman). One of my interview subjects, who was familiar with the CLCO board, commented that they were not completely certain that all of the provincial and federal government nominees on CLCO's board were regularly reporting to their representative governments. This meant that although CLCO was responsible to several different public sector organizations, including three levels of government (federal, provincial, and regional metropolitan, through TransLink), it was functionally independent of direct political involvement, especially including partisan considerations.

CLCO was therefore placed in a unique position where it was required to be sensitive to the political needs of its partner organizations but was not subject to direct political interference. One outcome of this position was the abundance of caution in decision making described above. In addition, because none of its board members were elected politicians, CLCO was protected from lobbying and the pressures of the electoral cycle. One interview subject reported that a convention arose that CLCO would not hold public media events of any kind with politicians during an election campaign at any level

of government. This resulted in “a build-up of milestone events during elections” according to this interviewee, because the self-imposed convention meant they could not hold press conferences or media events to promote the milestones.

And lastly, the use of CLCO as a procedural focal point for the Canada Line project meant that all public relations for the project emanated from a single source. The high level of continuity of personnel assured that the same central messages were broadcast throughout the development of the project. This includes phrases such as “on time and on budget”, and the fact that the Richmond-Vancouver corridor is home to “one-third of the region’s jobs and 20% of its population” (see RAV Project Management Ltd., 2004c for example). Statements such as these were ubiquitous in press releases and public statements published by CLCO, and were repeated by the private media (e.g. Bellett, 2007b). This frequent and regular repetition of claims about the Canada Line – without conflicting messages from multiple organizations – helped to concretize public opinion about the project. In fact public opinion of the Canada Line was fairly high throughout the project’s development (e.g. Lee, 2004a).

In Sydney, the central position of the state government meant that all of the political consequences attached to public perception of the Airport Link project accrued directly to the state. For example, the Liberal government under John Fahey had positioned the Airport Link prominently as a major public infrastructure investment project in their 1995 election campaign, which they lost (Wainwright, 2000e). A poll in 2002 showed that the Australian public was still very skeptical of P3s (Morris, 2002); in 2003, shortly after a state election, the Minister of Transport specifically referred to the airport rail link “disaster” as a reason for not using a P3 to extend the rail system to the western suburb of Paramatta (Kerr and O’Malley, 2003). Labor Premier Kristina

Keneally's move in 2011 to use public funds to subsidize fares at two Airport Link stations was referred to as "a last-minute pork barrel" (Saulwick, 2011a), as it came one month before a state election, and all four airport stations are in the former premier's riding of Heffron. Throughout its history, the Airport Link has been a high-profile issue, and one to which state governments have always been closely associated.

Without the buffer created for the Canada Line by CLCO, state governments in New South Wales were highly sensitive to political ramifications of the Airport Link project. The project became a partisan wedge issue in the state legislature in which there was a maximum incentive to capture all credit for positive outcomes and to assign blame for negative outcomes to the opposition. During the development of the project from 1995-2000, when it was clear that the project would cost much more than expected, the Labor government under Bob Carr attempted to increase the scope of the project by adding the interchange station at Wolli Creek. Once it was clear that the Airport Link would be a financial disaster, the Labor government could not be seen to collaborate with the Airport Link's private sector partners, since the government's primary objective at that point would have been to force the project to fail so that they could maximize the size of the failure that would be attributed to the opposition (who had signed the original deal before the state election in 1995).

Furthermore, the Airport Link did not have a central collaborative organization. The design and development of the system was undertaken by the private sector, with input from RailCorp and the state's Department of Transport. The state government did hire a project management group to oversee the government's interest in the construction phase of the project (see Kinhill Engineers, 1994), but they were a private management firm hired for a limited time period to perform specific tasks, whereas in

Vancouver, CLCO was a foundational decision-making body, essential to the project and placed in a role of primary leadership. Also, the project managers in Sydney were brought in late in the project's development cycle; they were simply tasked with representing the government in the construction phase, whereas CLCO was a fundamental part of the Canada Line from the beginning, from project definition to contract negotiations to opening of service.

As a result, a frequent comment from my Australian interview respondents was that the Airport Link project had considerable alignment of interests during the development phase, but not nearly enough for the operating phase. The focus of the construction phase of the project was to ensure that the project opened on time and did not surpass its budget by a significant amount. There was less concern with the operating parameters of the line, which had lasting implications (like the very high station access fees, for example). Because collaboration had not been institutionalized in Sydney as it later was in Vancouver, it was very easy for the government to cease to collaborate with the private sector as soon as the operating phase began and low ridership became evident.

The Sydney Airport Link did not benefit from the central focus that CLCO provided in Vancouver. Because the public sector side of the Airport Link project was controlled directly by the state government, policy decisions were a function of the will of only one government entity. This means that "caution" in decision-making was subject only to the strategy that was perceived as being best suited to the government's political ambitions – there was no need to be sensitive to the requirements of multiple organizations. In addition, the direct contact between elected politicians and the management of the Airport Link meant that it was fairly easy for the government to use

the project as a partisan wedge issue – even before patronage levels became a problem (e.g. Langton, 1997: 9724). This would have been much more difficult in Vancouver, where the non-partisan nature of CLCO acted as a barrier to this kind of direct politicization of the Canada Line project.

In summary, policy makers in Vancouver were faced with a policy problem that is increasingly common in the era of governance: a rapid transit project connecting Vancouver to the airport and to Richmond would require the input of multiple public sector organizations whose jurisdiction and policy responsibilities intersected. In order to solve this problem, policy makers produced an innovative model of project implementation in which an independent project management corporation was created to represent all of the relevant organizations simultaneously.

From a procedural perspective, this model had some major benefits, including an abundance of caution in policy making, consistent public relations, and the centralization of decision making in an independent but collaborative institution. From a more political perspective, the model effectively shielded the provincial government from public disapproval during the project's development, but then later allowed the province to reap all the rewards of having implemented a successful infrastructure program. In Sydney, the absence of a CLCO-like institution meant that the state government was exposed to all of the public's dissatisfaction with the Sydney Airport Link, which provoked the government into politicizing the project and transforming it into the core of a highly partisan political campaign.

In Vancouver, CLCO contributed to the prevention of governance failure. CLCO was a key element of cohesion that worked to connect the public sector partners, to

keep stakeholders informed, to enable careful oversight of policy decisions, and to maintain a functioning relationship with the private sector. CLCO allowed the provincial government to retain control of the Canada Line without appearing to dictate the policy direction of the project, which had the effect of quelling dissenting opinions, reducing potential conflicts, and generally fostering an atmosphere of collaboration. In Sydney, the central control of the project by the state government had the opposite effect, where it made conflict not only possible, but inevitable.

There were two main factors that formed the nucleus of the Sydney Airport Link's later problems: first, the ridership estimate was wrong by an order of magnitude. A system that was built for 65,000 riders per day only received 10,000 per day in its first five years of service. Second, and relatedly, the price was too high. At 400% of the price of a ride on the rest of the transit network, the station access fees were actively deterring commuters from using the Airport Link. These two factors hampered the urban development goals of the project, created a system that was simply not used to its expected potential, and enabled a political conflict in the state legislature that compelled the party in power to reject compromise and refuse to collaborate with the private sector on a solution.

If the state government of New South Wales had used an approach similar to CLCO, it is possible that the governance failure that occurred in Sydney would not have happened. For one thing, a more cautious project management company would probably have produced a better patronage forecast, either by better specification of the design parameters, by commissioning more than one study, or by relying on independent consultants. This is what CLCO did in the case of the Canada Line, and

their ridership predictions were much more accurate (in fact, as has been shown, the ridership forecast for the Canada Line *underestimated* patronage).

Secondly, a better ridership forecast might have allowed for a different price point for the station access fees, or maybe even a different funding model altogether. A more accurate prediction of how many people would actually use the system, combined with an economic analysis of the elasticity of demand of the product, would have yielded a more realistic surcharge from which the private sector could gain a return on its investment. Because there was no independent central organization in charge of collaboration, the fee structure was entirely ignored by the state government, as it was seen as being the responsibility of the private sector partner. More central, collaborative planning on this front may have saved the project from financial disaster.

And lastly, once the Airport Link went into service and its shortcomings became immediately apparent, if there had not been so much to be gained from political action in disavowing the project, the New South Wales Labor government could have implemented any of several options to mitigate disaster and ensure that the project would achieve its public service objectives. These options include temporary financial relief to the private sector partner; renegotiating the concession to change the fee structure; better cooperation over marketing and advertising; negotiating a partnership with the airport authority; or purchasing the system outright, which likely would have been the easiest and most effective option, as most estimates at the time revealed that the state could have bought the Airport Link for only slightly more than the private sector partner had contributed to the project in the first place, as mentioned previously. If a CLCO-like institution or a similar approach had been used in Sydney, it is probable that some kind of relief plan would have been implemented, in part because there would not

have been the same kind of political motivation to abandon the project but also because the institutionalization of cooperation would have allowed for a more collaborative solution to the governance failure that occurred.

In short, the province of British Columbia produced a major policy innovation for preventing governance failure in public-private partnerships for transportation infrastructure. The use of CLCO for the development of the Canada Line was a key contributing factor in maintaining cohesion and removing the political conditions that in Sydney made a governance failure possible.

Chapter 8.

Conclusion

In the first chapter I asked four conceptual questions:

1. Can governance fail?
2. What does a governance failure look like?
3. What are the consequences of governance failure?
4. How can governance failure be avoided?

It should be evident by now that governance arrangements can most certainly fail. In public-private partnerships in the transportation sector, as exemplified by the Sydney Airport Link, governance failures can prevent a governance arrangement from producing the outputs it intended to, like having a useful rail route that commuters actually use, reducing traffic congestion, promoting urban development, reducing greenhouse gas emissions, or other stated policy objectives. In the Sydney case, a governance failure appeared as a cessation of cooperation between the public and private partners after a dramatic financial collapse occurred shortly after the service went into operation in 2000. In the case of the Canada Line in Vancouver, all of the governance arrangement's policy objectives were met, and collaboration between the partners continues without substantial issue.

The consequence of governance failure for the people of New South Wales is that they did not receive a viable rail link between Sydney's central business district and Sydney International Airport. While the Link is there, and the trains are running, it is not used to its fullest capacity because of the high ticket price. Therefore the policy objectives of the project have not been fulfilled. In addition, substantial public funds have been diverted to the project as a direct result of the governance failure, including money that was lost when the P3 contract was renegotiated. If governance failure had not occurred in this case, this money could have been used in other areas of public policy. The Canada Line did not experience governance failure and so it did not meet with these outcomes.

But why did governance failure occur in the Sydney case? The quick answer is that the Sydney Airport Link was not a case of governance failure at all, but a case of financial failure, which occurred because of a faulty patronage forecast and an unrealistic pricing model. By this reasoning, if a better ridership forecast had been provided, the project would have been priced differently, or designed differently, and it would have achieved financial success and therefore it would also have achieved its public policy objectives.

This is, however, not a satisfactory explanation, for two reasons. One, the above does not explain how a faulty ridership forecast was allowed to occur in the first place; and two, it does not explain why, when faced with crisis, the P3 partners in the Airport Link project were not able to reconcile their differences and work towards a solution. If there had been no governance crisis, then a swift resolution would have been expected, rather than a five-year legal battle ending in a renegotiated contract and ongoing subsidies that represent a significant loss of funds to the public purse.

In fact, there was a governance failure. The state government of New South Wales categorically refused to collaborate with the private sector to resolve the financial conflict brought on by the underestimation of patronage. The Labor government of the day seized on the opportunity to label the Airport Link as a failure of the previous Liberal government, and was subsequently determined to see the Airport Link Company go bankrupt. This was (perhaps correctly) seen as the best way to make a political statement that the Liberal government had negotiated a bad deal over the Airport Link. This strategy required the government to stand back and allow the bank to foreclose on the Airport Link Company's debt, because the worse the outcome for the Airport Link Company, the more compelling the government's argument would be that their Liberal predecessors had set the project up for failure.

In fact, the Airport Link continued to be politically relevant long after the financial crisis was resolved and a new private partner had been brought on board, indicating that the Labor Party's strategy was perceived (by them, at least) to be productive. In 2005, when announcing the restructuring of the P3 agreement, then Minister of Transport and Deputy Premier John Watkins gave an impassioned speech in the legislature detailing this "bungled project" that his predecessors – voted out of office ten years prior – had initiated when they were in government (Watkins, 2005: 18616). As late as 2011, six years after the P3 contract was renegotiated and eleven years after the Airport Link went into service, then Premier Kristina Keneally told the Sydney Morning Herald that "the expensive fees on the Airport Link were a legacy of the previous Liberal government, which signed off on the public-private partnership" (Saulwick, 2011a). This strategy of blame assignment also absolutely prohibited the Labor government from nationalizing the Airport Link (and thereby officially and legally accepting ownership of the project),

although this might have been the most cost-effective way to end the conflict and emerge with a rail system that meets its stated public policy objectives. All of these were tactics pursued by an extremely successful Labor Party government, which was in power in New South Wales for sixteen years.

But more fundamentally, a faulty patronage forecast and an unrealistic ticket price were allowed precisely because there was insufficient policy leadership emanating from the public sector at every point along the project's trajectory. If the government had consulted a broader policy network of interested actors, it may have been able to produce more than one ridership report, or it may have been able to acquire data that would have better illuminated the estimation process, or it may have been able to produce a better overall business model, such as one that included the airport's authority to charge fares directly through airline tickets, which would have eliminated the need for station access fees altogether. If the state government had had access to more international experience on P3 best practices, it may have insisted on a rigorous competitive tender process, which could have produced a better designed system, a better business model, or more accurate ridership estimates. If a collaborative project management entity had been employed, the entire project may have been developed with more cautious decision making that would have produced a better pricing mechanism, or a cooperative relationship between the public and private sectors might have become institutionalized, or a government that was shielded from political backlash may not have found it as easy and as necessary to engage in a high-stakes partisan campaign that resulted in the bankruptcy of the system. These are all things that were employed in the Vancouver case and in that case governance failure did not happen (and does not appear likely to happen in the future, either).

Another possible explanation is that the difference in outcomes between these two cases is due to the fact that a turnover in government occurred in New South Wales during the Airport Link episode, while the Liberal party was in power in British Columbia for the entire development of the Canada Line. This explanation must be rejected, for two reasons: first, serious planning for the Canada Line, including the beginning of an organized effort between multiple public sector agencies, began in 1999 when the New Democrats were still in power; and secondly, the Liberals did not make any effort (though they had ample opportunity) to use a transit megaproject for partisan purposes when the Canada Line's predecessor, the Millennium Line, failed to reach its ridership estimates for years after opening (Luba, 2005).

Another alternative explanation is that the governance arrangement did not fail in Sydney, but that the state government simply unilaterally refused to collaborate. Under this explanation, if the government had offered support, the financial collapse would not have happened and perhaps a settlement could have been reached that would have enabled the project to realize its public service goals.

Again, this explanation is not satisfactory. The state government of New South Wales engaged in behaviour that could be seen as uncooperative because the weaknesses of the governance arrangement for the Airport Link project compelled it to do so. Because the government was directly responsible for the project, they were required by the nature of the party system to attempt to assign the blame for the project's collapse on the opposition party. If they had nationalized the system or if they had settled the crisis in any way that employed direct financial assistance to the Airport Link Company they would have been seen as accepting blame for the failure of the project and spending more public money to resolve it. In the end this is what happened,

but because the public subsidies are small and are delivered by means of ongoing installments, they are perceived as being less politically damaging than a large lump-sum payment would have been. Because the Airport Link's business model was designed to have the private sector carry the patronage risk in its entirety (as user fees were its only source of revenue), the Labor government was forced to allow the Airport Link company to go bankrupt, in order to show how big a mistake this Liberal-designed business model was. From a public service delivery perspective, this may not have been the best approach; but from a partisan perspective, this strategy could easily have been perceived to yield the biggest gains.

More generally, the issues of governance failure that were encountered in the case of the Sydney Airport Link underscore a broader debate on the role of the state in the delivery of public services. For more than half of the 20th century, many advanced democracies made considerable efforts to develop a system which is often referred to as the welfare state. In this system, many benefits were conferred on citizens in a mainly universal (as opposed to residual) manner and funded in theory (though not always in practice) by mechanisms of progressive taxation. The benefits of the welfare state, now often tellingly referred to as entitlements, raised standards of living, stimulated and stabilized economies, reduced class conflict, and institutionalized public service delivery as a means of democratically allocating scarce resources to subsets of a population.

Since the early 1970s, a public attitude developed in which citizens increasingly saw the public sector as wasteful, rent-seeking, unresponsive, and tied up in pointless bureaucratic process. Political parties in many countries were elected to office on platforms of marketization of services, New Public Management reforms of the public sector, reducing government activity, and lowering taxes. Since 1980, many of these

promises have been fulfilled, and governments have sold state owned enterprises, reduced regulation of industry, contracted operations to the private sector, downsized the civil service, and generally increased market activity in many areas.

However, possibly because of an attachment to the entitlements of the welfare state era, citizens have not demanded (nor have governments produced) a return to the pre-welfare state level of service delivery. Instead, governments, autonomous public agencies, private not-for-profit entities, independent authorities, and private corporations all operate together to deliver public services in an increasingly decentralized and non-hierarchical arena. This system of governance, in which public-private collaboration is a prominent method of service delivery, is still evolving, and the appropriate role of the state within the system is still a contested notion.

Governance is now an essential method of public service delivery in many countries and in many sectors. As such, governance has become a key element of democracy itself. Public-private partnerships, which are formal contractual arrangements between the public and private sectors, are a popular form of governance that are often seen as effective (they achieve objectives of public service delivery) and efficient (they achieve their objectives at minimum cost). These public-private partnerships are used especially in sectors where large capital investments are required and where user fees can easily be charged or, at the very least, calculated so that payments per user can be effected.

However, like markets and governments acting alone, governance arrangements – including P3s – can fail. When they fail, governance arrangements can produce institutional decay, in which functions of the state, constitutional privileges, or

mechanisms of democratic accountability are impaired; or, governance arrangements can generate perverse outcomes in which unfair advantage favours the either the public or the private sector at the expense of the other; or, finally, cause collaboration between the public and private sectors to break down, leading to a situation in which the objectives of the partnership cannot be achieved. The first two forms of governance failure, institutional decay and unfair advantage, would generally require longer time periods – multiple decades, with sequentially renewed or terminated concession periods – to become apparent. Unfortunately in the cases examined in this dissertation, not enough time has elapsed to allow for conclusive evidence of these two forms of governance failure.

These case studies in governance failure can help address the broader issues of the role of the state in governance arrangements. Public-private partnership, which is often used to bring the private sector in to participate in the delivery of a public service, is usually presented as a way for the private sector to bring in efficiency and discipline to infrastructure delivery. Fundamentally, the logic of P3s and other methods of alternative service delivery is to remove the state from the implementation side of the service delivery equation; the state, which proponents of P3s characterize as bloated, slow, wasteful, and prone to delay, should be relegated to broad policy direction while the efficient and innovative private sector should be charged with the actual delivery of services to the public. In the face of some P3s that did not realize these goals of increased efficiency, or failed to meet their public service objectives, some observers have argued that even more private sector involvement – not less – is required for P3s to be effective (Mustafa, 1999; Poschmann, 2003; United Nations, 2008: 37-38).

However, in order to prevent governance failure from occurring, sufficient public sector policy leadership must be shown. In other words, it is not sufficient for the public sector to retreat into the realm of policy ideas; the state must have an active and authoritative engagement with the delivery of public services. In the case of P3s for the development of transportation infrastructure in particular, the examples of the Sydney Airport Link and Vancouver's Canada Line suggest that a public sector that is actively engaged in management of its governance arrangement with the private sector can prevent governance failure, while a government that bestows too much responsibility on the private sector partner alone leaves the partnership vulnerable to governance failure. These are two cases with similar technical and political inputs that produced dramatically different outcomes: the Canada Line has been a success while the Sydney Airport Link resulted in a governance failure.

Specifically, I have shown three ways in which public sector policy leadership can help prevent governance failures from occurring: first, governments must pay attention to policy networks. P3s are networks of public and private sector actors, but they are also nested within more general networks of public sector agencies, stakeholder organizations, business groups, and private companies. By paying attention to the needs of the relevant policy networks, and by fostering cohesion and cooperation, governments can contribute to a collaborative environment in which as many interested parties as possible are included in the decision making process. At the same time, the government must position itself as a clearly defined but distant authority, visibly ready to step in and correct governance failures as soon as they appear. In short, the government must manage the policy network to achieve the best balance between independence and interconnectedness of the network's actors. In Vancouver, the provincial government of

British Columbia achieved this balance through careful manipulation of network actors, and through active engagement with as many relevant potential network participants as possible. In Sydney, the New South Wales government completely ignored the possibility of a policy network and attempted to act independently. In an era of governance, where jurisdictions and responsibility for policy are shared with numerous public and private sector actors, this approach is simply not viable.

Second, governments must learn from past experiences in other jurisdictions. They must establish what has worked, and what has not, as seen through the bounded-rationality lens of the domestic political context. Lessons from other jurisdictions in other time periods can prove to be highly educational, especially for governments that have not undertaken similar projects on their own in the past. In Vancouver, policy learning was critical to the success experienced by the Canada Line. In Sydney, policy learning did not take place – but admittedly, this is mostly due to the fact that the Sydney Airport Link was developed at a time when P3s for transportation structure were relatively new, so there was not yet an international body of experience available to draw upon for policy examples. This suggests that there is a natural evolution to global knowledge and understanding of new policy problems, as some authors have proposed (Rose, 1993; Stone, 2004).

And third, policy makers in Vancouver innovated a new method for project management that provided a central focus to the project and to the governance arrangement. This collaborative institutional model for project implementation enabled the government to protect itself from any public discontent over the project while, at the same time, it allowed the government to retain ownership of the success of the project in the long term. In addition, the use of CLCO institutionalized cooperation among the P3

partners and fostered a sensitivity to the needs of the multiple funding organizations in a way that inspired the project to proceed with an abundance of caution in decision making. In Sydney, the use of a CLCO-style organization might have obviated the need for partisan conflict by placing an institutional barrier between the government and the partnership; it might also have developed a more institutionalized collaborative arrangement with the private sector that would have been more difficult to abandon at the first appearance of crisis.

This study has, of course, some limitations. First, it should be noted that this project only considered two case studies. In order to achieve a more robust generalization, more cases should be studied.

However, the two cases analyzed in this dissertation provide some convincing results. In Vancouver, a careful government expertly guided the governance arrangement for the Canada Line according to international lessons and an innovative project management approach, and thereby avoided governance failure. In Sydney, two inexperienced governments set up a public-private partnership with some inherent weaknesses that left it particularly susceptible to a governance failure. Because the two cases are so similar in terms of technical design, political motivation, and cultural and legal contexts, but so different in terms of policy implementation, it is evident that the steps taken by policy makers in the case of the Canada Line helped to prevent governance failure while the absence of these strategies likely contributed to governance failure in the case of the Sydney Airport Link. If the public sector in Sydney had been more able or more willing to supply strategic policy leadership, then the Airport Link would not have experienced governance failure.

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