

The proposed Therme spa could be Highway 407 all over again

Sandford Borins



The European company set to build a spa and waterpark complex at Ontario Place says it listened to concerns from Toronto officials and community activists. Therme Group

Sandford Borins is professor emeritus of public management at the University of Toronto.

What we are learning about the Ford government's contract with Therme Group to build and operate a spa at Ontario Place is beginning to look a lot like the privatization of Ontario's Highway 407. I should know: I was a director of the Crown corporation that built the highway and co-author of the 2004 book *If You Build It ... Business, Government, and Ontario's Electronic Toll Highway*.

After Highway 407 opened in 1997, Mike Harris's Progressive Conservative government decided to privatize it. The privatization agreement closed on May 5, 1999, the day a provincial election was called.

The government proudly announced that it received \$3.1-billion for a 99-year lease and assured the public that toll increases would be modest and after 15 years pegged to the rate of inflation. It argued the agreement contained sensitive business information and could not be released. With the highway's book value of \$1.5-billion, the revenue from the sale conveniently balanced the government's books.

The bad news came later, with much higher than anticipated toll increases and a controversy over vehicle registration denial to drivers who the operator's software determined had not paid their tolls. The privatization agreement was finally made public in 2002 as a result of a freedom of information request. The Liberal government of Dalton McGuinty attempted unsuccessfully to challenge the agreement in court, and his successor as party leader and premier, Kathleen Wynne, decided to build the eastern section of Highway 407 under public ownership.

Marx's adage that history repeats itself, first as tragedy and then as farce, appears to be playing out for the Therme spa. We have just discovered that Therme has received a similar long-term lease for 95 years. The Ford government refuses to release the terms, citing business confidentiality.

The Ministry of Infrastructure and Ministry of Finance have the intellectual firepower to analyze the business case for the Therme spa lease and the related move of the Ontario Science Centre to Ontario Place, but the Ford government will cite business confidentiality and advice to cabinet as reasons not to release the analysis. Therme will continue to take out full-page ads in the Toronto newspapers to reassure the public that we are getting a great deal. If the spa is built, some time in the future, as the result of a freedom of information request or a new government taking office, we will learn that the deal isn't as good as promised.

But there is a big difference between the Therme spa and Highway 407. The initial decision to build Highway 407 was made by Bob Rae's NDP government and it had broad public and political support. Now there is considerable public opinion that the spa shouldn't be built at all. Opponents believe that obtaining the contract and analysis would show that financial injury has been added to environmental insult.

The Highway 407 and Therme spa stories make clear the deeply problematic nature of using contracts with the private sector as an instrument of governance. Legislation is intrinsically open to public scrutiny and debate. Regulations are overseen by quasi-judicial tribunals that hold public hearings.

But governments are not required to disclose the bidding process for contracts and the contracts are signed by cabinet, not by the legislature. The terms of the contract are hidden from public view because the government claims they contain proprietary information and analysis done by public servants is deemed advice to cabinet that is not subject to freedom of information legislation.

The maxim that sunlight is the best disinfectant provides a solution to this problem. Governments should table major contracts and the underlying analysis in the legislature, just as they make public contracts with public-sector unions and international treaties. This practice should improve the government's bargaining position in these negotiations and increase public support for the ultimate agreement.

Finally, publicity might affect the length of leases. There is little difference between the present value

of a 99-year lease and one of a much shorter term, say 35 years, because revenue streams in the distant future are greatly discounted. The essential reason for long-term leases is political ideology; public disclosure might reduce conservative governments' tendency to act ideologically.

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