



Decision

Rescinding of two contracts for road and sidewalk snow clearing (call for tenders 16-15049)

(section. 57.1.10 of the *Charter of Ville de Montréal,
metropolis of Québec*)

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SUMMARY

The Office of Inspector General conducted an investigation after receiving a report to the effect that Transport Rosemont Inc. was using a stratagem to boost its remuneration considerably when executing the snow removal contracts they had been awarded in the Villeray–Saint-Michel–Parc-Extension borough (hereinafter “VSMPE”).

Contrary to their obligations, and while the company is paid based on the full volume of its trucks, Transport Rosemont was not filling the trucks used to load and transport snow to their full capacity. According to the report, over three hundred (300) of the five hundred (500) truckloads during the fifth (5th) snow removal operation in 2019 were not full.

Call for tenders 16-15049 was published in 2016 by the Department for Borough Consultation [Service de concertation des arrondissements] (hereinafter the “SCA”) for the purpose of obtaining roadway and sidewalk snow removal services by sector. Two of these contracts covered the services required by the VSMPE borough in Sectors 103 and 107. The four-year contracts were awarded to Transport Rosemont in the amounts of \$5,002,038.32 and \$4,279,362.52, respectively, all taxes included.

In the course of the execution of snow removal contracts, including the one resulting from call for tenders 16-15049, Ville de Montréal agents ordinarily measure the full volume of each truck the contractor will be using, at the start of each winter season. Having taken the trouble to measure the dump beds of these trucks, and given that Transport Rosemont was paid based on the volume of snow transported, invoicing was premised on each truck travelling to the snow disposal site [Lieu d'élimination de la neige] (hereinafter the “SDS”) being fully loaded. Using the unit price bid by Transport Rosemont and depending on the measured capacity of each truck's dump bed, a load can represent from \$172.12 to \$332.61 for the company.

The Office of Inspector General's investigators met with the foremen and snowblower operators—all Transport Rosemont employees—working in Sectors 103 and 107. They noted that during a snow-loading operation, the snowblower operator was responsible for visually determining if a truck's dump bed was full. In this regard, they stated that with the exception of certain special circumstances, two (2) or three (3) snow mounds should be seen in the truck's dump bed, depending on the length of the truck.

However, when the Office of Inspector General analyzed photos of all five hundred and fourteen (514) loads carried by Transport Rosemont during the fifth snow loading operation, the story that emerged was entirely different. In fact, three hundred (300) of these loads were only 50% full or less, i.e. 50% of the loads from Sector 103 and 66.5% from the loads from Sector 107.

For comparative purposes, the Office of Inspector General analyzed the loads of another contractor in Sector 102 adjacent to Transport Rosemont's sectors. It appears that only three (3) of the two hundred and two (202) loads in Sector 102 were 50% full, corresponding to a rate of 1.5% irregular loads. The difference is even more striking since SCA considers the standard for acceptable partial loads to be approximately 2%.

Even though VSMPE borough representatives warned the company's general manager after the fifth (5th) operation, of the two hundred and ninety-seven (297) and three hundred and twenty-six (326) loads of snow hauled by Transport Rosemont in Sectors 103 and 107 during the sixth (6th) loading operation, twenty-two (22) and sixty-nine (69) loads were 50% full or less, representing proportions of 7.4% and 21.2%, respectively. In comparison, only three (3)



of the two hundred and eighty (280) loads by the contractor in the adjacent Sector 102 were 50% full, a rate of 1.1%.

The Office of Inspector General also analyzed the transactions for the loads carried by Transport Rosemont for Sectors 103 and 107 in the first four (4) loading operations in the winter of 2018-2019. These showed that the proportions of loads that were 50% full or less ranged from 11.2% to 28.5% for Sector 103, and from 13.4% to 45.5% for Sector 107.

Section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec provides two (2) cumulative conditions for intervention by the Inspector General. She must find non-compliance with one of the call for tender or contract documents, or that some of the information provided as part of the contract-awarding process is false or misleading. Second, she must be of the opinion that the seriousness of the breach observed justifies rescinding the contract.

The first criterion is met both by Transport Rosemont's failure to meet their obligation to fill the truck dump beds to capacity, and by their breach of the section in Ville de Montréal's by-law on contract management [Règlement sur la gestion contractuelle] (hereinafter "RGC") prohibiting the commission of fraudulent stratagems in performing their contracts.

The evidence shows that the snowblower operators – Transport Rosemont employees – were the ones who decided on the amount of snow to blow into the truck dump beds and, despite being aware of the standards expected in such matters, systematically failed to fill the dump beds to their full capacity. Similarly, the justifications put forth by Transport Rosemont to explain such behaviour are not credible and therefore cannot be accepted.

In terms of the seriousness of the breaches, it is mainly due to the fact that the incomplete loads recurred over the course of multiple snow loading operations and indicated patently bad faith on the part of Transport Rosemont in executing one of the snow removal contracts' central obligations. By acting as they did, Transport Rosemont irremediably undermined the bond of trust contractually binding them to Ville de Montréal. Even more so since contracts such as those resulting from call for tenders 16-15049 involve several hundred truckloads over the course of the winter, and thus demand a high degree of trust in the co-contracting party's good faith.

In short, the Inspector General believes that the conditions stipulated in section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec have been met, and is cancelling the contracts related to call for tenders 16-15049 awarded to Transport Rosemont by the City Council on June 21, 2016. In conformance with RGC provisions, the Inspector General is recommending that Transport Rosemont be prohibited from participating in any calls for tenders and denied the possibility of obtaining any contracts by mutual agreement with Ville de Montréal for a period of five (5) years.

Moreover, the investigation also revealed that the laser instrument used by Ville de Montréal to measure the truck dump bed volumes is not certified by Measurement Canada, the appropriate federal authority. Based on this fact, Measurement Canada informed the SCA that an uncertified instrument cannot be used. In the Inspector General's opinion, it is important that, apart from the legal implications, the City Administration conform to the applicable standards in these matters to maintain the trust of contractors and potential bidders.

It should also be noted that Measurement Canada's decision regarding the instrument in question does not affect the results of the investigation or the conclusions of this report, since the issues of measuring and determining the dump bed volume are independent of their mandate to carry out the terms of their contract.



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1. Scope and extent of work

1.1 *Warning*

Under section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* (R.L.R.Q. c. C-11.4, hereinafter the “Charter of Ville de Montréal”), the Inspector General’s mandate consists in overseeing contracting processes and the performance of contracts by Ville de Montréal or a related legal person.

The Inspector General does not conduct criminal investigations but rather investigations of an administrative nature. In this report, each time the term “investigation” is used, it refers to an administrative investigation and should in no way be interpreted as referring to a criminal investigation.

1.2 *Applicable standard of proof*

The Inspector General has the duty to deliver quality reports that are timely, objective, accurate and presented in a manner that will ensure that the individuals and organizations under her authority are able to act in accordance with the information provided.

Consequently, in support of her opinions, reports and recommendations, the Inspector General imposes upon herself the burden of proof of the civil standard of the balance of probabilities.¹

1.3 *Notice to interested parties*

Before making the results of her investigation public and, where applicable, using the powers conferred to her under section 57.1.10 of the *Charter of Ville de Montréal* in accordance with her duty of procedural fairness, the Inspector General is sending a Notice to Interested Parties (hereinafter, the “Notice”) indicating the relevant facts gathered during the investigation.

Upon receiving the Notice, the persons concerned may submit in writing any comments, representations or observations they believe to be relevant or likely to influence the Inspector General’s decision.

Such a Notice was sent on May 24, 2019 to the attention of the contractor who had been awarded two contracts related to call for tenders 16-15049, Transport Rosemont Inc. (hereinafter “Transport Rosemont”), and to the Ville de Montréal business units concerned, namely the Department for Borough Consultation [*Service de la concertation des arrondissements*] (hereinafter the “SCA”) and the Borough of Villeray–Saint-Michel–Parc-Extension (hereinafter “VSMPE”).

¹Evidence is sufficient if it renders the existence of a fact more probable than its non-existence (see Article 2804 of the *Civil Code of Québec*).



The facts and arguments invoked by the recipients of the Notice were taken into account by the Inspector General and addressed in this decision.

2. Context of the Office of Inspector General's investigation

2.1 Denunciation received

The Office of Inspector General received a denunciation in March 2019 alleging that Transport Rosemont was employing a scheme to boost its remuneration considerably while performing snow removal contracts in the VSMPE borough.

Whereas the full volume of the truck dump beds is measured at the start of each winter to determine the amount to be paid per load of snow, the company was not filling the trucks used to load and transport snow to capacity. According to the report, over three hundred (300) of the five hundred (500) truckloads during the fifth (5th) snow removal operation in 2019 were not full.

The Office of Inspector General's investigation therefore intended to shed light on these allegations.

2.2 Call for tenders 16-15049

On April 5, 2016, the SCA published call for tenders 16-15049 on the SEAO online tendering site for the purpose of awarding contracts for roadway and sidewalk snow removal by sector in seven (7) boroughs (hereinafter "call for tenders 16-15049"). Two of these contracts covered the services required by the VSMPE borough in Sectors 103 and 107.

The bids were opened on May 18, 2016. Of the fifty-five (55) companies that took specifications for call for tenders 16-15049 as a whole, there were five (5) conforming bidders for each of the VSMPE borough Sectors 103 and 107.

On June 21, 2016, the City Council adopted resolution CM16 0770, which namely awarded the contracts related to call for tenders 16-15049 for VSMPE borough Sectors 103 and 107 to the lowest conforming bidder, Transport Rosemont. The contracts were for a term of four (4) years each, starting on November 1, 2016 and ending on April 15, 2020, for the respective amounts of \$5,002,038.32 and \$4,279,362.52, all taxes included.

3. Performance of contracts related to call for tenders 16-15049

This section addresses the general process of a snow removal operation, Transport Rosemont's organization with regard to the performance of the contracts resulting from

call for tenders 16-15049, and the performance of said contracts over the winter of 2018-2019.

3.1 General comments

Before addressing the performance of the contracts related to call for tenders 16-15049 as such, some general comments on the contractual realities in the snow removal sector are required to facilitate the reader's understanding.

3.1.1 Types of existing contracts

Apart from cost plus contracts, whereby snow is loaded into trucks by Ville de Montréal employees and transported by private contractors, there are two (2) types of contracts in which all snow removal activities are carried out by private contractors: “centimetres fallen” and “cubic metre”. The contracts in the VSMPE borough covered by this decision are of the latter type (i.e. cubic metre).

In the years preceding call for tenders 16-15049, the calls for tenders issued by Ville de Montréal for snow removal stipulated that the successful bidder would be paid according to the unit price for each linear metre of street in the sector in question. This unit price was to be calculated based on a projection of a base threshold of two hundred (200) centimetres of precipitation between November 15 and March 31 of each winter. To reflect the actual amount of precipitation during the winter, the unit price was adjusted upwards or downwards by 0.4% for each centimetre of precipitation diverging from the base threshold of two hundred (200) centimetres.

In other words, the contractor's remuneration was established based on the price per kilometre being tendered, the total number of kilometres included in the sector in question, and the amount of snowfall during the winter. This method of remuneration is commonly known in the snow removal industry as “centimetres fallen.”

However, in the last few years, Ville de Montréal has started favouring other types of contracts over centimetres fallen contracts, such as call for tenders 16-15049, in which the remuneration is based on the unit price per cubic metre of snow from streets and alleys loaded and transported to the snow disposal site (hereinafter the “SDS”). The purpose of this change in the method used for the remuneration of snow removal contractors is to more accurately reflect the actual amount of snow to be loaded.

In a centimetres fallen contract, the contractor is paid based on the number of centimetres of snowfall, regardless of whether the snow has melted before snow loading operations begin. With a cubic metre contract, the contractor is paid only for the snow loaded onto the contractor's trucks and transported to the SDS.



As will be shown below, these new cubic metre contracts caused discontent among some industry players, including the company at the centre of this investigation, Transport Rosemont.

Apart from the cubic metre contracts for VSMPE borough Sectors 103 and 107 mentioned in subsection 2.2, Transport Rosemont was also awarded three (3) other cubic centimetre contracts, namely two (2) sectors in the Borough of Ahuntsic–Cartierville and one (1) in the Borough of Rosemont–La-Petite-Patrie.

3.1.2 Measurement of truck dump bed volumes

For the performance of snow removal contracts, at the beginning of each winter, Ville de Montréal agents measure the full volume of each dump bed of the trucks which the contractor intends to use. At the same time, Ville de Montréal provides truck drivers with telemetry equipment and pagers, the operation of which will be explained in the following subsection. Having thus measured and identified each truck for the purpose of performing a given contract, Ville de Montréal can electronically monitor the approximately 300,000 truck trips made annually during snow loading and transport operations.

As mentioned at the beginning of this report, this measurement step is more important for cubic metre contracts, since the contractor's remuneration is directly related to the amount of snow being transported. Hence, the greater the measured capacity per truck, the more profitable it is for the contractor.

In the past, truck dump bed volumes were calculated manually with a measuring tape and the following formula:

$$\text{Volume} = 0,5 [(h_d + h_g) \times L_a \times L_o] - U$$

- **Volume** : est exprimé en mètres cubes, au dixième (1/10) près.
- **h_d** : Profondeur intérieure de la benne du côté droit du camion exprimée en mètres, au centimètre près;
- **h_g** : Profondeur intérieure de la benne du côté gauche du camion exprimée en mètres, au centimètre près;
- **L_a** : Largeur intérieure de la benne du camion exprimée en mètres, au centimètre près;
- **L_o** : Longueur intérieure de la benne du camion exprimée en mètres, au centimètre près;
- **U** : Saillie

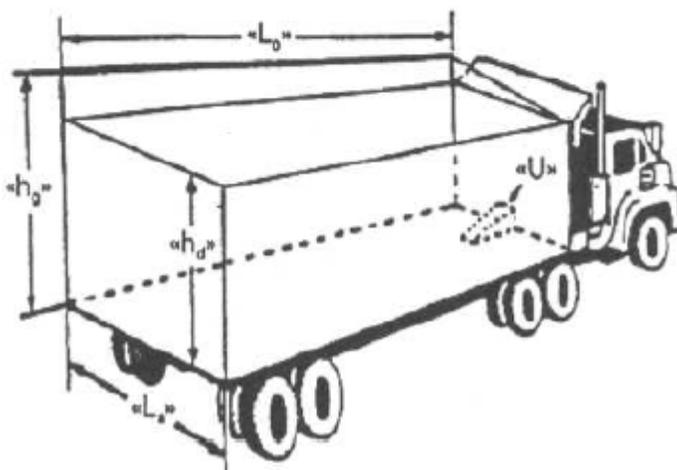
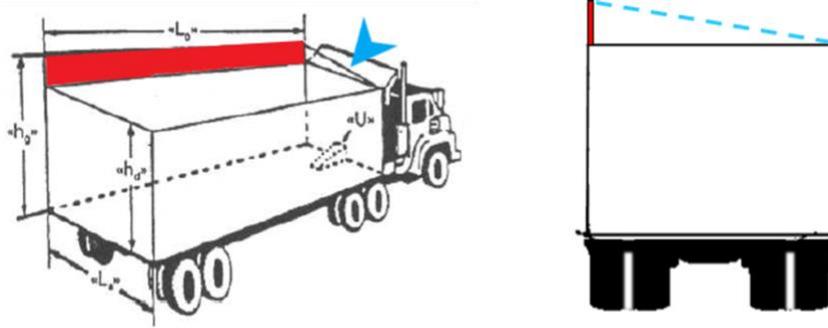


Image taken from call for tenders 16-15049 specifications

A figure is provided below to facilitate the reader's understanding. Using the figure from the call for tenders 16-15049 specifications, the second figure represents a cross-section from the rear of the truck. The red segment shows the planks often installed by truck drivers. This addition, made of wood or another material, extends above the truck's dump bed and helps prevent blown snow overshooting the bed and landing on cars parked on the opposite side of the street.



When Ville de Montréal wants to measure the expected dump bed volume, it not only calculates the contents of the dump bed itself, but also takes into account the snow extending above the dump bed up to the dotted blue line.

However, just like the general remuneration method (from centimetres fallen to cubic metre), Ville de Montréal is also considering modifying its dump bed measurement methods. In fact, as allowed under Section 17.2.2 of the call for tenders 16-15049 specifications, Ville de Montréal began a pilot project in the winter of 2016-2017 in the VSMPE borough to measure truck dump bed volumes using a laser instrument.

Supplied by a Ville de Montréal co-contractor, the instrument captures a cloud of reference points in the dump bed and produces a 3D digital image of the bed. This new method is used to determine a dump bed's total volume based on the same parameters as the former manual method. In other words, this method also totals the dump bed volume as such by the volume defined by the triangle formed by the top of the dump bed, the left side planking, and the blue dotted line. According to Ville de Montréal, with this instrument, manual errors are avoided and the actual dump bed volume is more accurately reflected.

However, the transition is not easy. On the one hand, some truck drivers and snow removal contractors say they are frustrated because the data obtained with the laser measurement was less than the data previously obtained after manually measuring the same dump beds. For its part, Transport Rosemont estimates these volume losses at about 10% compared to the volumes determined manually in 2015-2016.

Furthermore, it was learned that the laser instrument used by Ville de Montréal was not certified by the appropriate federal authority, Measurement Canada. In the course of the investigation, SCA representatives advised the Office of Inspector General that they have since taken steps to have the instrument accredited and, according to them, the tests conducted to date are conclusive. Nevertheless, in a letter dated June 3, 2019, Measurement Canada informed the SCA that it could not use an uncertified instrument.

3.1.3 *Sequence of snow loading and transport operation*

Now that we have described the steps leading up to the performance of a snow removal contract, it is important to understand the mechanics of a snow removal operation.

In accordance with Section 12.2.1 of the call for tenders 16-15049 specifications, a snow-loading operation is initiated when the accumulation of snow resulting from one or more precipitation events creates a windrow equivalent to an accumulation of at least 10 to 15 cm. Ville de Montréal also reserves the right to initiate a snow-loading operation for any other reason.

When a loading operation has been declared and the snow has been cleared from sidewalks, the gathered evidence shows that a snow loading and transport operation is carried out in the following manner.

First, the truck is positioned close to the blower. The snowblower operator must activate the pager given to him by Ville de Montréal, after which an electronic authorization is sent to the truck driver's pager. The electronic signal consists of the blower ID number in combination with the ID of the truck and its measured volume to initiate the transaction. Snow loading can then begin.

All the witnesses have stated that the snowblower operator is responsible for the snow loading operations, and loads the snow into the truck until the truck's dump bed is full or too heavy.

Transport Rosemont snowblower operators said they determine that a dump bed is full by visually inspecting it. This element will be addressed in more detail in subsection 3.2.4 below.

With regard to a dump bed being too heavy, the evidence shows that it is up to the truck driver to warn the snowblower operator if the contents of the dump bed exceed the maximum limit in terms of weight that the driver is legally allowed to transport. The truck driver monitors the weight of the dump bed using a scale or other instrument of the same type located in the cabin of the truck.

So unless the snowblower operator receives a warning from the truck driver with regard to the weight of the dump bed, he is the one who decides when to stop filling the truck when he thinks the dump bed is full. At that moment, the snowblower operator raises the blower snow chute to stop if from blowing snow into the truck's dump bed. Since the truck driver is unable to see the contents of the dump bed, he relies on the signal from the snowblower operator to know if he can leave and head to the SDS.

When arriving at the SDS, the truck driver must stop at the gatehouse for the SDS attendant to receive the electronic transaction retransmission from the truck pager. Once the electronic signal has been received, the transaction is complete and the truck driver proceeds to a snow unloading dock, dumps the truck's load, and returns to the borough sector where the truck was assigned to be refilled.



Meanwhile, the SDS gatehouse attendant validates the truck's ID, its origin and the contents of the dump bed, and ensures that a photo is taken of each truck's dump bed. In their response to the Notice, the SCA explained that because some 300,000 trucks arrive at the SDSs during snow removal operations, the gatehouse attendants are not authorized to reject partial loads. Instead, the attendants must enter a note in Ville de Montréal's electronic system if they see that a dump bed is not full. As explained in detail in the next point, these reports of partially full dump beds are then analyzed by the SCA and the borough.

3.1.4 Data reconciliation, Ville de Montréal's expectations, and invoicing

With respect to Ville de Montréal, two levels are involved in the management of snow removal contracts. The SCA generally authorizes all payments to the various Ville de Montréal co-contractors, and the boroughs are responsible for overseeing on-site operations. These two levels share reconciliation and invoicing operations with regard to the various contractors.

Invoicing is done based on the premise that the trucks travelling to the SDSs are fully loaded. In fact, having measured the truck dump beds as described above, Ville de Montréal expects them to be full.

If a truck is not filled to capacity, section 13 of the call for tenders 16-15049 specifications stipulates the following:

[TRANSLATION] "If a truck is not filled to capacity, the director can visually estimate the portion of the truck that is filled and only count the corresponding volume for processing purposes. He may also refuse to count the trip."

Hence, under this section, after visually estimating the contents of the dump bed, Ville de Montréal has discretionary power to adjust payment to the contractor proportionately or refuse to count the truck's trip.

However, given the number of truck hauls over the course of a winter (approximately 300,000), Ville de Montréal cannot systematically assess the individual contents of each dump bed. This is why it initially assumes that the loads are full, and subsequently relies on reports received from the SDS gatehouse attendant to identify incomplete loads.

Based on this volume processing and sampling system, the SCA analyzes the abnormal transactions, including those that contain reports of partially filled dump beds. The transactions reported as irregular are forwarded for comments to the borough concerned, in this case VSMPE. As specified in call for tenders 16-15049, the VSMPE borough visually estimates the level of snow in the trucks using photos taken during the transaction and can adjust the contractor's payment accordingly. In its response to the Notice, the SCA indicated that some incomplete loads can occur in rare circumstances; e.g. at the end of a work shift. Hence, a rate of around 2% of partially filled dump beds is deemed to be normal and acceptable over the total transactions.

It was the number of reports of incomplete loads by Transport Rosemont that triggered the denunciation sent to the Office of Inspector General.

3.2 Transport Rosemont's operating procedures in executing the contracts resulting from call for tenders 16-15049

To fully understand the context surrounding the events that occurred in the various snow loading operations, certain elements gathered in the course of the investigation with regard to Transport Rosemont's operating procedures must be brought to the reader's attention.

3.2.1 Foremen and snowblower operators

Both the foremen and snowblower operators working on the contracts related to call for tenders 16-15049 for each of the VSMPE borough Sectors 103 and 107 are Transport Rosemont employees. The company's foremen are employees who are highly experienced in snow removal (each with twenty (20) years or more of experience) and have previously held the critical position of snowblower operator.

They report directly to Transport Rosemont's general manager, who considers his foremen responsible for the company's contract in the sector to which they are assigned. As such, they must hire and train Transport Rosemont employees who operate the blowers as well as the machinery used to clear snow and spread salt on the sidewalks.

The main snowblower operators in Sectors 103 and 107 are also employees with some experience, having worked in this position for about five (5) years.

3.2.2 Truck drivers

Almost all the trucks used to transport snow belong to subcontractors; only two (2) of the trucks used by Transport Rosemont for the performance of the contracts related to call for tenders 16-15049 are owned by the firm. The drivers of the latter two (2) trucks are Transport Rosemont employees who are paid by the hour.

The subcontracting trucking companies are paid by Transport Rosemont using a hybrid method of two possible payment options: one based on the number of trips, and the other at a minimum hourly rate guaranteed by Transport Rosemont. If the trip-based method proves to be more beneficial for the subcontractor at the end of a loading operation, the subcontractor will be paid on that basis.

However, if the subcontractor did not make enough trips with respect to the number of hours worked and this results in an hourly rate that is below the guaranteed hourly rate, Transport Rosemont will add fictitious trips as compensation to bring the rate up to the guaranteed minimum. It should be noted that, according to Transport Rosemont, these



additional compensatory trips are not charged to Ville de Montréal and the company must assume the costs itself.

Transport Rosemont's general manager says that his intention in establishing such a payment method was to induce truck drivers to make as many trips as possible, as well as to offer them a lucrative hourly rate to ensure subcontractor loyalty from year to year. The foreman and snowblower operator in Sector 107 said that they were aware that the truck drivers were paid per trip, and that as a result, the more trips they made the more lucrative it was for them.

Moreover, another element with respect to truck driver compensation should be mentioned. As mentioned above in subsection 3.1.2, use of a laser measurement method for truck dump beds led to a reduction in the volume reported for each dump bed. When interviewed by the Office of Inspector General's investigating officers, the Sector 107 foreman and a truck driver said that Transport Rosemont had decided to pay truck drivers for winter 2018-2019 using the measurements obtained in fall 2017 and not the lower ones obtained in fall 2018. However, this created a shortfall for Transport Rosemont, since the firm is paid by Ville de Montréal based on the reduced measurements obtained in fall 2018.

Transport Rosemont's general manager and the Sector 107 foreman were asked if they were aware of any intention on the part of the truck drivers to make more trips in order to get paid more, or of any agreement between the snowblower operators and truck drivers to load the dump beds less. They said no.

3.2.3 Snow loading instructions at Transport Rosemont

As mentioned in subsection 3.1.3 above, the snowblower operator is the linchpin of the snow-loading operation. Unless the truck driver indicates that he has reached his load capacity in terms of weight, the snowblower operator is the one who decides whether the dump bed is full, and who signals to the truck driver that he can leave the site and head for the SDS. Since the snowblower operators are Transport Rosemont employees, it is important to know what instructions they may have been given in relation to snow loading.

According to the statements that were gathered, Transport Rosemont's general manager provides snow loading instructions to the foremen, who are responsible for conveying them to the snowblower operators in their respective sectors. Transport Rosemont's general manager rarely gives instructions directly to the company's snowblower operators.

According to the statement made by Transport Rosemont's general manager, the instructions he issues to employees differ depending on whether the contract consists of a cubic metre or centimetres fallen contract.

Regarding the three (3) centimetres fallen contracts awarded to Transport Rosemont in the boroughs of Rosemont–La-Petite-Patrie and Ahuntsic, the company's general manager said that the trucks have to be filled to their maximum capacity. He said that he was willing to assume the risks associated with filling the truck dump beds as much as

possible, including being fined by the authorities concerned for trucks with loads that exceeded weight or height limits. It should be recalled that for a centimetres fallen contract, the contractor's remuneration is determined based on the precipitation that occurred and not on the volume of snow transported. In other words, the contractor has every incentive to load the snow while making the fewest possible trips.

With regard to the two (2) cubic metre contracts in VSMPE borough Sectors 103 and 107, Transport Rosemont's general manager said "I had the conviction to say that I didn't want to exceed the weight limit" [TRANSLATION]. Consequently, he directed his employees to observe the limits with regard to maximum load weight in those two sectors. He also said he noticed that the loads were always too full early on in the performance of the cubic metre contracts. He said that he ordered his employees to reduce the loads to the level measured in the dump beds.

For their part, the Sector 103 and 107 foremen stated that the instructions they received from Transport Rosemont's general manager consisted of an explanation of the method used to determine the dump bed volume for the cubic metre contracts. The witnesses basically described the illustrations shown in 3.1.2 above, while indicating that the volume of snow was not to exceed the blue dotted line. Whereas in the centimetres fallen contracts they were accustomed to filling the trucks to their load limit, the foremen understood that they needed to adjust to the cubic metre payment method, since Ville de Montréal would not be paying for the snow loaded above the blue line.

Transport Rosemont's foremen also claimed that they were asked to comply with the trucks' weight limits. Moreover, it should be noted that the foremen mentioned not having been given instructions stating that the trucks not be loaded or loaded below the blue dotted line.

With regard to the instructions that he himself gave to his personnel, the Sector 103 foreman said he told his employees at the beginning of the season not to overload the dump beds, repeating what was explained to him by Transport Rosemont's general manager regarding volume measurement in cubic metre contracts. According to the foreman, it is hard to gauge the right amount to put in the dump beds, and he said he had to warn and temper his snowblower operator during winter 2018-2019 because the latter was filling the trucks as if he was working on a centimetres fallen contract.

The Sector 107 foreman said that the only instructions he gave his employees were to use logic in loading the snow, i.e., to comply with the dump bed volume measurement and not to overload the trucks when the snow was heavy, and not break the trucks. In addition, this foreman pointed out that, unlike a centimetres fallen contract, with a cubic metre contract they do not become frustrated and complain about private contractors (for private driveways, alleyways or other areas) who push more snow into the street.

Lastly, the snowblower operators in Sectors 103 and 107 said that the instructions they received involved complying with the truck load limits.



3.2.4 Visual determination of full dump bed by the snowblower operator

As mentioned in subsection 3.1.3, the Transport Rosemont snowblower operators said they would visually assess the dump bed to determine whether it was full and then send the truck to the SDS. Whereas the preceding subsection dealt with the theoretical truck loading limit, this subsection covers its application on site.

In general, the statements that were gathered mention that during a snow-loading operation, the snowblower operator should be able to see two (2) or three (3) mounds in the truck's dump bed, depending on the truck's length.

Both the Transport Rosemont foreman and snowblower operator in Sector 107 said that for a load to be considered full, there had to be two (2) or three (3) mounds of snow in the dump bed. The Sector 107 foreman even stated that he did not see how it made sense or how it was possible to send a truck to the SDS when not even one (1) mound of snow was visible in the dump bed.

The Sector 107 snowblower operator said that he could see about one (1) foot beneath the highest plank on the truck and could tell when a mound of snow was forming. If there was no mound in the dump bed, he could not see anything.

The Transport Rosemont foreman for Sector 103 said that an adjustment was required in the way the trucks were being loaded after the switch to cubic metre contracts, i.e., that they no longer had to make overflowing mounds of snow as they did with the centimetres fallen contracts. Nonetheless, he stated that they still had to be able to see snow from outside the truck when it was full.

Lastly, the Sector 103 snowblower operator said that his capacity to see inside the dump bed depended on the height of the planking on the truck in question. Whatever the case, according to him, he would manage to see something in the dump bed for at least 50-60% of the loads, and even for trucks with higher planking, he would sometimes be able to see some of the mound of snow in the dump bed. Another fact that should be noted: when the snowblower operator met with the Office of Inspector General's investigating officers, he depicted a full dump bed as having two (2) or three (3) mounds of snow that could be seen to extend above the truck's lower planking.

In summary, these statements by Transport Rosemont employees helped identify what they believed should constitute a full load and, consequently, the way that they should form the loads that were then hauled to the SDS in order to meet their obligations under the contracts related to call for tenders 16-15049.

3.2.5 Remuneration received by Transport Rosemont

As previously explained, when executing cubic metre contracts in the VSMPE borough, Transport Rosemont was paid based on the amount of snow loaded and hauled to the SDS. The prices tendered by Transport Rosemont were \$5.04 per cubic metre for Sector 103 and \$4.90 per cubic metre for Sector 107.

Still based on the operating method stipulated in the contracts related to call for tenders 16-15049 and described in detail above, the volume of the dump bed of each truck used by Transport Rosemont was measured at the beginning of winter 2018-2019. The measured dump bed volume ranged from 34.15m³ to 71.66m³ in Sector 103 and from 49.27m³ to 67.88m³ in Sector 107.

This means that depending on the truck involved, each full load may represent for Transport Rosemont:

- \$241.42 to \$332.61 for Sector 107, and
- \$172.12 to \$361.17 for Sector 103.

It should be recalled that Ville de Montréal expects the bin loads to be full, so when it makes payments to Transport Rosemont, it assumes that the loads are compliant and pays the company accordingly. No information was obtained during this investigation to indicate that Transport Rosemont had ever notified Ville de Montréal that some of its loads were not full.

3.3 Fifth (5th) snow loading and transport operation

On February 21, 2019, Ville de Montréal ordered the fifth (5th) snow loading operation for winter 2018-2019. The operation took place over several days, ending on February 24 and 26, 2019 for Sectors 107 and 103, respectively.

As per the SDS procedure, photos were taken of the dump beds of each truck that arrived at the SDS during the loading operation. A large number of irregular loads from Sectors 103 and 107 were detected and, as a result, the VSMPE borough conducted a separate visual inspection of each load, as stipulated in section 13 of the call for tenders 16-15049 specifications.

3.3.1 Methodology

The VSMPE borough visually estimated the loads, which were divided into categories based on the proportion of snow contained in the dump bed based on its total capacity: 10% or less, 25%, 50%, 75% and 100%. The Office of Inspector General subsequently confirmed this visual estimate.

When met by the Office of Inspector General's investigating officers, the witnesses—the truck drivers, snowblower operators, foremen, and Transport Rosemont's general manager—had an opportunity to see and comment on the photos of the snow loads they had made and transported.

At these meetings, it was clear from the statements that were made that the witnesses agreed with the 100% ratings. In terms of loads assessed at 75%, the statements revealed some disagreements, with some witnesses estimating 100% full loads.

For the loads estimated at 10% or less, 25% and 50%, the witnesses disagreed about the percentage that was specifically assigned, saying that 5-10-15% should have been added.



However, the witnesses generally conceded that the loads could not be considered full. When looking at loads assessed at 10%, one Transport Rosemont foreman even asked the Office of Inspector General's investigating officers if the photos had been taken after the trucks had dumped their loads.

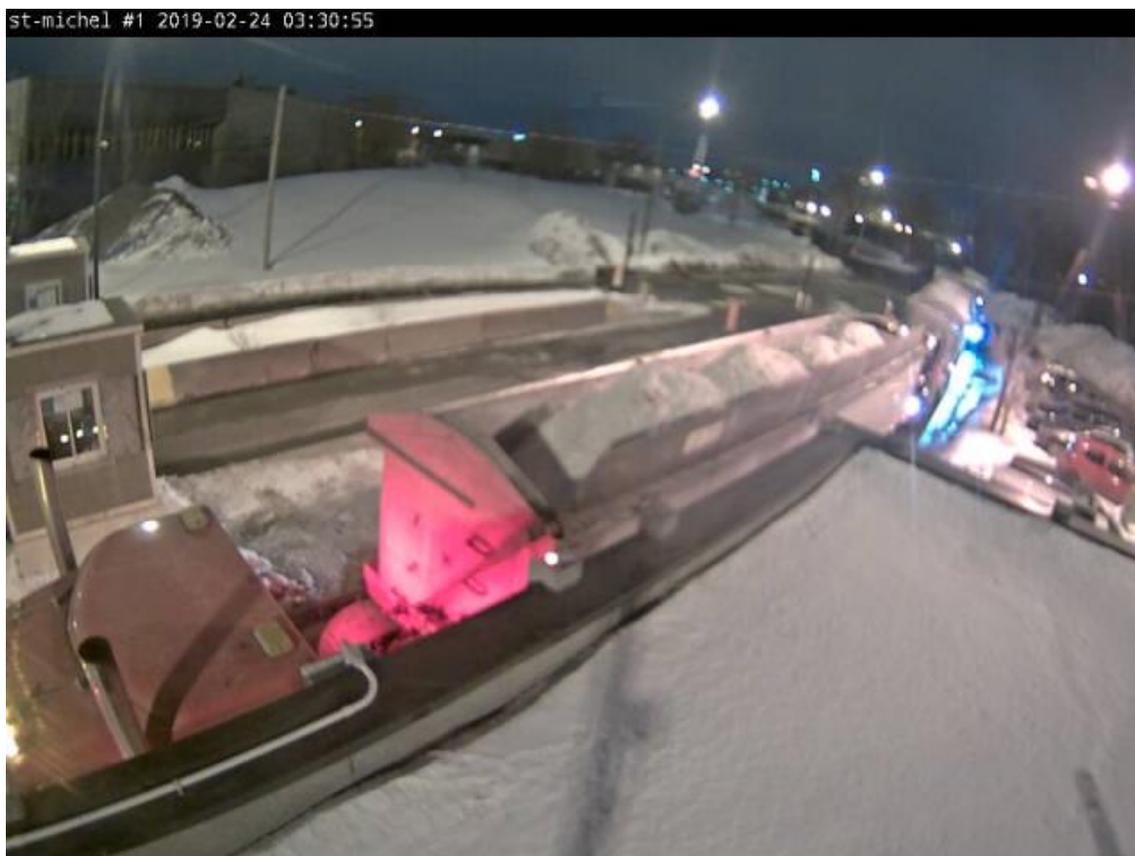
In short, the Office of Inspector General combined the "75%" and "100%" load categories, considering them full and not problematic for the sole purpose of its analysis. Similarly, the "25%" category was merged with the "50%" category for the purposes of the case, to Transport Rosemont's benefit. There were three (3) remaining categories:

- 10% or less (hereinafter "10%"),
- 25% to 50% (hereinafter "50%"), and
- 75% to 100% (hereinafter "considered full").

3.3.2 Representative photographs of the three (3) categories of loads originating from Sector 103

To provide a concrete and concise illustration of the 254 photos of loads obtained by the Office of Inspector General, a representative photo of each of the three (3) categories of loads in Sector 103 transported by Transport Rosemont has been reproduced below.

The first photo shows a load considered full for the purposes of the Office of Inspector General's analysis. The three (3) mounds referred to by the snowblower operators and Transport Rosemont under item 3.2.4 above can be clearly seen.



Load of snow originating from Sector 103 in the VSMPE borough considered full for the purposes of this case. Photo provided to the Office of Inspector General by the SCA.

Next is a photograph of a load that was assessed at about 50%:

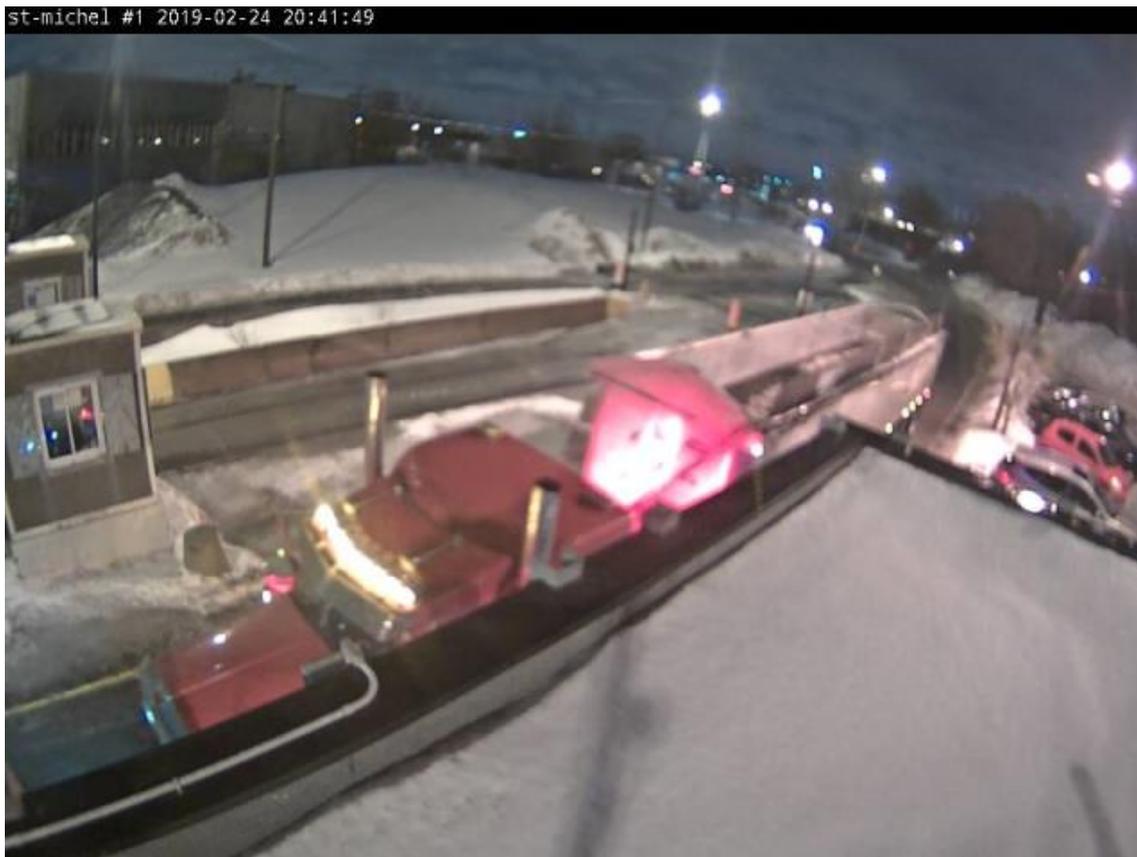
st-michel #1 2019-02-23 20:56:34



*Snow load originating from Sector 103 in the VSMPE borough part of the "50%" category.
Photo provided to the Office of Inspector General by the SCA.*

Unlike the previous image, it can be seen that the level of snow in the truck's dump bed is not flush with the side, as it should be based on the earlier photo. The snow only reaches about the middle of the truck's dump bed.

Finally, the last photo shows a load estimated at around 10%:



*Snow load originating from Sector 103 in the VSMPE borough part of the “10%” category.
Photo provided to the Office of Inspector General by the SCA.*

This photo shows a small amount of snow in the truck dump bed.

3.3.3 Representative photographs of the three (3) categories of loads originating from Sector 107

In addition, since the Office of Inspector General obtained 260 photos of loads originating from Sector 107, some representative photos of the three (3) categories of loads from this sector transported by Transport Rosemont have been reproduced below.

The first photo shows a load considered full for the purposes of the Office of Inspector General's analysis.



Load of snow originating from Sector 107 in the VSMPE borough considered full for the purposes of this case. Photo provided to the Office of Inspector General by the SCA.

As in the photo showing a full dump bed in Sector 103, the image shows the two (2) or three (3) mounds of snow rising above the dump bed which the snowblower operators and Transport Rosemont foremen had referred to in subsection 3.2.4 above.

Next is a photograph of a load that was assessed at about 50%:



*Snow load originating from Sector 107 in the VSMPE borough part of the “50%” category.
Photo provided to the Office of Inspector General by the SCA.*

This photograph shows a mound of snow in the middle that is almost as high as the dump bed, but not enough snow at the front and rear of the dump bed.

Finally, the last photo shows a load estimated at around 10%:



*Snow load originating from Sector 107 in the VSMPE borough part of the “10%” category.
Photo provided to the Office of Inspector General by the SCA.*

Like Sector 103, the photo shows that this load only contains a small amount of snow at the bottom of the dump bed.

3.3.4 Comparison with VSMPE borough Sector 102

In addition to the loads from Sectors 103 and 107 hauled by Transport Rosemont, the loads transported in the sector adjacent to Sector 103 – VSMPE borough Sector 102 – were analyzed for comparison purposes. The contract in Sector 102 is also a cubic metre contract and was awarded to another private contractor subsequent to the same call for tenders 16-15049.

Based on the analysis, most of the loads in Sector 102 could be considered full. Three (3) loads were estimated at 50%. Some representative photos of these two (2) categories have been reproduced below.

st-michel #1 2019-02-23 01:23:39



Load of snow originating from Sector 102 in the VSMPE borough considered full for the purposes of this case. Photo provided to the Office of Inspector General by the SCA.

Just as in the photos of the loads considered full in Sectors 103 and 107, it can be seen that the snow formed mounds that exceeded the height of the dump bed, in accordance with the dump bed measurement method described in subsection 3.1.2 above.

Next, there is a photo of a load estimated at approximately 50%, with a single mound of snow that can be seen toward the rear of the dump bed:



*Snow load originating from Sector 102 in the VSMPE borough part of the "50%" category.
Photo provided to the Office of Inspector General by the SCA.*

3.3.4 Summary of comparative analysis of loads originating from Sectors 102, 103 and 107

Upon completion of the analysis of all the photos of loads transported by Transport Rosemont in Sectors 103 and 107, and by the other contractor in Sector 102, for the fifth (5th) loading operation as a whole, the final statistical compilation is as follows:

Comparison of loads during the fifth (5th) loading operation in sectors awarded to private contractors			
	Sector 102 (other contractor)	Sector 103 (Transport Rosemont)	Sector 107 (Transport Rosemont)
Number of "10%" category loads	0	35	46
Number of "50%" category loads	3	92	127
Total number of loads	202	254	260
Percentage of loads 50% full or less	1.5%	50%	66.5%

Upon seeing the above data, a main observation can immediately be made: there is a marked difference in terms of problematic loads between the two sectors (103 and 107) awarded to Transport Rosemont and Sector 102, awarded to the other private contractor.

In fact, whereas more than half of the Transport Rosemont loads in Sectors 103 and 107 (50% and 66.5%) were only 50% full or less, the same could be said for only 1.5% of the other contractor's loads in Sector 102.

However, the conditions under which the contracts for these sectors were executed are similar, since all three sectors are adjacent.

3.4 Meeting on March 1, 2019 and sixth (6th) snow loading and transport operation

3.4.1 Meeting on March 1, 2019

On March 1, 2019, VSMPE borough representatives met with Transport Rosemont's general manager to discuss problems associated with the dump beds of his trucks not being fully loaded noted during the fifth (5th) snow loading operation.

Transport Rosemont's general manager confirmed to the Office of Inspector General's investigating officers that such a meeting had taken place, after which he said he met with his employees and the Sector 107 foreman told him that they may have loaded the trucks less because there was ice. Transport Rosemont's general manager said he then advised his employees to load the truck dump beds more.



However, neither the foremen nor the snowblower operators in Sectors 103 and 107 told the Office of Inspector General's investigating officers that they were given any such instructions by the general manager.

3.4.2 Summary of comparative analysis of loads transported from Sectors 102, 103 and 107 during the sixth (6th) loading operation

On March 11, 2019, Ville de Montréal ordered the sixth (6th) snow loading operation. This operation took place over three (3) and four (4) days, ending on March 14 and 15, 2019, for Sectors 107 and 103 respectively.

Upon completion of the analysis of all the photos of loads transported by Transport Rosemont in Sectors 103 and 107, and by the other contractor in Sector 102, for the sixth (6th) loading operation as a whole, the final statistical compilation is as follows:

Comparison of loads during the sixth (6th) loading operation in sectors awarded to private contractors			
	Sector 102 (other contractor)	Sector 103 (Transport Rosemont)	Sector 107 (Transport Rosemont)
Number of "10%" category loads	0	4	13
Number of "50%" category loads	3	18	56
Total number of loads	280	297	326
Percentage of loads 50% full or less	1.1%	7.4%	21.2%

3.4.3 Increased monitoring

As a result of problems observed during the fifth (5th) loading operation, two (2) VSMPE borough employees monitored snow loading operations in Sectors 103 and 107 more closely on the evening of March 12, 2019. At that time, they made sure they were seen by Transport Rosemont employees as well as by Transport Rosemont's subcontracted truck drivers.



A cross analysis of photographs of the loads and the Sector 107 transactions report at the SDS for the sixth (6th) loading operation shows that of the sixty-nine (69) loads that were 10% or 50% full during the three (3) days of the operation, only seven (7) took place on March 12, 2019.

The same cross analysis for Sector 103 for the sixth (6th) loading operation shows that of the twenty-two (22) loads that were 10% or 50% full during the four (4) days of the operation, only two (2) took place on March 12, 2019.

This means that there was a marked reduction in incomplete loads during the sixth (6th) loading operation when Ville de Montréal employees were on site.

3.5 Summary of the analysis of Transport Rosemont loads in Sectors 103 and 107 for the other snow loading operations

The loading transactions by Transport Rosemont for Sectors 103 and 107 during the first four (4) loading operations were analyzed by the Office of Inspector General. The results are summarized in the following two tables:



Data for first four (4) loading operations Sector 103				
	1 st operation ²	2 nd operation ³	3 rd operation	4 th operation ⁴
Number of "10%" category loads	9	33	10	7
Number of "50%" category loads	27	157	38	93
Total number of loads	322	666	340	742
Percentage of loads 50% full or less	11.2%	28.5%	14.1%	13.5%

² Given the high number of transactions during this operation, a sample of 200 transactions was analyzed. The proportions resulting from this analysis in terms of loads that were 10% and 50% full, and others that could be considered full, were applied to the total number of operation transactions.

³ Same.

⁴ Same.

Data for first four (4) loading operations Sector 107				
	1 st operation ⁵	2 nd operation ⁶	3 rd operation	4 th operation ⁷
Number of “10%” category loads	2	43	7	55
Number of “50%” category loads	101	391	40	247
Total number of loads	404	953	350	1008
Percentage of loads 50% full or less	25.5%	45.5%	13.4%	30%

In light of these results, although the percentage of loads that were 50% full or less for the other loading operations is less than that of the fifth (5th) loading operation, high rates of irregular loads can still be noted, especially compared to the 1.5% and 1.1% rates observed in Sector 102 for the fifth (5th) and sixth (6th) loading operations. Note also that the SCA considers an irregular load rate of 2% to be normal and acceptable.

It should be noted that to date, Ville de Montréal has only paid Transport Rosemont for the first three (3) snow loading operations.

⁵ Given the high number of transactions during this operation, a sample of 200 transactions was analyzed. The proportions resulting from this analysis in terms of loads that were 10% and 50% full, and others that could be considered full, were applied to the total number of operation transactions.

⁶ Same.

⁷ Same.



3.6 *Transport Rosemont's justifications*

When the Office of Inspector General's investigating officers met with the witnesses – truck drivers, snowblower operators, foremen, and Transport Rosemont's general manager – they were shown photos of the snow loads they had been in charge of themselves during the fifth (5th) snow loading operation. They were then asked what could justify these partially filled loads. The following four (4) justifications emerge from the responses that were given.

3.6.1 *First argument: Excess weight*

The first major reason invoked by both Transport Rosemont employees working in Sectors 103 and 107 and the general manager was wanting to comply with the maximum allowable truck load weight limits.

In this regard, they maintained that there was a lot of ice this winter, which reduced the volume that could be loaded into the truck dump beds. The snowblower operator in Sector 107 even went so far as to say, "We don't care so much about the volume; it's the weight that matters" [TRANSLATION].

In practice, both the Sector 107 and Sector 103 snowblower operators said they would estimate ("gauge") the weight of the snow at the start of their shift while paying careful attention to the truck driver's indications with regard to the truck's weight limit. They would then rely on and follow this indication for the remainder of the shift.

However, several elements gathered during the course of the investigation contradict both this statement by the snowblower operators about how they work and the excess weight argument overall.

3.6.1.1 *First element: cross analysis of photos and transaction reports*

The Office of Inspector General first did a cross analysis of the Sector 103 load photos and the transaction reports at the SDS. As shown by the data below, there is no consistency between the loads at the start of a shift, whether they were 10%, 50% or 100% full, and subsequent loads:

- On the first evening, namely February 21, 2019, nineteen (19) of the first twenty-two (22) loads could be considered full, but they were followed by a sequence of fourteen (14) trucks, thirteen (13) of which were assessed as 10% or 50% full.
- The next day, the first two (2) loads were assessed as 50% full, but five (5) of the following ten (10) loads could be considered full, and five (5) others 10% or 50% full.

- On day three, February 23, 2019, the first two (2) loads could be considered full, the next two (2) 50% full, followed by eight (8) trucks, four (4) of which could be considered full and four (4) others 10% or 50% full.
- On day four, February 24, 2019, the first load was assessed as 10% full, followed by one (1) load that could be considered full, six (6) loads assessed as 10% or 50% full, followed by one (1) other load that could be considered full.
- Finally, on day five, February 25, 2019, the first three (3) loads could be considered full and the next four (4) 10% or 50% full.

The same cross analysis of the photos and the transactions report for Sector 107 at the SDS showed a similar determination:

- For the evening of February 21, 2019, the first six (6) loads were assessed as 10% full, followed by one (1) load that could be considered full, followed by four (4) consecutive loads that were 10% full and two (2) others that were 50% full.
- On the second evening, February 22, 2019, the first thirty (30) loads were 10% or 50% full, while eight (8) of the fourteen (14) following loads could be considered full.
- On the third evening, February 23, 2019, the first three (3) loads were assessed as 50% full, followed by two (2) loads that could be considered full, three (3) loads that were 10% or 50% full, and one other load that could be considered full.

To see the lack of consistency in the truckloads, readers can also refer to the three (3) Sector 107 photos shown in subsection 3.3.3 above. They each show the same truck on the same shift, but with highly variable loads: one considered full, another 50% full, and the last 10% full.

3.6.1.2 Second element: statements from truck drivers working for Transport Rosemont

Second, the Office of Inspector General's investigating officers met with eight (8) of the sixteen (16) truck drivers who worked in Sectors 103 and 107 for Transport Rosemont during the fifth (5th) loading operation.

Of this group, the first four (4) subcontractors maintained that there was a lot of ice during the winter, and two (2) of them said they often had to notify the snowblower operator that the weight limit had been reached. Each of them did close to 40 loads over the course of the fifth (5th) loading operation, and most of their individual loads (64% to 86%) only contained 10% or 50% of snow.

However, even these truck drivers with many irregular loads conceded, when shown photos of their partially filled loads, that there was “nothing in the box” for some trips, that there was definitely “a shortfall,” and that “there had been exaggeration somewhere”



[TRANSLATION]. One of the drivers even stated that he was “certain that his weight gauges hadn’t sounded” for some of the trips he was shown.

The fifth and sixth truck drivers that were met said that they had to notify the snowblower operator only one (1) or (2) times that the loads were too heavy. One of them said that a snow load is so light compared to hauling soil or rocks in the summer, that “they’re sure they would never exceed the weight limit when passing the highway control scales” and, to be frank, “they never even look at it” [TRANSLATION]. Each had about 20 loads in the course of the fifth (5th) loading operation, but one had only two (2) loads that could not be considered full, while the other had six (6) loads assessed 50% full.

The last two (2) truck drivers that were met were Transport Rosemont employees. More than half the loads they hauled during the fifth (5th) loading operation in Sectors 103 and 107 were 10% or 50% full. However, one of the drivers said he had to alert the snowblower operator fewer than ten (10) times over the course of the entire winter that he had reached the maximum load, while the other driver said that he would sometimes get close to the limit, but never to a point of having to alert the snowblower operator.

3.6.1.3 Third element: statement by a representative of the contractor in Sector 102

Third, the Office of Inspector General’s investigating officers met with one of the contractor’s senior managers working in Sector 102 in the VSMPE borough. This contract was also a cubic metre contract and, since it was located in a sector adjacent to Sector 103, the type of snow in both sectors was comparable. Similarly, it should be pointed out again that the photos of the trucks’ loads from this sector show that only three (3) out of the 202 loads were 50% full.

According to the representative, the company’s employees in Sector 102 always made sure to observe the weight limit. While he also found the winter difficult because of the presence of ice, he said that they had no problems associated with excess truckload weights either for 2018-2019 in general or for the fifth (5th) snow loading operation in particular. The impact of the ice was mainly in terms of the number of trips required to spread salt on the roads and sidewalks.

3.6.1.4 Fourth element: comparison of loads hauled by the same Transport Rosemont truck in centimetres fallen contracts and cubic metre contracts

Lastly, the Office of Inspector General obtained some photos of loads hauled by Transport Rosemont during the fifth (5th) loading operation as part of one of their centimetres fallen contracts in the Borough of Ahuntsic-Cartierville. As can be seen in the bottom left photo, most of the loads are full.

Once again, Transport Rosemont’s general manager explained this difference by saying that he was willing to assume more risks in a centimetres fallen contract and fill the trucks’ dump beds more, at the risk of exceeding the allowable weight and height limits, since it

was financially beneficial for him to do so. For his part, the Sector 107 foreman maintained that it was better to make lighter trips in cubic metre contracts so as not to damage the trucks.

The following two photos show this double standard on the company's part according to the type of contract. A Transport Rosemont truck can be seen making trips with less than full loads in Sector 107, whereas only three hours earlier, the same truck was hauling full loads for a centimetres fallen contract in Ahuntsic-Cartierville.



*Left: Load of snow from the Borough of Ahuntsic-Cartierville at 7:15 p.m. on February 21, 2019.
Right: Load of snow from Sector 107 in the VSMPE borough at 10:35 p.m. that same day.
Photos provided to the Office of Inspector General by the SCA.*

For his part, the company representative working in Sector 102 of the VSMPE borough stated that the method of contractual remuneration made no difference. In addition to his company's cubic metre contract in Sector 102, they have three (3) centimetres fallen contracts in two (2) different boroughs. He said that the company operates in the same way regardless of the type of contract, and that the instructions given to the employees with respect to snow loading are the same.

3.6.1.5 Summary of the analysis related to the weight-based argument

In its response to the Notice, Transport Rosemont reiterated that the argument with regard to weight had a major and material impact on dump bed loading. However, the statements and analysis of the data and photos described above instead show that the magnitude of the problem for 2018-2019 was exaggerated, with only an occasional impact on the loading capacity. The comparison between the performance of the centimetres fallen contracts and the cubic metre contracts also shows that compliance with weight limits is a variable-geometry argument invoked by Transport Rosemont in contracts when it benefits the company.



Furthermore, the Office of Inspector General verified the number of violation notices issued for non-compliance with truck weight limits. It appears that no such notices were issued in winter 2018-2019 in all of Montreal.

3.6.2 Second argument: street ends and dead ends

The second argument invoked by Transport Rosemont employees to explain the less than full loads is that the drivers and snowblower operators had reached the end of a street or a dead end. Consequently, instead of asking the truck driver to move to the next street to complete the load, they were told that they could go to the SDS to prevent the snow from freezing in the dump beds.

However, according to the statements that were gathered, this rarely happens. The Sector 107 snowblower operator said that it happened “a few times.” The foreman in the same sector described it as being “a good contract with nice straight streets” [TRANSLATION]. In other words, there were not many short streets.

The Sector 103 foreman explained that during the first two (2) evenings of a loading operation, the snow on the main thoroughfares would usually be cleared first. Thus, unless there were unusual circumstances, the trucks should be full since there were no street ends or dead ends on any of the main thoroughfares. However, the transaction statistics for Sector 103 show that 54 of the 127 loads assessed as being 10% or 50% full were on the first two (2) days of the fifth (5th) loading operation.

With regard to the next three (3) days of the fifth (5th) loading operation, the Sector 103 foreman stated that they were working on smaller streets and that it was more complicated. When asked if it was possible that 50% of the trips were non-compliant for this reason, he unequivocally said no, that it wasn't “supposed to” happen. Yet the transaction statistics for this period indicate that 73 of the 155 loads were 50% full or less, for a rate of 47.1%.

When met by the Office of Inspector General's investigating officers, the representative of the company awarded the contract for Sector 102 stated that it was possible that a partially full truck could be sent to the SDS at the end of a street. However, according to him, such an order may be given to a truck driver when the dump bed is 75% full. It should be noted that for the purposes of this case, such loads were considered full and were not included either in the statistics in the table above or in the other statistics cited in relation to Transport Rosemont's partial loads.

The Inspector General therefore retained that the argument that street ends and dead ends account for less than full loads could be invoked occasionally, but could not explain all the breaches that were observed. As admitted by Transport Rosemont personnel, the non-conforming load statistics do not correspond to the number of streets accounting for dump beds that were 50% full or less.

3.6.3 *Third argument: narrow streets and rear loading*

Third, Transport Rosemont employees invoked problems with streets that were too narrow. In such cases, the snowblower operator cannot position himself parallel to the truck being loaded, but must go to the rear of the truck. Due to the limitations regarding the force of propulsion of the snow from the snowblower, the snow may not always reach the front of the truck's dump bed, especially if the truck has four (4) axles.

However, some witnesses, including Transport Rosemont's general manager and the Sector 107 foreman, told the Office of Inspector General's investigating officers that the Transport Rosemont blowers were modified in order to blow the snow further and compact it more.

Furthermore, the Sector 107 foreman said that only two (2) of the twelve (12) streets in his sector require such a rear loading method, while the snowblower operator in the same sector reported only one (1). For his part, the Sector 103 foreman also believed that there were only two (2) or three (3) streets in his sector that require rear loading.

Thus, just as in the preceding argument, the rear loading argument can involve a frequency that is at best limited, according to the statements made by Transport Rosemont employees themselves.

3.6.4 *Fourth argument: mechanical failure*

Fourth, the statements that were gathered indicate that the snowblowers may experience mechanical failure during the performance of the contract. According to the witnesses, there are two categories of mechanical failure: broken bolts and major breakdowns. In the case of a bolt failure, the repair is done quickly on site, while in the second case, the snowblower has to go to the Transport Rosemont garage, in which case the truck driver may be instructed to proceed to the SDS to prevent the snow from freezing in the truck's dump bed, regardless of whether it is full or not.

When the Sector 107 snowblower operator was asked to quantify the number of failures that required going to the shop and therefore sending a truck with a partially filled dump bed to the SDS, he initially responded by saying that they could be "counted on two hands, and that's being generous" [TRANSLATION] for the entire winter.

However, when the Office of Inspector General's investigating officers showed some photos of partially filled loads he had made, he wondered out loud whether some ice may have caused his snowblower to always be break down. He nevertheless concluded that the date shown on the photo did not call to mind anything specific in that respect.

The Sector 103 snowblower operator was unable to quantify the phenomenon, saying only that it could happen and that it varied depending on the evening. The Sector 103 foreman said that it was not possible for two (2) consecutive partially full loads to be caused by mechanical failure.



During each of the five (5) days of the fifth (5th) loading operation, on at least four (4) occasions, there were partially full trucks one after the other. On the first day, February 21, 2019, thirteen (13) consecutive trucks were 10% or 50% full, a sequence that was broken by a single truck with a load considered full.

In short, it appears from the statements made by Transport Rosemont employees that the mechanical failure justification is also only occasionally relevant.

3.6.5 *Fifth argument: end of shift*

The last argument put forth by witnesses was that an end of shift was involved. At such a time of the evening, there would be very little snow still to load and a truck driver would have little incentive to return to his assigned sector. Not knowing if there would be enough snow left to fill all the trucks, the driver does not want to chance coming back for nothing.

To avoid finding themselves without an available truck, the Transport Rosemont snow loading teams told the Office of Inspector General's investigating officers that the snowblower operators would usually divvy up the remaining snow into the two (2) or three (3) trucks they would ask to come back and send those partially loaded trucks to the SDS.

However, a cross analysis of the Sector 107 load photos and transactions from the SDS qualifies such an argument by indicating that:

- On the evening of February 21, 2019, although the last two (2) loads were 10% full, sixty (60) of the sixty-five (65) partially filled loads for the entire evening occurred more than three (3) hours before the end of the shift.
- On the second evening, February 22, 2019, among the fourteen (14) last loads during the last hour of the shift, thirteen (13) were either 10% or 50% full, including the last three (3). Furthermore, these fourteen (14) loads were made by the same seven (7) truck drivers, which means that six (6) of them each made two (2) trips that were either 10% or 50% full.
- On the third evening, February 23, 2019, the last load was indeed incomplete, as it was assessed at 50%.

With regard to Sector 103, although the sector foreman said that the last truck was never full during all the shifts, the sector transaction reports qualifies this argument as well by showing that for two (2) of the five (5) fifth (5th) loading operation evenings, the last loads could be considered full.

Therefore, even if the response to the SCA's Notice concedes that there is a justification relating to ends of shifts, it is by its nature only of limited relevance. In addition, the analyzed data show that the argument has no merit for some fifth (5th) operation shifts.

3.6.6 Overall conclusion with respect to the justifications that were presented

Following the analysis of these justifications, only one determination is possible: they are clearly inadequate and are not credible.

Momentarily setting aside the question of credibility, which will be discussed later on, the explanations provided by Transport Rosemont, even when considered together, cannot justify all three hundred (300) loads that were 50% full or less during the fifth (5th) operation. According to the statements made by Transport Rosemont employees, only a few of the incomplete loads can be attributed to ends of shifts, mechanical failures, or short or narrow streets. Therefore, most of the incomplete loads were due to the fact that the truck weight limit had to be observed.

However, the Inspector General cannot retain this version of the facts since it is not credible for the following three reasons. First, Transport Rosemont's employees and general manager contradicted themselves in several of their explanations. In fact, as evidenced by the foregoing, their versions and quantification of the problems changed as soon as the photos of their truck loads were shown to them.

Thus, the situation evolves from mechanical failures that initially could be “counted on two hands, and that's being generous” to speculation on multiple mechanical failures during the course of the fifth (5th) operation. Whereas one sector was said to contain “nice straight streets,” one must then accept that several loads contained 50% or less snow because of parts or ends of streets. Transport Rosemont's general manager claimed that the company was at a disadvantage since it had modified its blowers to make them ultra-efficient and, as a result, they compacted the snow more in the dump beds and the trucks would reach their weight limit before their volume limit. Yet, when the trucks would have to be loaded from the rear, they said that the snowblowers were not powerful enough to propel the snow to the front of the dump bed.

Second, four (4) of the eight (8) truck drivers that were met contradicted either the alleged extent of the overly heavy loads or the argument itself. In fact, one of the two Transport Rosemont truck drivers said that he had to alert the snowblower operator fewer than ten (10) times during the entire winter that he was reaching the maximum weight. One of the subcontractors claimed that this had happened only once or twice, whereas according to the other two drivers – a Transport Rosemont employee and a subcontractor employee – it had never happened.

Third, even if one disregards all the contradictions in the witnesses' statements, the explanations by the Transport Rosemont representatives contradict the comparisons with Sector 102 in the VSMPE borough.

While 300 of the 514 loads from Sectors 103 and 107 were assessed as 50% full or less, only three (3) loads out of 202 from Sector 102 could be considered the same. Three (3) loads over a period of three (3) days could qualify as anecdotal and be explained by the arguments that were invoked (e.g. equipment failure, end of shift). Three hundred (300) such loads could only be characterized as systematic, all the more so since the three sectors were adjacent, thus having comparable operating conditions.



In short, the lack of credibility shown by the witnesses, combined with the data from the adjacent Sector 102, is enough to reject the explanations presented by Transport Rosemont.

4. Responses to the Notice to Interested Parties

In accordance with her duty of procedural fairness, once the investigation was completed, the Inspector General sent all the facts detailed above in Notices to Transport Rosemont, the SCA, and the VSMPE borough. The Inspector General retains the following elements from the responses that were received.

4.1 *Transport Rosemont maintains that it was not obligated to fill the dump beds*

First, it would appear, from Transport Rosemont's response to the Notice, that the company believes it was not obligated, under the contracts related to call for tenders 16-15049, to fill the dump beds to full capacity based on the following three arguments.

For the reasons given below, the Inspector General believes, on the contrary, that there is an obligation for the dump beds to be filled to capacity.

4.1.1 *No clause specifically requires it*

First, Transport Rosemont points out the fact that the call for tenders 16-15049 documents do not include any explicit provision requiring the truck loads to be filled to full capacity and that, likewise, no contractual penalty was provided for partially full bins.

From the outset, the Inspector General acknowledges that the call for tenders 16-15049 documents do not specifically prescribe that the trucks are to be loaded to full capacity. However, the applicable laws provide that the interpretation of contracts related to call for tenders 16-15049 must include the obligations ensuing therefrom due to its nature and in keeping with industry practices. In light of all the facts revealed by this case and those described above, this means that an experienced contractor like Transport Rosemont was aware of and was obligated to fill the dump beds to full capacity.

First, as explained in section 3.1, cubic metre contracts are based on the amount of snow hauled by the contractor. To this end, call for tenders 16-15049 stipulates that Ville de Montréal take the time each fall to measure the total volume of all the trucks which the co-contractor intends to use. The purpose of the telemetry systems which Ville de Montréal provides to each truck driver is precisely to monitor the loads by identifying the truck drivers using a numbered plate and the measured volume of the trucks' dump beds. During the reconciliation and invoicing between Ville de Montréal and Transport Rosemont, the

amounts payable are calculated on the assumption that the loads that were hauled are full. It is to be recalled that Transport Rosemont never notified Ville de Montréal that some of the loads were not full.

Second, all the statements that were gathered, including those from the Transport Rosemont snowblower operators, foremen and general manager, said that the snowblower operator must fill the trucks' dump beds at full capacity, except when there are weight limitations. In this respect, the evidence shows that the instructions given by Transport Rosemont's general manager were to fill the trucks according to Ville de Montréal's dump bed measurement method and not to exceed the blue dotted line on the graphs shown under item 3.1.2 above. In addition, both the snowblower operators and the Transport Rosemont foremen defined what a full truck should look like visually, and this was consistent with the full dump bed measurements made by Ville de Montréal.

Similarly, Transport Rosemont's response to the Notice also acknowledges this obligation to fill trucks to their full capacity, while quoting the following, with approval, which its foreman and snowblower operator had said:

[TRANSLATION] "The evidence gathered by BIG investigating officers indicates that [Transport Rosemont]'s foreman and snowblower operator for Sector 107 'do not see the logic in sending a truck to the SDS that is not full, while no mound of snow can be seen.'"

The response is in line with [Transport Rosemont]'s culture of having a long-standing excellent reputation, and of maintaining it in the snow removal industry."

Lastly, the photos and data related to Sector 102 loads irrefutably show that the contractor in that sector interpreted its contract under the same call for tenders 16-15049 as requiring full loads on its part.

In short, in light of the preceding, the Inspector General concludes that it is unreasonable to claim that Transport Rosemont was not obligated to load its truck dump beds to full capacity. The calculation of the dump bed volume and the industry practices exemplified by the other contractor in Sector 102 clearly show that the trucks should have been full during snow loading operations. When it maintains the opposite, Transport Rosemont is going it alone and contradicting all the statements made by its own employees.

4.1.2 Section 13 authorized partially full loads and therefore Transport Rosemont was not obligated to fill them to full capacity

According to Transport Rosemont, the wording of Section 13 of the call for tenders 16-15049 specifications is "clear and unambiguous," and allows and authorizes that a truck not be filled to full capacity. Similarly, another section of call for tenders 16-15049 on payments specifies that payment will be made in proportion to the amount of goods delivered and accepted by Ville de Montréal. Therefore, making incomplete loads was allowed. This is Transport Rosemont's second argument.



The relevant passage of section 13 cited above in subsection 3.1.4 is as follows:

[TRANSLATION] "If a truck is not filled to capacity, the director can visually estimate the portion of the truck that is filled and only count the corresponding volume for processing purposes. He may also refuse to count the trip."

While agreeing that section 13 is clear, the Inspector General believes that Transport Rosemont's interpretation conveniently disregards the word "if" at the beginning of the section, which changes its purpose. In fact, rather than authorizing partial loads, use of the word "if" is key since it establishes that a truck not filled to capacity is an exception to the basic rule requiring full loads.

Similarly, the director's option to reduce the contractor's payment proportionately to the contents of the dump bed, or even to refuse to tally the load, clearly shows that the assessment and authorization of a partially full load are at Ville de Montréal's discretion. Therefore, it cannot be validly claimed that Section 13 constitutes a general contractual authorization allowing Transport Rosemont not to haul full loads.

Hence, when reasonably interpreted and in the context of the rest of the obligations and practices related to call for tenders 16-15049, including those mentioned in the previous subsection, Section 13 instead supports the exceptional nature of partial loads and the expected full capacity loads.

4.1.3 The changes in a new call for tenders for snow removal indicate that these are new obligations not provided for in call for tenders 16-15049

Transport Rosemont's third argument is based on the changes in a new call for tenders for snow removal issued in May 2019. Contrary to Section 13 of call for tenders 16-15049, the equivalent section of the new call for tenders explicitly states that the contractor is responsible for making full loads and of notifying the SDS gatehouse attendant if the load is incomplete. There is also now a penalty for breaching such an obligation. According to Transport Rosemont, this confirms that the obligation did not exist previously.

In its response to the Notice, the SCA explained that these changes to the call for tenders documents are part of a continuous improvement process and are intended to prevent situations such as the one in the present case from recurring.

There is nothing to prevent a pre-existing obligation that is already recognized and applied by the other contractors for contracts under call for tenders 16-15049 to be explicitly stated in such a way in the future. Similarly, doing so does not imply a retroactive adjustment regarding the application or interpretation of an existing contract, especially when, in the

present case, the client is aware of a foreseeable dispute on this issue and its intention is clearly to correct it for the future only.⁸

4.1.4 Conclusion regarding the first element in Transport Rosemont's response

To summarize, it is apparent from the first element in Transport Rosemont's response that, having been confronted with the discovery of serious breaches on their part in the performance of the contracts related to call for tenders 16-15049, the company is now trying to deny the existence of an obligation it had in fact previously acknowledged through the aforementioned statements made by its general manager, foremen, and snowblower operators. Consequently, the Inspector General is of the opinion that this first element is neither credible nor supported by the facts revealed by the investigation, and that it cannot be accepted.

4.2 Transport Rosemont believes that the SDS gatehouse attendant was obligated to indicate any non-conformances on the spot

The second element of Transport Rosemont's response to the Notice is that the company believes that the SDS gatehouse attendant was obligated, under the terms of call for tenders 16-15049, to indicate to the drivers any non-conformances in their truck loads immediately as they entered the SDS.

To understand this argument, we first need to refer to the definition of the term "Director" in call for tenders 16-15049: "the Director of the Ville de Montréal or borough department concerned or his or her authorized representative" [TRANSLATION].

Next, Transport Rosemont is claiming that Section 13 of call for tenders 16-15049 "logically assumes" that the Public Works Director delegated the option of assessing the load in the truck's dump bed to the SDS attendant. According to Transport Rosemont, the attendant 1) sees the trucks, 2) is required to photograph them, 3) sees the photos and the contents of the dump beds, and 4) has the power to "immediately on the spot, at the gatehouse, only tally the actual volume of a load." By this same logic, Transport Rosemont is claiming that the gatehouse attendant has "the right, immediately on the spot, to decide not to allow the load to be dumped," either because it contains other waste or because the quantity of snow is negligible or insufficient.

With regard to the need for the decision to be made on the spot, Transport Rosemont justifies its interpretation of Section 13 by saying that Ville de Montréal must allow the driver of a non-conforming load to return to the sector to which he is assigned to add some snow and fill up the load, or dispose of the waste already contained in the dump bed.

⁸ *Construction DJL inc. v. Montréal (Ville de)*, 2013 QCCS 2681, para. 53; *Transport Rosemont inc. v. Ville de Montréal*, 2008 QCCS 5507, para. 58 to 60.



From the outset, it should be noted that Ville de Montréal acknowledging the fact that it has to allow the truck driver to return to complete his load implies that it should have been completed in the first instance. Otherwise, why should he go back to load his truck if Transport Rosemont has no obligation to fill it in the first place? Inherently, the interpretation put forth by Transport Rosemont would therefore indicate acceptance of the obligation—which it contested at length above—for its trucks to be full for the performance of the contract related to call for tenders 16-15049.

Furthermore, the Director's alleged delegation of authority to the SDS clerk has no basis. It is true that the attendant sees the trucks, must photograph the loads, and sees the photos; however, that does not give him the power to refuse the loads. In reality, the situation is completely the opposite, as described in subsection 3.1.3 above.

After receiving Transport Rosemont's response to the Notice, the Office of Inspector General again obtained confirmation from the SCA that SDS attendants have no authority over the truck drivers. Their role is to control access to the SDS "without delaying operations" and therefore to simply report any irregular loads. The goal of the reporting and photographing system is in fact to enable Ville de Montréal to efficiently manage the fleet of several hundred trucks during snow loading operations, and to defer the analysis of the loads using the photos that were taken to a later time.

If the SDS attendants have to make a decision on the spot for each and every load, as Transport Rosemont is suggesting, it would be impossible to efficiently complete the snow loading operations, even more so as several truck drivers met by the Office of Inspector General already find the current wait at the SDS to be too long.

Lastly, it should be noted that Transport Rosemont's interpretation contradicts two (2) of their previous justifications with regard to their practices. In fact, the company explained that some of its loads were incomplete because when they were at ends of streets, or when mechanical failures would occur, they had to send partially full loads to prevent the snow from sticking to the dump beds, which could cause accidents when dumping the snow at the SDS.

However, it is hard to imagine how such explanations can be compatible with demanding that Ville de Montréal allow truck drivers with incomplete loads to return to their assigned borough, finish filling up their dump beds and then come back to the SDS to empty them. Either there is a safety imperative or there is not; both cannot be true.

In short, in the Inspector General's opinion, this second element of Transport Rosemont's response does not result from a reasonable reading of the text in Section 13, and would place an unreasonable burden on Ville de Montréal. Therefore, it cannot be retained.

4.3 According to Transport Rosemont, Ville de Montréal's deficient monitoring at the SDS results in its tolerance of partially full loads, and prevents it from blaming the company

The third argument presented by Transport Rosemont is based in part on the above alleged obligation on the part of the SDS gatehouse attendant to notify Transport Rosemont immediately, on the spot, of any partially full loads, and in part on the sophistication of Ville de Montréal's photographic control system.

According to Transport Rosemont, when Ville de Montréal draws up a public contract with monitoring systems, it must be accountable and assume the obligation of ensuring its compliance at all times, since it has the financial resources to do so. It must do so reasonably, in good faith, and in real time.

When Ville de Montréal notes, or should have noted via its employees, a non-compliance or error in the performance of the terms of the contract, it assumes the obligation to disclose it immediately and on the spot to the company to enable the latter to correct the situation forthwith after being notified of it.

Otherwise, in Transport Rosemont's opinion, Ville de Montréal is legally waiving its right to hold the company liable for any claim based on the co-contractor's responsibility, given its failure to notify the company on the spot to correct the situation forthwith. Furthermore, the company contends that such a "refusal to take immediate action toward its co-contractor, for whatever reason, is considered a major civil fault, categorized as unacceptable institutional blindness, or is equivalent to bad faith management of its contractual relationship with its co-contractor" [TRANSLATION].

In this case, invoking a "red flag" legal theory, Transport Rosemont is pointing to the charts above showing its irregular loads and is arguing that Ville de Montréal had implemented a good system, failed to check these irregularities, and did not immediately notify the company of them, since 2016. Therefore, Transport Rosemont was unable to make the corrections in a timely manner as it would have done had it known and, according to the company, what it said it had done after the March 1, 2019, meeting with the VSMPE borough.⁹

In short, Transport Rosemont is maintaining that its senior management cannot be held accountable for what it is not aware of. By refusing to disclose the information on the irregular loads in real time, Ville de Montréal is attempting to shirk its responsibility and invoke its own turpitude, which it cannot do, and it is precluded from blaming Transport Rosemont for its contractual breaches. According to Transport Rosemont, this also results in the nullity ab initio of this Office of Inspector General's report.

⁹ Note that in subsection 3.4.1 above, neither the foremen nor the snowblower operators in Sectors 103 and 107 told the Office of Inspector General's investigating officers that they received any instructions from Transport Rosemont's general manager after the March 1, 2019 meeting.



4.3.1 *The SCA's response to the Notice and other clarifications*

As was just shown, Transport Rosemont is mainly blaming Ville de Montréal for its deficient management of its system of following up on reports originating from the SDS, thus raising several concerns in this regard. The following paragraphs will address elements of the SCA's answer, both from its response to the Notice and the clarifications provided following questions asked by the Office of the Inspector General's investigating officers after reviewing Transport Rosemont's response to the Notice. Ville de Montréal is basically attempting to prove that, on the contrary, it has been diligent in the implementation and use of its monitoring measures.

First, as previously mentioned, the SCA handles nearly 300,000 snow transport transactions per winter over a period of three (3) to four (4) months. Such a condensed volume calls for a mass, rather than individualized, case management system to be instituted to enable efficient snow removal operations. With this reality in mind, Ville de Montréal said that in 2015, it implemented the electronic transaction management system described in section 3.1 which has enabled it to identify the source of the snow in the municipality and the associated disposal site. The system was first tested in nine (9) boroughs and then extended to all the other boroughs the following year.

Taking the same context into account, Ville de Montréal states that it did not confer to the SDS gatehouse attendant either the authority or duty to reject irregular loads. It was extensively documented above that, given the stream of trucks, the attendant only needs to jot down certain information with regard to the loads, including the binary indication of full or partially full dump bed. The borough is responsible for visually determining, using photos and after the operation, the level to which the dump beds have been filled and adjust the contractor's payment accordingly. The SCA noted that some incomplete loads can occur in rare circumstances, such as at the end of a shift. This is why a rate of about 2% of partially filled dump beds out of all the transactions is considered normal and acceptable.

When the Office of the Inspector General's investigating officers asked the SCA why they only discovered Transport Rosemont's irregular loads after the fifth (5th) loading operation, the SCA explained that it had a rare work overload.

In fact, four (4) loading operations were reported in succession in January. Furthermore, in an attempt to counter the problem of payment delays at Ville de Montréal, the SCA processed the transactions on a priority basis without any reports. Both of these elements therefore caused additional delays with respect to the verification of loads that were tagged by attendants as being problematic.

Both generally and as the result of the discovery of the issues in the present matter, the SCA said that it has always worked diligently with a view toward continuous improvement.

In fact, in the years following the system's implementation, Ville de Montréal has made several improvements to its systems to facilitate the monitoring and analysis of the data that are generated. For instance, Ville de Montréal enhanced the quality of the resolution

and angles of the photos taken when truck drivers pass through the gatehouse for a better view of the fill levels. In 2018, a new electronic application was added to compare data from one winter to the next.

In addition, since 2018, the system allows sixteen (16) photos to be simultaneously displayed instead of one at a time, which significantly increases the number of photos that can be checked. Furthermore, a pilot project is under study involving measuring the volume of snow in the truck dump beds at the SDS gatehouse in real time using photogrammetry.

Moreover, the SCA reports that, because of the operational difficulties experienced previously¹⁰, since 2018, Ville de Montréal has been using a private security company for the SDS gatehouse attendant positions. The employees from this private firm were trained at the start of winter 2018-2019; however, given the present case, the SCA says they are preparing training modules to raise the level of vigilance of gatehouse attendants as of next year. In addition, training modules are under development for snowblower operators and truck drivers explaining their respective responsibilities and how the technology works.

In summary, the SCA says that it is working proactively to prevent any breaches and pay its suppliers in a fair, honest and equitable manner.

4.3.2 Analysis of Transport Rosemont's third argument

Transport Rosemont is blaming Ville de Montréal for invoking its own turpitude by failing to notify the company of its irregular loads and by refusing to accept them from now on.

First, it should be noted that such reasoning is based on a most astonishing premise, namely Transport Rosemont's acknowledgement of the irregularity of its own loads. This position again contradicts the one previously defended by the company in subsection 4.1, namely that it is not obligated to fill its trucks to full capacity. It stands to reason that if a partial load is irregular, a regular load must be full.

Transport Rosemont is also trying to do exactly what they are accusing Ville de Montréal of doing, namely, invoking their own turpitude and shirking responsibility. Note that the company's position is not unlike the one which the Court of Appeals rejected in a recent decision.¹¹ An accountant who defrauded his client was trying to blame her for failing to take basic precautionary measures that would have enabled her to discover the fraud. The

¹⁰ The SCA would like to point out that the SDS used in this case – the Saint-Michel quarry – has the largest number of gatehouses (5) and that trucks arrive there day and night depending on the snow removal schedules in the various sectors.

¹¹ *Schmerer v. Silver*, 2019 QCCA 790.



Court of Appeals ruled that the client's errors could not be accepted as a means of defence by the accountant to diminish his responsibility for the fraud he had perpetrated.

Furthermore, in light of the facts gathered during the investigation and given the mass system management of 300,000 truck trips each year, Ville de Montréal did show diligence as soon as Transport Rosemont's irregular loads were discovered.

Some of the testimonies gathered did show that prior to the sixth (6th) loading operation, the borough had put less effort in monitoring snow loading and hauling. This appears to stem from the belief that, because there was a photo-taking system at the SDS, if a problem associated with the filling of the truck dump beds occurred, it would be detected at the SDS, reported by the attendant, and subsequently communicated to them.

This is exactly what the sequence of events in this case shows. Upon completion of the fifth (5th) snow loading operation, the SCA detected the irregularities in the Transport Rosemont loads and notified the VSMPE borough. Just a few days later, they met with the company's general manager and increased the level of monitoring for the sixth (6th) loading operation. The timeliness of this response should be noted.

Moreover, the investigation revealed two weak points in Ville de Montréal's contract management. First, the VSMPE borough had to appoint a new foreman for Sectors 103 and 107 in winter 2018-2019, and it appears that it was this foreman's first time overseeing the performance of snow removal contracts and he had not been given any training in this regard prior to his appointment.

However, the Office of Inspector General was told that this was due to exceptional circumstances arising from unforeseen personnel-related changes. This element is also mitigated by the key role described above of the SDS reporting system as a control measure for irregular loads.

Second, it appears that prior to the events in this case, the SCA's verifications of data from the photo-taking system were intended mainly, but not exclusively, for reconciling data in view of invoicing the operator of the high-powered snowblower at the SDS¹² rather than for ensuring the quality of the services provided by the contractors doing the snow loading and hauling.

It is true that prior to the recent and gradual advent of cubic metre contracts, contractors awarded centimetres fallen contracts not only had no incentive to haul lesser loads to the SDS, but it was to their advantage to load as much snow as possible using the fewest

¹² A high-powered snowblower is used at some SDSs to make higher snow piles and maximize the available area at the SDS. Since the high-powered snowblower operator is paid based on the number of cubic metres of snow actually blown, Ville de Montréal had to calculate the amount of snow hauled to the SDS.

number of trucks. It is also true that Ville de Montréal must be able to rely on the good faith of its co-contractors in the fulfillment of their obligations.

However, by introducing cubic metre contracts, the contractors' payment method was changed, which suddenly created the risk that a contractor would be tempted to act the way Transport Rosemont did. This case clearly demonstrates the existence of a scheme that could be utilized in this way.

Nonetheless, the case also clearly shows that Ville de Montréal was able to detect it. From now on, Ville de Montréal must be aware of such a stratagem and be continually vigilant in exercising its monitoring methods to prevent it from recurring, all the more so as it has indicated that it would like to extend the use of cubic metre contracts to more sectors in the near future.

4.3.3 Conclusion with regard to Transport Rosemont's third argument

In short, Transport Rosemont's third argument shows that the company is attempting to shirk accountability for and have Ville de Montréal bear the burden of its own contractual breaches, even though these breaches are the starting point of this case. Consequently, the Inspector General is of the opinion that this third element is neither credible nor supported by the facts revealed by the investigation, and cannot be retained.

4.4 The justifications presented in subsection 3.6 have merit, according to Transport Rosemont

Generally speaking, Transport Rosemont's fourth argument is that the justifications presented in subsection 3.6 above have merit and actually occurred. In their opinion, the presence of ice had a major and material impact on compliance with the load weight limit. The company supports the portions of the statements made by its employees that support its justifications, but conveniently contests all the other contradictory elements.

The Inspector General has said throughout subsection 3.6, and will reiterate it under subsection 5.3 below, that some loads may not be completely full due to ends of streets, narrow streets, mechanical failure or ends of shifts. But such justifications cannot be so frequent that they cause the number of Transport Rosemont's irregular loads, namely 50% and 66%, to be swept aside. As for the argument about the presence of ice, the Inspector General believes that the facts gathered during the investigation and detailed in subsection 3.6.1 amply support the conclusion that if there was an impact on the loads, it was limited during winter 2018-2019.



4.5 The comparisons with Sector 102 are not valid

Transport Rosemont's fifth argument is that data from Sectors 103 and 107 cannot be compared with those from Sector 102 awarded to another contractor through the same call for tenders 16-15049.

This claim is based on the fact that, in Transport Rosemont's opinion, the Sector 102 contractor is not doing a good job. In fact, Transport Rosemont maintains that ice removal in Sectors 103 and 107 is done perfectly, but done poorly in Sector 102. According to the company, this is a fundamental issue that accounts for the greater number of snow loads from their sectors.

Such an argument entirely overlooks the type of allegations against Transport Rosemont. The company may well claim to be exemplary in the way it clears snow and removes ice from sidewalks and roads, but the investigation has focused on snow loading. Whether the company clears snow or removes ice from the sectors well or not is no excuse for the fact that over half its loads are no more than 50% full. All the more so as the only element that may be favourable to Transport Rosemont's position relating to ice removal – that the loads were too heavy – was contradicted by all the facts presented in subsection 3.6.1 above.

For these reasons, the Inspector General believes that Transport Rosemont's fifth argument must also be disregarded.

4.6 Transport Rosemont believes that the photos at the SDS were taken from a bad angle and are not reliable

The sixth and second-last argument presented by Transport Rosemont is that the camera angle at the SDS is wrong, resulting in the actual contents of the trucks' dump beds being obstructed by the planks. Therefore, the photos cannot be relied upon to accurately assess the dump bed contents.

Upon seeing the photos found in subsections 3.3.2 through 3.3.4 of this report, the Inspector General cannot accept such an argument. The photos that are shown are clear, and a reasonable person can clearly see the different quantities of snow in the dump beds. This is true of all the photos obtained by the Office of Inspector General's investigating officers. In fact, if Transport Rosemont personnel believe they are unable to see snow in some of the dump beds, it is not because of the angle of the photos but simply because of the small amount of snow in the dump beds.

4.7 Use of an uncertified laser measuring instrument is illegal

The last element in Transport Rosemont's response is the fact that Ville de Montréal's use of the laser instrument is illegal.

According to the information obtained during the investigation, measuring the dump beds by laser is a method that is viewed positively by Ville de Montréal intervenors. The resulting 3D model is considered more reliable than manual measurements and could result in cost savings. The SCA representatives that were met during the investigation claimed that such methods are currently being used in Europe and are in the process of being adopted in Canada. In its response to the Notice, the SCA said that it was in the process of having its measurement method certified by Measurement Canada.

Whatever the case may be, the letter from Measurement Canada that SCA received on June 3, 2019, is clear. The laser instrument from the Ville de Montréal supplier has not been certified, and an uncertified instrument cannot be used. Regardless of the legal implications, the City Administration has to comply with applicable standards in order to maintain the trust of contractors and potential bidders.

Furthermore, it should be noted that despite Measurement Canada's decision regarding the instrument in question, this element does not affect the outcome of the investigation and the conclusions of this report. The issue of measurement and the determination of dump bed volumes is separate from the issue regarding the filling of the dump beds during the performance of the contract.

5. Determinations regarding Transport Rosemont and analysis

All the facts detailed above lead the Inspector General to make the following determinations with regard to Transport Rosemont.

5.1 *The snowblower operators are in charge of snow loading and they are experienced Transport Rosemont employees*

The statements gathered during the investigation are unanimous in this regard: the snowblower operators are in charge of snow loading. Their role is to blow snow into the trucks' dump beds, and as a result of their elevated position in relation to the dump beds, are best suited to visually assess the contents.

The truck drivers cannot see inside the dump beds and, for reasons of operational efficiency, do not leave their truck to inspect the dump bed contents each time. They must therefore rely on the visual indication given by the snowblower operator (i.e. the fact of the latter moving the snowblower chute to the side).

In short, apart from questions involving reaching load weight limits, the snowblower operators are those who indicate to the truck drivers that the dump bed is full enough so they can leave the site and head to the SDS.

It should be reiterated that the snowblower operators working on the VSMPE borough contracts for Transport Rosemont are employees of that company who were hired and



trained by the company's foremen. They are also experienced employees, with winter 2018-2019 generally being their fifth year of service in that capacity.

5.2 Transport Rosemont snowblower operators did not systematically fill the truck dump beds as per the expected standards

Having established that the snowblower operators are responsible for loading operations, we must now look at how the snowblower operators performed this task.

As mentioned in subsection 3.2.4, both the Transport Rosemont snowblower operators and their foremen explained how they visually determined that a dump bed was full enough. Depending on the length of the truck, they had to be able to see two (2) to three (3) mounds of snow. It was only then that the signal could be given to the truck driver to leave the site.

But the photos of the trucks at the SDS clearly and unequivocally show that the loads for more than half the trucks Transport Rosemont sent to the SDS during the fifth (5th) loading operation did not meet such a standard. It goes without saying that, in addition to diverging from the standard it stated itself, Transport Rosemont's loads were far from being in line with the expectations expressed by Ville de Montréal during its dump bed measurement operations, or even with those carried out by another contractor in an adjacent sector.

What is more, this is not an isolated incident, as data from other loading operations show a recurrence of the situation.

5.3 The justifications presented are clearly inadequate and not credible

Since they knew that they were obligated to fill the trucks' dump beds, the Transport Rosemont snowblower operators have no justification to reasonably explain all the loads that were 10% or 50% full. In this respect, the analysis conducted under subsection 3.6 above leads to a definite conclusion, namely that the justifications provided are clearly inadequate and cannot explain the irregular loads that were observed.

In fact, although they can happen, if we rely on the statements made by Transport Rosemont employees and the data analyzed, several of the justifications put forth are at best infrequent. This is namely the case for ends of shifts and street ends.

It stands to reason that the excess weight argument would have to be used to account for most of the three hundred (300) loads that were 10% or 50% full. However, the lack of credibility of the Transport Rosemont witnesses, combined with the significant difference in the data from the adjacent Sector 102 (with only three (3) loads that were 50% full), prevent the Inspector General from concurring with such a theory.

In short, as a result of the foregoing, the explanations presented by Transport Rosemont must be rejected.

5.4 Transport Rosemont breached the RGC and its contracts must be rescinded

Pursuant to subsection 573.3.1.2 of the Cities and Towns Act, on June 18, 2018, Ville de Montréal adopted a by-law on contract management [*Règlement sur la gestion contractuelle (18-038)*] (hereinafter the “RGC”). Sections 3 and 35 of the RGC stipulate that this by-law is deemed to be an integral part of all contracts entered into by Ville de Montréal, including those under way at the time of its adoption, such as the contracts related to call for tenders 16-15049 awarded to Transport Rosemont.

Section 14 of the RGC specifically prohibits committing or attempting to commit fraudulent practices in the performance of a contract:

“No one may, directly or indirectly, when preparing or presenting a bid or when signing a mutual agreement contract or executing any City contract, engage in or attempt to engage in collusion, bribery or fraudulent practices, or participate in or attempt to participate in any other action likely to affect the integrity of the tendering process or the mutual agreement co-contracting party selection or execution of any contract.”

In light of the aforementioned determinations, the Inspector General believes that Transport Rosemont’s actions in the performance of the contracts related to call for tenders 16-15049 meet the four (4) criteria required to prove a fraudulent practice or tactic.¹³

First, the fraudulent practice in the present case consists of partial truck loads, without any reasonable justification and without notifying Ville de Montréal that the loads were partial either at the time they entered the SDS or at invoicing. Based on these facts, and given that Transport Rosemont was being paid based on the volume of snow being hauled, the company attempted to unduly inflate its remuneration, and actually succeeded in doing so for the first three (3) loading operations.

In its response to the Notice, Transport Rosemont argued that no fraudulent practice was involved since the loads were made out in the open and photographed. However, it is stated that the scheme per se can be clever or, in this case, crude.¹⁴

Second, the error caused by Transport Rosemont undeniably involved a key element of the contracts related to call for tenders 16-15049, namely the loading and hauling of snow. Along with the clearing and salting of roads and sidewalks, these are essential obligations that Transport Rosemont was required to fulfill. In addition, as was already amply demonstrated, the entire operating procedure, including dump bed measurement and invoicing, is based on calculations that assume full loads.

¹³ KARIM, Vincent, *Les obligations*, vol. 1, 4^e éd., Wilson & Lafleur, Montréal, 2015, par. 1106; *Sénécal v. Poirier*, 2015 QCCS 3818.

¹⁴ BAUDOIN, Jean-Louis, Pierre-Gabriel JOBIN and Nathalie VÉZINA, *Les obligations*, 7^e éd., Éditions Yvon Blais, Cowansville, 2013, par. 229.



Third, with regard to the intent to deceive, it is important to mention that contrary to what Transport Rosemont is claiming in its response to the Notice, fraudulent practices do not have to constitute criminal offences to be subject to civil penalty.¹⁵ The evidence in this case undeniably reveals that the actions were intentional: the snowblower operators, who were Transport Rosemont employees, were in charge of deciding on the amount of snow to blow into the trucks' dump beds and, despite being aware of the expected standards in this regard, systematically failed to fill the dump beds to their full capacity. Similarly, the justifications presented to explain such behaviour are not credible and therefore cannot be accepted.

Lastly, the fraudulent practice unquestionably originated from Transport Rosemont, since the snowblower operators are its employees.

Section 57.1.10 of the Charter of Ville de Montréal states two (2) cumulative criteria allowing the Inspector General to intervene to rescind a Ville de Montréal contract:

- 1° She must find a breach of one of the call for tender or contract document requirements, or that some of the information provided as part of the contract-awarding process is false;
- 2° She must be of the opinion that the seriousness of the breach observed justifies rescinding the contract.

In this case, failure to fulfill obligations regarding the loading of the dump beds and non-compliance with Section 14 of the RGC have been well established. With respect to the seriousness of the breaches, her decision is based on both the number and recurrence of incomplete loads over multiple snow loading operations, as well as the nature of Transport Rosemont's actions.

During the fifth (5th) snow loading operation, 300 of the 514 loads were 50% full or less. In itself, this is sufficient not to be considered an isolated incident. In addition to this, there are also the statistics from other snow loading operations which show that 7% and 45% of the loads from Sectors 103 and 107 were also incomplete. Furthermore, it should be recalled that the Office of Inspector General's analysis only took into account the loads that were assessed as 50% full or less, and not all the loads that were less than 100% full.

Next, Transport Rosemont's actions show patently bad faith in the performance of one of the key obligations of snow removal contracts, namely, snow loading. In this respect, the suggestion made by the company's general manager to the effect that Ville de Montréal only needs to apply section 13 of the specifications and remunerate it based on the actual dump bed contents is astonishing, to say the least. Contracts such as those related to call for tenders 16-15049 involve several hundred truckloads over the course of a winter and therefore require a high degree of trust in the co-contractor's good faith. However, acting the way Transport Rosemont did irremediably undermines the bond of trust that contractually binds it to Ville de Montréal.

¹⁵ Ibid.

To summarize, the Inspector General believes that the two conditions required under Section 57.1.10 of the *Charter of Ville de Montréal* have been met in this case, and she is therefore rescinding the two (2) contracts related to call for tenders 16-15049 that had been awarded to Transport Rosemont.

6. Conclusion

First, as indicated above, the investigation enabled the Inspector General to conclude that Transport Rosemont was in breach of Section 14 of the RGC and she believes that these breaches are sufficiently serious to justify rescinding the two (2) contracts related to call for tenders 16-15049 awarded to Transport Rosemont, pursuant to section 57.1.10 of the *Charter of Ville de Montréal*.

Sections 23 and 27 of the RGC stipulate that any person who is in breach of Section 14 of the RGC is automatically declared ineligible as defined in this by-law. The Inspector General is therefore recommending that Transport Rosemont be entered on the Register of Ineligible Persons for five (5) years. As such, the company may not submit a bid for a contract with Ville de Montréal or enter into such a contract, mutual agreement contract, or subcontract that is directly or indirectly associated with such contracts.

Next, regarding Ville de Montréal, the Inspector General is recommending increased monitoring of snow loading operations. In light of Measurement Canada's letter, she is also recommending that Ville de Montréal comply with applicable standards relating to the use of an instrument for measuring dump bed volumes.

Lastly, as provided for in Section 57.1.18 of the *Charter of Ville de Montréal*, the Inspector General will report the facts observed to the Anti-Corruption Commissioner and will forward the information gathered during the investigation to the Autorité des marchés publics in the belief that it is relevant to that agency's mandate with respect to the issuance of prior authorization for obtaining public contracts or subcontracts.

FOR THESE REASONS,

The Inspector General

RESCINDS the two (2) contracts for road and sidewalk snow removal services awarded subsequent to call for tenders 16-15049 to Transport Rosemont Inc. by the Ville de Montréal City Council on June 21, 2016 under resolution CM16 0770.

INFORMS Ville de Montréal of the breach by Transport Rosemont Inc. of Section 14 of the by-law on contract management.



RECOMMENDS that, in accordance with the provisions of the by-law on contract management, Transport Rosemont Inc. be entered on Ville de Montréal's Register of Ineligible Persons for a period of five (5) years from the date of this decision.

RECOMMENDS that the City Administration provide continuous monitoring of compliance with call for tender documents regarding snow loading and hauling.

RECOMMENDS that the City Administration comply with the respective applicable standards regarding the use of an instrument for measuring truck dump beds.

SENDS, pursuant to section 57.1.10 of the *Charter of Ville de Montréal*, a copy of this decision to the Ville de Montréal Mayor and City Clerk, who shall forward it to the City Councils concerned.

REPORTS the findings, in accordance with section 57.1.18 of the *Charter of Ville de Montréal*, to the Anti-Corruption Commissioner.

SENDS, pursuant to section 57.1.18 of the *Charter of Ville de Montréal*, the relevant information that was gathered to the Autorité des marchés publics with regard to its mandate under Chapter V.2 of the *Act Respecting Contracting by Public Bodies*.

The Inspector General,

Brigitte Bishop

ORIGINAL SIGNED