



[This is an English version of the report originally transmitted in French to the Montréal City Council on October 22, 2019]

## Recommendation Report Regarding a Snow Transport Subcontract

(section. 57.1.23 of the *Charter of Ville de Montréal, metropolis of Québec*)

October 22, 2019

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## SUMMARY

*The Office of Inspector General conducted an investigation after receiving a denunciation to the effect that Entreprise Sylvain Choquette inc. and its president, Sylvain Choquette, had installed additional wood panels on their truck bin at the time of a measuring session. The measured volume was therefore unduly increased, along with the hourly rate that Entreprise Sylvain Choquette inc. was able to collect.*

*Entreprise Sylvain Choquette inc. is the personal company of its president, Sylvain Choquette. It entered into a snow transport subcontract with a bulk transport company, which in turn entered into a contract with Ville de Montréal for several boroughs. Under this contract, any snow transporter was required to have the volume of its truck bin measured to determine the hourly rate that it would be paid to it for its services.*

*Photos taken during a measuring session held on March 9, 2019, show that Sylvain Choquette had attached additional wood panels above the truck bin, thus increasing its total volume. However, it appears from photos taken at the snow disposal sites on each of the trips done by Entreprise Sylvain Choquette inc. during the 2018-2019 winter season that these additional panels were not used by the company when carrying out its contract.*

*The City by-law on contract management (Règlement du Conseil de la Ville sur la gestion contractuelle, hereinafter the "RGC") applies to all subcontracts directly or indirectly relating to contracts entered into by the City and, therefore, to the subcontract entered into by Sylvain Choquette and Entreprise Sylvain Choquette inc. The goal of Sylvain Choquette's action was to increase the measured volume of his truck bin and, consequently, to collect a higher hourly rate than that to which he was entitled.*

*While rather unsophisticated, such an attempt at a fraudulent scheme cannot be tolerated. Indeed, the very essence of a snow transport subcontract is to transport snow based on the measured volume of the truck bin.*

*Consequently, the Inspector General informs the City of Sylvain Choquette's violation of the RGC and recommends that his company be sanctioned. In this case, the RGC provides that Mr. Choquette and Entreprise Sylvain Choquette inc. will be automatically listed on the Register of Ineligible Persons [Registre des personnes inadmissibles] for a period of five (5) years.*





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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 carrying out of contracts by the City or by a related legal person.

The Inspector General does not conduct criminal investigations. She conducts investigations of an administrative nature. In this report, wherever 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.

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.<sup>1</sup>

### 1.3 *Notice to interested parties*

Before releasing the results of her investigation and, if applicable, employing the powers conferred upon her under section 57.1.23 of the *Charter of Ville de Montréal* in accordance with her duty of procedural fairness, the Inspector General transmits a Notice to Interested Parties (hereinafter the “Notice”), indicating the relevant facts gathered in the course of the investigation.

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

Such Notice was sent on August 2, 2019, to Entreprise Sylvain Choquette inc. and its president, Sylvain Choquette, as well as to the Ville de Montréal business unit involved in the matter, the Department for Borough Consultation [Service de concertation des arrondissements] (hereinafter the “SCA”).

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<sup>1</sup>Evidence is sufficient if it renders the existence of a fact more probable than its non-existence (see section 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 are addressed in this report.

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

### ***2.1 Denunciation received***

The Office of Inspector General received a denunciation in the month of March 2019 alleging that Sylvain Choquette had installed additional wood panels, at the time of measuring the Entreprise Sylvain Choquette inc. truck bin, in order to unduly increase the volume. The effect of this scheme was to increase compensation in carrying out a snow transport subcontract in the Sud-Ouest borough, as the hourly rate payable to the company was set based on the volume thus measured.

The Office of Inspector General therefore investigated to shed light on these allegations.

### ***2.2 Entering into of the main contract and subcontract***

In fall 2018, the City entered into a contract with a bulk snow transport company for the transport of snow in certain sectors of about ten boroughs, including the Sud-Ouest borough.

Before the 2018-2019 winter season, Sylvain Choquette, the president of Entreprise Sylvain Choquette inc. and a truck owner, signed a subcontract with this bulk transport company to transport snow in the Sud-Ouest borough.

## **3. Carrying out of the main contract and subcontract**

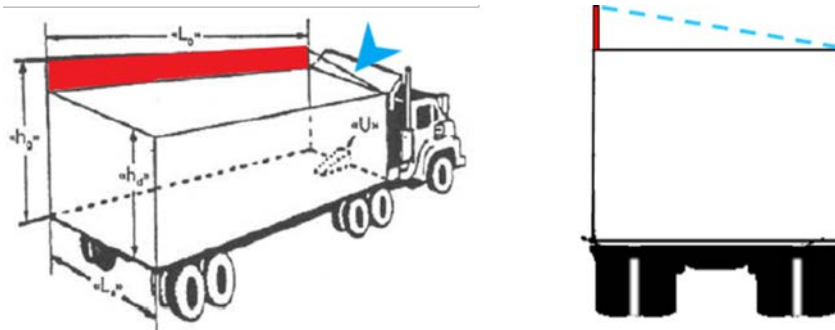
### ***3.1 Measurement of truck bin volumes***

Under the contract entered into by Ville de Montréal and the bulk snow transport company, the bin capacities of all trucks used by this company to transport snow had to be measured before the start of the 2018-2019 winter period, meaning before November 15, 2018.

In view of measuring the volume, side panels coming out of the truck bins had to be installed by the trucker. Once the volume was established, the trucker could not modify it without authorization from the City.

For a better understanding of this aspect, a figure is provided below. It shows a section through the rear of the truck. The red segment shows the side panel often installed by the truck drivers. This addition, made of wood or another material, exceeds the height of the bin and helps prevent blown snow from missing the truck bin and striking cars parked on the opposite side of the street.





When the City wants to measure the expected bin volume, it not only calculates the content of the bin itself, but also takes into account the snow exceeding the bin up to the dotted blue line.

This operation was done using a laser optical measuring instrument by a company whose services were retained by Ville de Montréal. This instrument captures a cloud of reference points in the bin to produce a 3-D digital image of it. It adds the bin volume as such to the volume defined by the triangle formed by the top of the bin, the left panel, and the blue dotted line.

According to the City, the instrument avoids manual errors, represents the actual bin volume more faithfully, and thereby provides substantial savings. However, since the measurements obtained with the optical instrument are lesser than those obtained previously, some contractors, including Sylvain Choquette, say they feel frustration and a certain amount of discontent.

The measuring of truck bin volume is nevertheless all the more important in this case as it determines the hourly rate paid by Ville de Montréal to the bulk transport company and, ultimately, the trucker. The contract excerpt below shows the different hourly rates applicable to the loading capacities:



Capacité en charge	Tarif horaire inscrit au Recueil 2018	Tarif horaire hiver 2018-2019 suivant l'entente	Tarif horaire hiver 2019-2020 suivant l'entente
10,0 à 16,9 m. cubes	62,19 \$	60,95 \$	à venir
17,0 à 20,9 m. cubes	75,24 \$	73,74 \$	à venir
21 à 23,5 m. cubes	80,28 \$	78,67 \$	à venir
23,6 à 25,9 m. cubes	83,49 \$	81,82 \$	à venir
26,0 à 28,5 m. cubes	91,42 \$	89,59 \$	à venir
28,6 à 30,9 m. cubes	99,30 \$	97,31 \$	à venir
31,0 à 34,9 m. cubes	102,40 \$	100,35 \$	à venir
35,0 à 38,9 m. cubes	108,96 \$	106,78 \$	à venir
39,0 à 42,9 m. cubes	113,29 \$	111,02 \$	à venir
43,0 à 46,9 m. cubes	118,69 \$	116,32 \$	à venir
47,0 à 50,9 m. cubes	120,74 \$	118,33 \$	à venir
51,0 à 54,9 m. cubes	123,82 \$	121,34 \$	à venir
55,0 à 59,9 m. cubes	138,60 \$	135,83 \$	131,00 \$
60,0 à 64,9 m. cubes	138,60 \$	135,83 \$	132,75 \$
65,0 à 69,9 m. cubes	138,60 \$	135,83 \$	133,50 \$
70,0 à 74,9 m. cubes	138,60 \$	135,83 \$	135,00 \$
75,0 m. cubes et plus	138,60 \$	135,83 \$	135,83 \$

**Notes:**

Les « taux horaires hiver 2018-2019 » ci-dessus sont les taux du Recueil des tarifs de transport de neige et de glace 2018, moins 2%.

Les « taux horaires hiver 2019-2020 » seront ceux du Recueil des tarifs de transport de neige et de glace 2019, moins 2 % pour les capacité en charge allant de 10,0 à 54,9 m.cubes. Les taux pour les capacités de 55,0 m. cubes et plus sont ceux indiqués ci-dessus.

*Hourly rates provided for in the contract between Ville de Montréal and the bulk transport company.*

### **3.2 Sessions for measuring the Entreprise Sylvain Choquette inc. truck bin volumes**

#### *3.2.1 Measuring sessions held before November 15, 2018*

According to information obtained by the Office of Inspector General, Entreprise Sylvain Choquette inc. did not attend the scheduled measuring sessions held before November 15, 2018.

#### *3.2.2 Measuring session held on January 11, 2019*

Due to his absence from the sessions scheduled before November 15, 2018, the Entreprise Sylvain Choquette inc. truck bin was measured on January 11, 2019, at which time it displayed a maximum volume of 42.45 m<sup>3</sup>.

However, Sylvain Choquette explained to the Office of Inspector General investigating officers that he challenged this measurement. Since the measuring session was held while he was transporting snow, there was snow in his truck's bin, which, according to him, reduced the measured volume.

Although SCA representatives maintained that the company performing the volume measurement could electronically eliminate the snow appearing in the bin and thus reflect the actual truck volume, a third measuring session was set.

### *3.2.3 Measuring session held on March 9, 2019,*

The third measuring session was held on March 9, 2019. The volume measured on this occasion was 56.16 m<sup>3</sup>, representing an increase of approximately 33% over the previous measurement.

This had the effect of increasing, from \$111.02 to \$135.83, the hourly rate for which Entreprise Sylvain Choquette inc. was eligible.

However, as it appears in the photos below, which were taken during this measuring session, Sylvain Choquette had added wood panels above a smaller rounded red wood panel, thereby increasing his truck's bin capacity.



*Photo taken from the outside of the Entreprise Sylvain Choquette inc. truck bin during the March 9, 2019, measuring session. Photo provided to the Office of Inspector General by the SCA.*



*Photo taken from the inside of the Entreprise Sylvain Choquette inc. truck bin during the March 9, 2019, measuring session. Photo provided to the Office of Inspector General by the SCA.*

### **3.3 Carrying out of the snow transport subcontract by Entreprise Sylvain Choquette inc.**

In order to see what configuration of side panels was used by Entreprise Sylvain Choquette inc., the Office of Inspector General obtained and analyzed the photos taken at the snow disposal sites during each of the trips the company made throughout the 2018-2019 winter season.

They show that the additional panels added by Sylvain Choquette at the time of the March 9, 2019, measuring session were not used during the snow loading operations. Only the smaller red rounded wood panel is visible, even on the photos taken after the March 9, 2019, measuring session.

The following two photos illustrate the transport of snow by Entreprise Sylvain Choquette inc. before and after March 9, 2019.





*Transport of snow by Entreprise Sylvain Choquette inc. on February 22, 2019. Photo provided to the Office of Inspector General by the SCA.*



*Transport of snow by Entreprise Sylvain Choquette inc. on March 11, 2019. Photo provided to the Office of Inspector General by the SCA.*

### **3.4 Note about payment by the City**

It should be pointed out that the SCA observed the modification of the side panels. Thus as part of its payments to the bulk transport company, the SCA did not take into account the new measurements of the Entreprise Sylvain Choquette inc. truck obtained in the March 9, 2019, measuring session and instead used those from the January 11, 2019, session.

## **4. Responses to notices to interested parties**

In accordance with her duty to ensure procedural fairness, once the investigation was completed, the Inspector General transmitted the set of facts detailed above in a Notice sent to Entreprise Sylvain Choquette inc. and the SCA.



The Inspector General retains the following elements from the responses received.

#### 4.1 *Response of the SCA*

The SCA considers that the reported facts reflect the situation it had observed.

It also emphasizes the importance of the measured bin volume's accuracy, as in addition to the payment due to the bulk transport company, any error or scheme affecting the volume of transported snow can influence the price and payment of other suppliers. Indeed, the volume of transported snow is also used to assess work performed as part of turnkey contracts and for those granted to snow disposal sites.

For example, at some snow disposal sites, high-pressure blowers owned by private contractors are used to pile snow higher and maximize the available area. Since the high-pressure blower operator is paid based on the number of cubic metres of snow blown, the City must calculate the amount of snow actually transported to the snow disposal site.

#### 4.2 *Response of Entreprise Sylvain Choquette inc.*

Entreprise Sylvain Choquette inc. maintains that it showed up for a measuring session held before November 15, 2018, but that the City did not communicate the results to the company. It further maintains that the City lost them and that this explains the call to attend the measuring session held on January 11, 2019.

Entreprise Sylvain Choquette inc. states that on this occasion, there was snow in its truck bin, but that Sylvain Choquette was told the company would not be penalized because the snow could be removed by the computer. However, the company states that its hourly rate nevertheless dropped to \$111.02 from the hourly rate of approximately \$137.02 collected in the past. In support of this statement, Entreprise Sylvain Choquette inc. maintains that it knows that the basic load capacity of its truck is 45.31 m<sup>3</sup> and that it can exceed at least 50 m<sup>3</sup> if wood panels are added.

Finally, Entreprise Sylvain Choquette inc. points out that during the summer the bulk transport company forwarded a message from the SCA to it by email. This SCA email includes the following paragraph:

*"In the event of a repeat offence during the following winter seasons, the trucker may no longer be eligible for City contracts given that he attempted to get paid more by falsely changing his truck's volume." [Translation]*

While disputing that this was a false modification of its truck volume, Entreprise Sylvain Choquette inc. concluded that the SCA limited itself to serving it a warning. Because of



this, the company was surprised that the Office of Inspector General pursued its investigation.

#### 4.2.1 *Additional verifications with the SCA*

After receiving the response from Entreprise Sylvain Choquette inc., the Office of Inspector General investigating officers met with SCA representatives to discuss its content. The results are as follow.

First, concerning the measuring sessions held before November 15, 2018, the SCA maintains that the company did not attend them. The SCA has photos of all trucks that were measured at this time and the Entreprise Sylvain Choquette inc. truck was not among them. No measurement data was lost, as none was recorded. Furthermore, the SCA points out the even if it had lost such data, the company that performs the measuring would have it, which is not the case here.

Concerning the presence of snow in the truck bin on January 11, 2019, the SCA confirms that the company doing the measuring is able to remove it electronically.

Finally, concerning the email sent by the SCA during the summer, two points bear mentioning. The SCA representatives first explained that the email had been sent at the request of the bulk transport company due to insistent and repeated requests by Entreprise Sylvain Choquette inc. concerning payment. Knowing that an investigation by the Office of Inspector General was underway, but unable to surmise its outcome, the SCA wished to report that the City was aware of Sylvain Choquette's actions, tell him that he would not be paid based on the March 9, 2019, measurements and, at the least, serve him with a warning moving forward.

Second, no matter what interpretation may be made by either side of the SCA email, the Inspector General reiterates that she is independent of Ville de Montréal. Under section 57.1.23 of the *Charter of Ville de Montréal*, the Inspector General may, "at any time, send the Mayor and the City Clerk any report presenting findings or recommendations that, in the opinion of the inspector general, warrant being brought to the attention of the council." The Charter thus confers a margin of discretion in assessing the facts, and as a result, under the mandate entrusted to the Inspector General, she is not bound by any positions that may be taken by City representatives.

## 5. Analysis and conclusion

As provided for in section 3 of the RGC (18-038) adopted by Ville de Montréal on June 18, 2018, the RGC is deemed an integral part of all contracts entered into by Ville de Montréal, including all directly or indirectly related subcontracts. The RGC thus



applies to the subcontract entered into by the bulk transport company with Entreprise Sylvain Choquette inc.

Section 14 of the RGC forbids the commission of and attempt to commit fraudulent schemes when carrying out any City contract or subcontract.

The aforesaid facts show that Sylvain Choquette installed additional wood panels at the time of the March 9, 2019, measuring session in order to increase the measured capacity of his truck bin and, therefore, his compensation rate. The photos taken during the 2018-2019 winter season clearly show, however, that these additional panels were never used by Entreprise Sylvain Choquette inc. when transporting snow. These facts and actions constitute an attempt in violation of section 14 of the RGC.

Moreover, the response of Entreprise Sylvain Choquette inc. does not include any elements that would change such a finding. Whether the company claims it knows that the volume of its bin is greater than the volume measured by the City, or whether it was present at the measuring sessions held before November 15, 2018, does not excuse Sylvain Choquette's installation of panels that were used neither before nor after carrying out his subcontract. As previously mentioned, it is the Inspector General's responsibility to bring findings or recommendations to the attention of the council when she deems it appropriate.

This is the case here. While rather unsophisticated, Sylvain Choquette's scheme of March 9, 2019, leaves no room for interpretation as to its intent and it strikes at the very essence of the subcontract he had to carry out, which was to transport snow based on the measured capacity of his truck bin. Such actions cannot be tolerated.

Under sections 23 and 27 of the RGC, the violation of section 14 of the RGC leads to a declaration of ineligibility of Sylvain Choquette and Entreprise Sylvain Choquette inc. for a term of five (5) years.

## **FOR THESE REASONS,**

The Inspector General

**INFORMS** Ville de Montréal of the violation by Sylvain Choquette of section 14 of the RGC.

**RECOMMENDS** that, in accordance with the provisions of the RGC, Sylvain Choquette and Entreprise Sylvain Choquette inc. be listed on Ville de Montréal's Register of Ineligible Persons for a period of five (5) years from this report.



**SENDS** a copy of this decision to the Mayor and to the City Clerk for forwarding to the City Councils concerned, pursuant to section 57.1.23 of the *Charter of Ville de Montréal*.

The Inspector General

Ms. Brigitte Bishop

**SIGNED ORIGINAL**