



[This is an English version of the report originally transmitted in French to the mayor of Montréal and then submitted to Montréal City Council and Agglomeration Council on April 24, 2017]



# ANNUAL REPORT OF THE INSPECTOR GENERAL OF MONTRÉAL



**Filed with the City Council and the Agglomeration Council**

**For the year ended December 31, 2016**

(Section 57.1.23 of Montréal's City Charter)

**March 31, 2017**

**TRUST • INTEGRITY • TRANSPARENCY**

**Montréal** 



# MESSAGE FROM THE INSPECTOR GENERAL



**Mayor Denis Coderre, Members of the Montréal City Council and the Montréal Agglomeration Council, and citizens of Montréal,**

It is an honour and a privilege for me to present the *Annual Report of the Inspector General of Montréal for the year ended December 31, 2016*, pursuant to section 57.1.23 of Montréal's City Charter.

The mandate entrusted to me unanimously by the Montréal City Council is to oversee contracting processes and the carrying out of contracts by the City or by a legal person related to the City, so as to prevent breaches of integrity and foster compliance with applicable legal provisions and with the City's requirements regarding contracting and the carrying out of contracts.

The present report highlights, for the year 2016, the achievements of the Office of Inspector General of Montréal, which I began building immediately following my appointment as Inspector General on February 24, 2014, as well as my priorities for the year 2017. My primary aim will always be to conduct administrative investigations with the same rigour which has driven me since my first day in office.

I take great pride in the Office's success as an institution serving to rebuild the public's trust in municipal democracy. The number of complaints we receive each year is tangible proof that the job of the Inspector General is, and will always remain, highly relevant. The independence of the Inspector General's position, the high standards guiding the Office in its day-to-day operations, and the protection of whistleblowers makes the Office of Inspector General of Montréal the veritable watchdog of the integrity of the City's contracting processes.

The Office of Inspector General is entering its fourth year in existence. I benefit from the expertise of a solid team of professionals in various fields of practice, which is a tremendous asset given the nature of my mandate. In my capacity as Inspector General, I can also count on the invaluable assistance of other control and monitoring bodies, as well as a vast network of remarkably courageous whistleblowers. These individuals who, day after day and of their own volition, report irregularities with contracts, show us that there is a genuine desire to clean up practices, improve transparency and prevent the kinds of situations we saw in the media around the time of the Charbonneau Commission from recurring.

In my last annual report, I announced that I would make the accountability of the City's managers and employees a priority in 2016. I can now confirm that I have seen changes happening. Many stakeholders of the City as well as numerous partners intervened in files before the Office was even called upon, and informed the Office of the irregularities and the corrective measures they took. I would like to take this opportunity to praise their initiative and encourage them to continue in this vein. That said, much work remains to be done on the accountability front, and I pledge to continue to advocate for its importance through my actions.



In fact, several files that were made public since my last annual report demonstrate the importance of keeping an eye out for attempts to violate the law or rules governing contract awards and management, the requirements of call for tenders documents, as well as measures implemented following an intervention by the Office.

The Office continually follows up on investigated files in which it has been involved. As a result of this monitoring effort, in 2016 it was revealed that contractors in the snow removal and towing businesses were continuing to enter into collusive or fraudulent contracts, despite the publication of reports condemning such practices, and that they were attempting to circumvent the measures that had been put in place. My team and I were quick to intervene once again with these contractors in order to send them the clear message that their activities were being scrutinized. Snow removal and tow-truck rental contracts were rescinded, contractors were excluded from the possibility of signing contracts with the City for a period of five (5) years, and one contractor even lost his authorization from the Financial Markets Authority (Autorité des marchés financiers) to enter into contracts with public bodies. The respect of our decisions will always remain our priority and we will not hesitate to take action against those who attempt to come up with new schemes to undermine it.

On another matter, it was brought to my attention in 2016 that the City was delayed in issuing many of its payments to its suppliers of goods and services. If allowed to continue, this situation could lead to a closure in this market and price hikes, and thus impede healthy competition. In fact, it is the small businesses that are impacted by these payment delays, as they have less cash flow. Some contractors explained to the Office that they charged an additional 15% to offset the effects of these delays.

While some suppliers expect to be paid over extended periods, the City will occasionally grant substantial advances without performing any verifications, so as to prevent a supplier from being negatively impacted by a payment delay. In the public report concerning contracts awarded to Montréal en histoires, some boroughs even consented to the non-profit organization benefiting from extremely advantageous payment schedules, which deviated from the basic rules of prudence. In fact, 90% of the total value of the contract was paid out sixty (60) days after the contract signing, leaving only 10% of the budget envelope for the end of the mandate. What's more, the payments included sums allocated for contingencies, whereas these should have been disbursed only in the event of unexpected cost overruns.

In the course of the investigations carried out in 2016, I noted a number of risky practices on the part of the City in its role as manager of public funds. I therefore intend to address the issue of payment delays in 2017 and conduct enquiries and analyses to evaluate the impact these practices are having on the market.

In closing, I would like to wish a happy birthday to Montréal, which will be marking its 375th anniversary on May 18.

Denis Gallant, *Ad. E.*  
Inspector General

**ORIGINAL COPY SIGNED**

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# 1. HIGHLIGHTS – INVESTIGATIONS IN 2016



- 260** COMPLAINTS
- 155** INVESTIGATION FILES OPENED
- 22** INVESTIGATION FILES OPENED ON THE INITIATIVE OF THE INSPECTOR GENERAL
- 156** INVESTIGATION FILES CLOSED
- 123** INVESTIGATIONS IN PROGRESS AS OF DECEMBER 31, 2016



- 7** PUBLIC REPORTS INCLUDING:
- 4** DECISIONS TO RESCIND EXISTING CONTRACTS
- 3** RECOMMENDATION REPORTS



- 560** WITNESSES INTERVIEWED OR CONTACTED
- 162** SURVEILLANCE OPERATIONS
- 85** REQUESTS FOR PRODUCTION OF DOCUMENTS
- 4** INSPECTIONS
- 3** ACCESS ORDERS
- 2** REQUESTS FOR ASSISTANCE

## JANUARY 2016

Rescinding of a snow removal contract awarded by the Ahuntsic-Cartierville borough due to illegal subcontracting.

## JUNE 2016

Rescinding of a contract for acquisition of pump sets because the successful bidder did not meet the tendering eligibility criteria.

## JUNE 2016

Recommendation to cancel the awarding process of snow removal contracts due to the lowest bidder's attempts at collusion.

## AUGUST 2016

Notice issued by the Inspector General informing the Ville-Marie borough that it erroneously declared the lowest bid non-compliant and wrongfully awarded a contract to a company other than the lowest bidder.

## OCTOBER 2016

Rescinding of a contract to replace signs because the successful bidder did not have the licences required by the call for tenders to perform the work.

## SEPTEMBER 2016

Rescinding of contracts for the rental of tow trucks for snow removal operations due to collusion between the contractors.

## DECEMBER 2016

Recommendation to rescind certain contracts awarded to a non-profit organization in violation of public policy rules.





## 2. HIGHLIGHTS – OFFICE OF INSPECTOR GENERAL

- The Office of Inspector General is an **independent** control and monitoring body whose overriding mandate is to **detect and prevent collusion, corruption, fraud and other fraudulent tactics** employed in the awarding and management of the City's public contracts.
- The Inspector General and his team conduct **administrative investigations** with a view to improving the **transparency and integrity** of the City's **contracting process** and to **cleaning up its practices** in this regard so that citizens can have **confidence** in their municipal institutions.
- The Inspector General may launch an investigation on his own initiative or in response to a complaint received. **Whistleblowers are guaranteed anonymity**. The Office of Inspector General's complaint hotline attests to the value placed on the **fundamental role of whistleblowers** and encourages citizens to exercise their monitoring role.
- The Inspector General has **extensive** powers and **various** means of intervention. As a result, he is able to **address** problematic situations **upstream** and to intervene in the contracting processes when major irregularities are noted.
- The various achievements of the Office of Inspector General since its creation in 2014 are a testament **to the active role it plays**. Since his appointment, the Inspector General has earned the **public's trust** by his interventions and by maintaining the confidentiality of the individuals who communicate with him. In less than three (3) years, the Inspector General, through his interventions, has been a **driver of change** and has had an impact not only on customs and practices but on general policies as well.
- The Inspector General favours **recommendations that impact customs and practices** rather than individually oriented solutions. To some extent, the reports he submits to councils play an **educational role** and **encourage actors to reflect** on their actions and behaviours. Their **accountability** is therefore brought back to the forefront.
- The Office of Inspector General **does not work alone but collaborates** with various control and monitoring bodies whose powers complement its own.





### 3. THE INSPECTOR GENERAL AND HIS DEPUTIES

Appointed unanimously by the members of Montréal's City Council on February 24, 2014, Inspector General Denis Gallant is assisted in his functions by three deputy inspectors general who he himself appointed based on their qualifications, experience and professional accomplishments.

The following pages present the biographies of Inspector General Denis Gallant, Deputy Inspector General – Administration, Control and Legal Affairs, Philippe Berthelet, Deputy Inspector General – Inspections and Investigations, Michel Forget, and Deputy Inspector General – Expertise and Analysis, Pierre Egesborg. Philippe Berthelet left the Office of Inspector General in December 2016 to take up a new appointment as commissioner of the Québec Access to Information Commission (Commission d'accès à l'information du Québec). His successor will assume his duties in April 2017.



#### **The Inspector General**

##### ***Denis Gallant, Ad. E.***

Denis Gallant holds a law degree from the University of Sherbrooke and a Master's Degree in law from the University of Québec in Montréal (UQAM). He has been a member of the Québec Bar since 1990.

In office since February 2014 as the first Inspector General in Canada, Mr. Gallant's mandate is to oversee contracting processes and the carrying out of contracts by the City or by a legal person related to the City. He also works to prevent breaches of integrity and foster compliance with the applicable legal provisions and with the City's requirements regarding contracting or the carrying out of contracts.

Prior to his appointment as Inspector General of Montréal, he was deputy chief counsel of the Commission of Inquiry into the Granting and Administration of Government Contracts in the Construction Industry (Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction (CEIC)).

Mr. Gallant also served as a crown prosecutor for many years. Specialized in the criminal prosecution of narcotic offences and organized crime, he worked in the Québec Justice Department's organized crime unit (Bureau de lutte au crime organisé). In 2007, he joined the Public Prosecution Service of Canada, where he served as a federal prosecutor and team leader. Mr. Gallant began his career as a lawyer at Montréal's Legal Aid, where he practiced for several years, mostly in criminal law.

He has appeared before all the courts of criminal jurisdiction in Québec. As a prosecutor, he worked on a number of complex organized crime cases at the trial and appeal levels.

He taught criminal law for several years, in particular, criminal evidence and procedure, at the Faculty of Political Science and Law at the University of Québec in Montréal (UQAM) and at the Québec Bar School. He also taught criminal law at the Faculty of Law of the University of Sherbrooke and Faculty of Permanent Education of the University of Montréal. Mr. Gallant is often invited to speak at conferences and study days.

In 2011, the Québec Bar awarded him the distinction of *Advocatus Emeritus* (Lawyer Emeritus).

In 2015, Mr. Gallant earned the designation of Certified Inspector General (CIG) from the Association of Inspectors General.





## **Deputy Inspector General – Administration, Control and Legal Affairs**

### ***Philippe Berthelet***

Holder of a law degree from the University of Ottawa, Mr. Berthelet has been a member of the Québec Bar since 1989.

Mr. Berthelet has vast experience in administrative law, public freedoms and human rights. During his 25-year career with the City's Legal Affairs Department (Service des affaires juridiques), he has represented the City in many large cases before all of the general courts and most of the administrative courts of Québec.

Also a specialist in access to information rights, Mr. Berthelet was invited in 2012 to speak at a conference held on the 30th anniversary of the coming into force of the *Act respecting access to documents held by public bodies and the protection of personal information*.

In 2016, Mr. Berthelet earned the designation of Certified Inspector General (CIG) from the Association of Inspectors General.



## **Deputy Inspector General – Inspections and Investigations**

### ***Michel Forget***

Mr. Forget was a police officer with the Québec Provincial Police for 26 years. He spent most of his career in the Criminal Investigation Division of the force, where he was lead investigator in many major criminal cases, mostly involving corruption and organized crime.

Mr. Forget also occupied key management positions, where he supervised groups ranging from 6 to 900 investigators. In particular, he held the following positions: manager responsible for the financial crime division, deputy director of the organized crime unit, senior officer of the anti-corruption unit and director of communications.

Mr. Forget holds a degree in business administration from the University of Quebec at Trois-Rivières and is also a graduate of the FBI National Academy in Quantico, Virginia. Named an Officer of the Order of Merit by the Governor General of Canada in 2012 for his exceptional contribution to the police community throughout the country, Mr. Forget joined the Office of Inspector General in June 2015 as an inspection and investigation officer. In November 2016, he was appointed Deputy Inspector General – Inspections and Investigations.

In 2016, Mr. Forget earned the designation of Certified Inspector General Investigator from the Association of Inspectors General.



## **Deputy Inspector General – Expertise and Analysis**

### ***Pierre Egesborg***

Mr. Egesborg holds a bachelor's degree in Civil Engineering from McGill University and is a member of the Quebec Order of Engineers.

Mr. Egesborg has worked for the City for over 25 years and has served as head of the engineering division and interim director of public works for the borough of Saint-Léonard. His most recent position was Division Head, Contract Management and Technical Analysis, at the City's Office of Comptroller General.

Through this experience, he acquired extensive knowledge of municipal engineering activities and in procurement and contract management and analysis.

In 2016, Mr. Egesborg earned the designation of Certified Inspector General Investigator from the Association of Inspectors General.



## 4. THE CONCEPT OF INSPECTOR GENERAL

The concept of an inspector general stems from the United States, where there are more than two hundred fifty-four (254) offices of inspectors general at the federal, state and local levels.

Accountability is key to maintaining public trust in our democracy. **Inspectors general at all levels of government are entrusted with fostering and promoting accountability and integrity in government.** While the scope of this oversight varies among Offices of Inspectors General (OIGs), the level of public trust, and hence public expectation, embodied in these offices remains exceptionally high. **The public expects OIGs to hold government officials accountable for efficient, cost-effective government operations and to prevent, detect, identify, expose and eliminate fraud, waste, corruption, illegal acts and abuse.** This public expectation is best served by inspectors general when they follow the basic principles of integrity, objectivity, independence, confidentiality, professionalism, competence, courage, trust, honesty, fairness, forthrightness, public accountability and respect for others and themselves. **Inspectors general are granted substantial powers to perform their duties. In exercising these powers, inspectors general regard their offices as a public trust, and their prime duty as serving the public interest.\***

\*The function of Inspector General, as defined by the AIG. Excerpt from:  
ASSOCIATION OF INSPECTORS GENERAL, *Principles and Standards for Offices of Inspector General*, p. 3  
<http://inspectorsgeneral.org/files/2014/11/AIG-Principles-and-Standards-May-2014-Revision-2.pdf>



Most U.S. offices of inspectors general are members of the Association of Inspectors General (AIG), founded in 1996. The Office of Inspector General of Montréal has been a member of this U.S. association since June 9, 2014.

### What is the role of the AIG?



The AIG fosters and promotes public accountability and integrity in the general areas of the prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste and abuse. In particular, the AIG fulfills its mandate through:

- policy research and analysis;
- standardization of practices, policies and ethics;
- encouragement of professional development by providing and sponsoring educational programs;
- establishment of professional qualifications, certification, and licensing.

The AIG has issued principles and guidelines to its members on quality standards applicable to office administration and operation, investigations, inspections and audits conducted by the offices of inspectors general.

In this regard see: ASSOCIATION OF INSPECTORS GENERAL,  
*Principles and Standards for Offices of Inspector General*,  
<http://inspectorsgeneral.org/files/2014/11/AIG-Principles-and-Standards-May-2014-Revision-2.pdf>

In 2015, on completion of the 40-hour certification program of the AIG, Inspector General Denis Gallant earned the designation of Certified Inspector General (CIG).

In 2016, all the deputy inspectors general completed the AIG certification program.

Philippe Berthelet (Deputy Inspector General) earned the designation of CIG. For their part, Michel Forget (Deputy Inspector General – Inspections and Investigations) and Pierre Egesborg (Deputy Inspector General – Expertise and Analysis) earned the designation of Certified Inspector General Investigator (CIGI).

From November 16 to November 18, 2016, Denis Gallant and Deputy Inspector General – Inspections and Investigations Michel Forget attended a 20-hour course in Boston, Massachusetts, organized by the AIG and titled "The AIG's Annual Training Conference – 20 years of the AIG: The Evolving Role of Inspector General."





**The Inspector General of Montréal is the only Office of Inspector General created by a statute in Quebec.**

**Montréal is a major client with substantial budgets to carry out its work. In 2016, the City awarded thousands of contracts with an aggregate value of over two billion dollars (\$2,000,000,000).**

*Figures obtained using “Vue sur les contrats,” a viewing tool developed by the City and available for consultation at: <http://ville.montreal.qc.ca/vuesurlescontrats/>*



## 5. MISSION OF THE INSPECTOR GENERAL

Three values deemed to be at the core of the mission of the Office of Inspector General of Montréal are incorporated in the office's official logo.



### TRUST

The Inspector General of Montréal oversees the awarding and carrying out of contracts and works to improve practices so citizens can have **trust** in their municipal public institutions where contractual matters are concerned.

### INTEGRITY

The mandate given to the Inspector General aims to ensure **integrity** in the awarding and carrying out of contracts.

### TRANSPARENCY

The main purpose of the investigations conducted by the Office of Inspector General is to improve the **transparency** of municipal activities and decisions by shedding light on certain problems and proposing recommendations or other courses of action, as necessary.



## 6. MANDATE OF THE INSPECTOR GENERAL



### 1. Oversee

contracting processes and the carrying out of contracts by the City or by a legal person.



### 2. Recommend

to the council any measure aimed at preventing a breach of integrity in the making of contracts by the City or the carrying out of such contracts.



### 3. Recommend

to the council any measure designed to foster compliance with the applicable legal provisions and the City's requirements regarding contracting or the carrying out of contracts.



### 4. Verify

within the City, the implementation of such measures adopted by any council.



### 5. Train

council members as well as the officers and employees to recognize and prevent any breach of integrity or violation of the applicable rules concerning contracting by the City or the carrying out of contracts.



## 7. JURISDICTION OF THE INSPECTOR GENERAL

The Inspector General has jurisdiction over more than eighteen (18) agencies,\* including the City. This jurisdiction can be summarized as follows:

Over \$6,000,000,000	Annual budget
More than 50,000	Suppliers
More than 38,000	Employees
More than 18	Agencies, including the City

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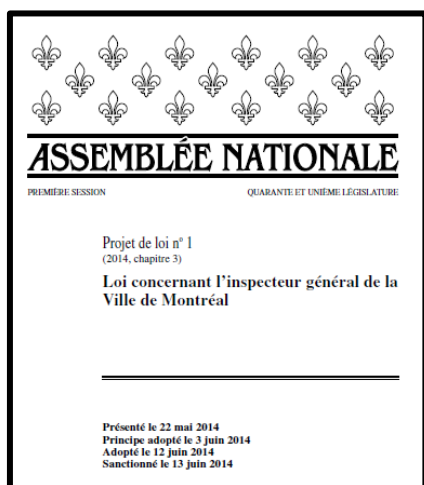
### 1 Inspector General

\*Including Montréal's Subway and Bus Service (Société de transport) (STM)), Montréal's Taxi Bureau (Bureau du taxi), Montréal's Public Consultation Office (Office de consultation publique de Montréal), Montréal's Housing and Development Society (Société d'habitation et de développement de Montréal), Jean-Drapeau Park Society (Société du parc Jean-Drapeau) and Montréal's Technoparc.





## 8. POWERS OF THE INSPECTOR GENERAL



### A cautionary note regarding the nature of the investigations conducted by the Inspector General

The Inspector General does not conduct criminal investigations. He conducts investigations of an administrative nature. Consequently, in this annual report, the term “investigation” refers to an administrative investigation and should in no way be interpreted as referring to a criminal investigation.

To enable the Inspector General to effectively perform his duties and fulfil his mandate, the legislator granted him the following powers under sections 57.1.9, 57.1.10 and 57.1.23 of Montréal's City Charter:

### Power to require information and documents

The Inspector General is entitled to examine any book, register or record, or obtain any information relevant to his mandate.

### Inspection powers

The Inspector General may, at any reasonable hour, enter a building to examine any book, register or record. The Inspector General may require the owner, occupant or any other person on the premises visited to give him reasonable assistance.

The Inspector General may also use any computer or material or any other thing found on the premises visited to access data relevant to his mandate and contained in an electronic device, computer system or other medium or to inspect, examine, process, copy or print out such data.



## Power to cancel, rescind and suspend

The inspector general may cancel any contracting process involving a contract of the City or any related legal person or rescind or suspend the carrying out of such a contract if the following two conditions are met:

- if the Inspector General finds that any of the requirements specified in a document of the call for tenders or a contract has not been met or that the information provided in the contracting process is false; and
- if he is of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.

## Power to make recommendations

The Inspector General may, at any time, send the council or any decision-making body of the City any report presenting findings or recommendations that, in his opinion, warrant being brought to its attention.



## 9. STATEMENTS OF PRINCIPLE

### An independent Inspector General

This independence is both fundamental and essential to the role of Inspector General.

**Independence, in appearance and in fact, must be ensured through protection, autonomy and freedom of action.**

**The Inspector General carries out his work in a fully independent manner. Nothing and no one can influence his investigations, reports, opinions and recommendations.**

Without independence, how can one be sure that the Inspector General's reports, opinions and recommendations are objective, impartial and free from conflict of interest?

Several guarantees of independence are provided to the Inspector General of Montréal, namely under sections 57.1.1, 57.1.3, 57.1.4, 57.1.5, 57.1.7 and 57.1.21 of Montréal's City Charter:

#### Enshrined in the law

The Inspector General cannot be removed based on the political will of the municipal administration in power.

#### Non-partisan appointment

- Appointment protected for a five-year term.
- Non-renewable mandate.
- A two-thirds majority vote of City Council is required to appoint, dismiss or suspend the Inspector General.
- Appointment free from conflict of interest.

#### Hierarchical autonomy

- Neither the mayor nor the City manager has authority over the Inspector General.
- The Inspector General reports directly to City Council; however, there is no relationship of subordination between City Council and the Inspector General.\*

\*Pothier v. Notre-Dame-de-la-Merci (Municipalité), 1998 CanLII 12656 (QC CA)

#### Independent budget

- The Inspector General's budget is set by law.
- It represents a fixed percentage (0.11%) of the City's operating budget.
- The Office of Inspector General cannot be subjected to budget cuts that could affect its activities and operations.



## An office driven by high standards

- The Office of Inspector General handles all complaints it receives in a **confidential, objective and impartial** manner.
- The Inspector General is committed to producing **reports of exceptional quality that are objective, accurate, and timely** and that are presented in such a way as to enable the persons and organizations over which he has jurisdiction to take action on the basis of the information they contain.
- The Inspector General sets as burden of proof in his public reports the standard of a preponderance of evidence. This is used by civil courts and has a reasonable degree of probability (Article 2804 of the *Civil Code of Québec*).

## An inspector general who protects whistleblowers

- It is thanks to the courage of people who report or expose situations that the Office of Inspector General can conduct investigations.
- The Inspector General **has the duty and obligation** to take all necessary measures to protect the anonymity of any person who provides information or exposes a situation (section 57.1.14 of Montréal's City Charter).
- In his public reports, the Inspector General protects the anonymity of the persons who provided him with information and enabled him to further his investigation.
- Anyone who communicates, reports or exposes a situation to the Inspector General is protected. It is forbidden by law to retaliate against or threaten a whistleblower, and stiff fines are imposed for violating these rules.

s. 57.1.15  
of  
Montréal's  
City

The following are  
considered reprisals:

- Demotion;
- Suspension;
- Termination of employment;
- Transfer;
- Any disciplinary or other measure that adversely affects employment or working conditions.

A person who does  
not comply with these  
rules is liable to the  
following fines:

- \$2,000 to \$20,000 in the case of a natural person;
- \$10,000 to \$250,000 in other cases;
- For any subsequent offence, the amounts are doubled.





# 10. COMPLAINT HOTLINE

## HANDLING COMPLAINTS: A PRIORITY FOR THE INSPECTOR GENERAL

Since his appointment, the Inspector General has received numerous complaints: **a total of eight hundred ninety-five (895) complaints have been received, including two hundred sixty (260) in 2016.**

**Complaint hotlines are a key success factor for offices of inspectors general.**

A telephone hotline was introduced soon after the creation of the Office of Inspector General of Montréal and the appointment of Denis Gallant as Inspector General.

Since it was introduced, three hundred sixty-five (365) complaints have been received through this means of communication, including fifty-four (54) in 2016.

The Website of the Office of Inspector General, launched on December 4, 2014, is becoming the preferred means of communication among citizens, elected officials, City employees, suppliers and the media. It is intended to be a single point of contact for the collection of various types of complaints or information. In 2016, 59% of the complaints were received by email or through the form available on the Website, versus 41% in 2015.

Anyone, including citizens, City employees or related legal persons, City suppliers or even elected officials can contact the Inspector General to provide him with any information they deem relevant to the Inspector General's legal mandate.



**Responding to complaints has always been and will always remain a priority for the Inspector General.**

*A person who communicates information to the Inspector General may do so despite:*

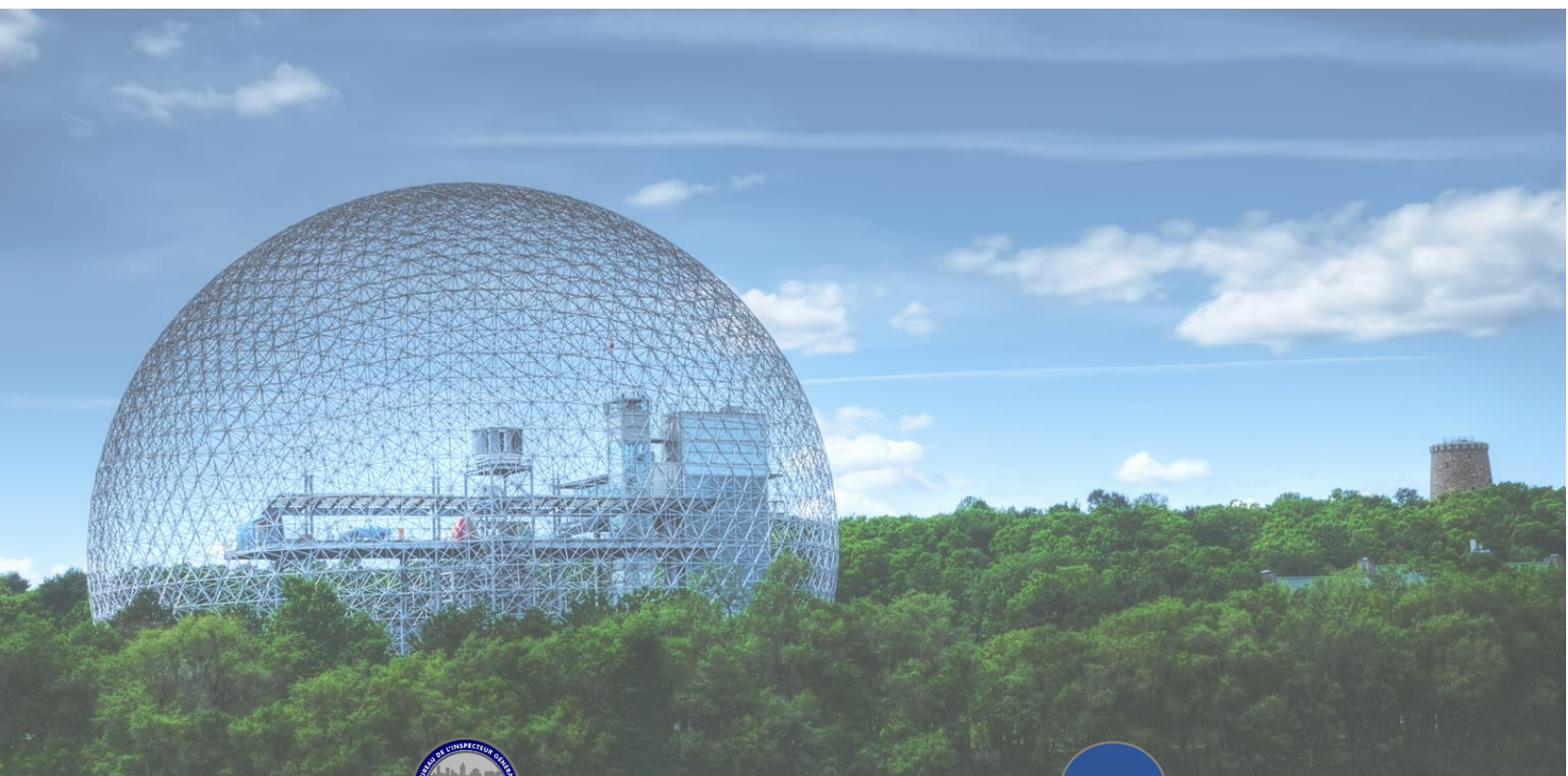
- *the Act respecting access to documents held by public bodies and the protection of personal information;*
- *the Act respecting the protection of personal information in the private sector;*
- *any other communication restrictions under other laws of Québec; and*
- *any duty of loyalty or confidentiality that may be binding on the person, in particular with respect to an employer or client.*

With the exception, however, of information protected by professional secrecy between attorneys or notaries and their clients, information on a person's health and information listed under section 57.1.13 of Montréal's City Charter.

## CITY ETHICS HOTLINE

In June 2014, the oversight and management of the City's ethics hotline has been entrusted to the Office of Inspector General of Montréal, an independent entity reporting to the City Council. Until then, this hotline had been under the responsibility of the comptroller general.

In order to avoid confusion for whistleblowers, a single point of contact was created by merging the City ethics and Office of Inspector General's complaint hotlines.





# BUREAU DE L'INSPECTEUR GÉNÉRAL

de la  
Ville de  
Montréal

The Inspector General may be reached in the following ways:



By phone:  
514 280-2800



By online form:  
[www.bigmrtl.ca](http://www.bigmrtl.ca)



By email:  
[BIG@bigmrtl.ca](mailto:BIG@bigmrtl.ca)



By facsimile:  
514 280-2877



By mail or in person  
1550 Metcalfe Street  
12th floor, Suite 1200  
Montréal, Québec  
H3A 1X6

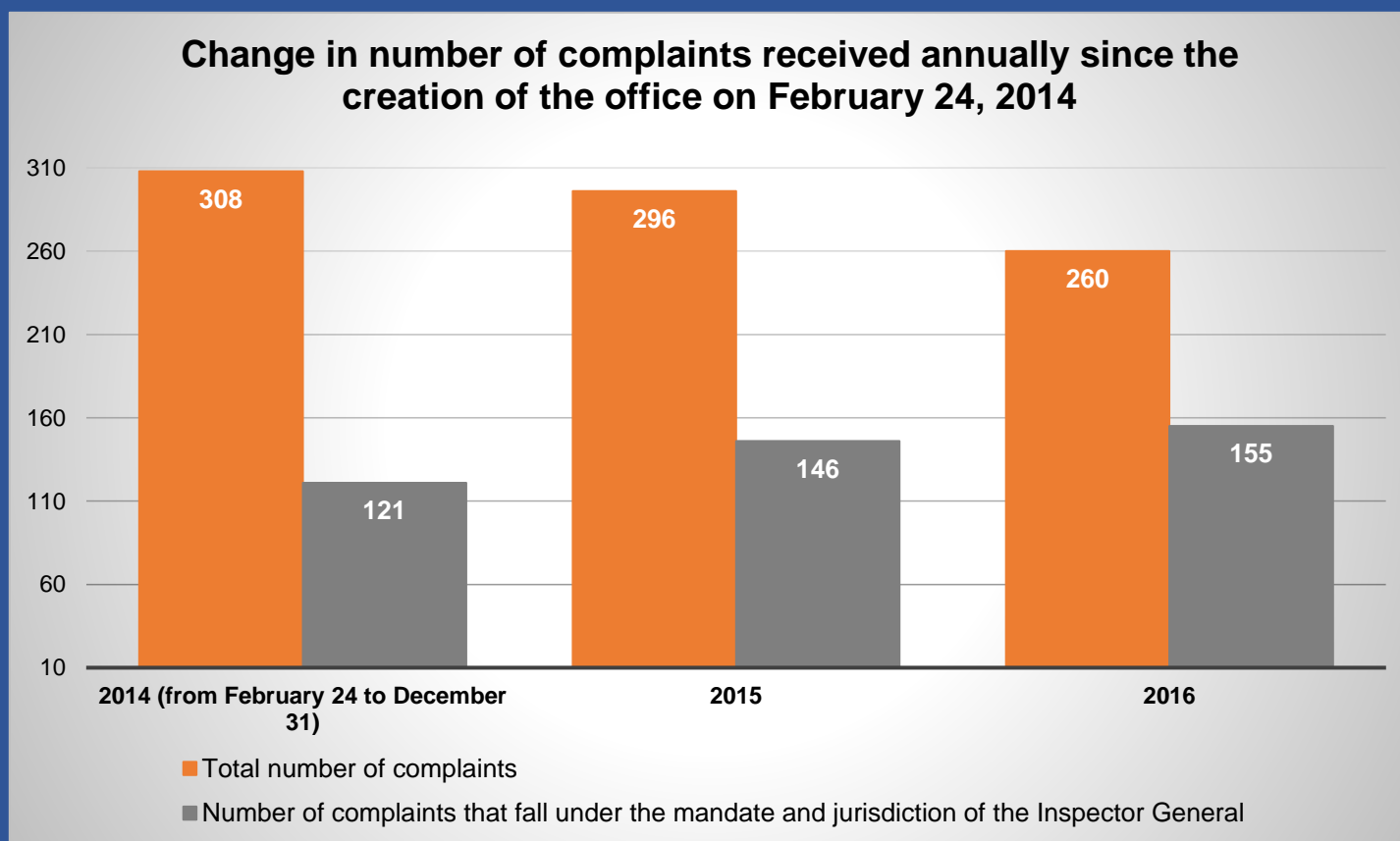




## 10.1 COMPLAINT STATISTICS

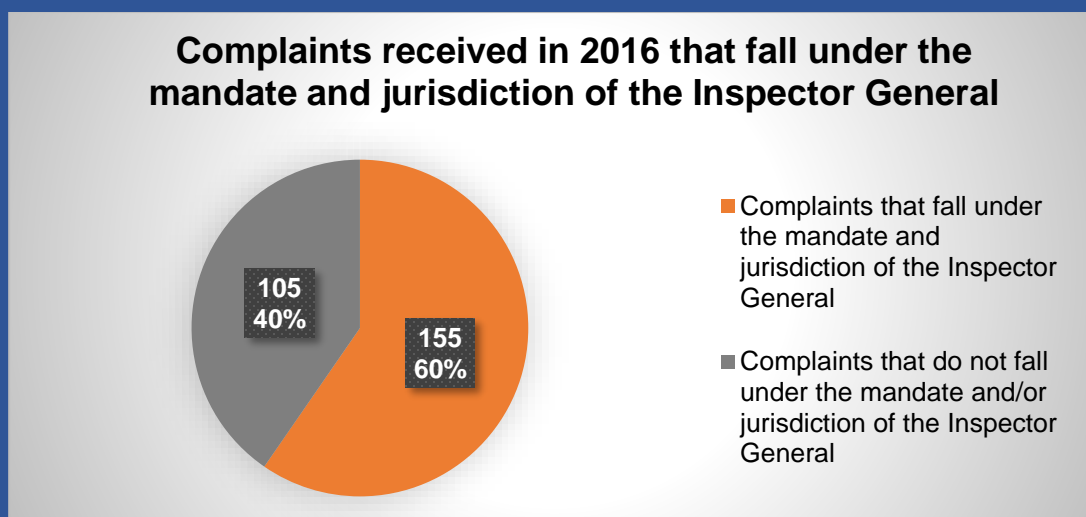
From January 1 to December 31, 2016, the **Office of Inspector General received two hundred sixty (260) complaints**, slightly fewer than in 2015. However, a growing number of the complaints received fall under the mandate and jurisdiction of the Inspector General. This attests to the fact that the public is becoming more familiar with the Office of Inspector General, which is now receiving more complaints in line with the mission for which it was created.

The following graph illustrates the change in the number of complaints received annually since the creation of the Office of Inspector General:



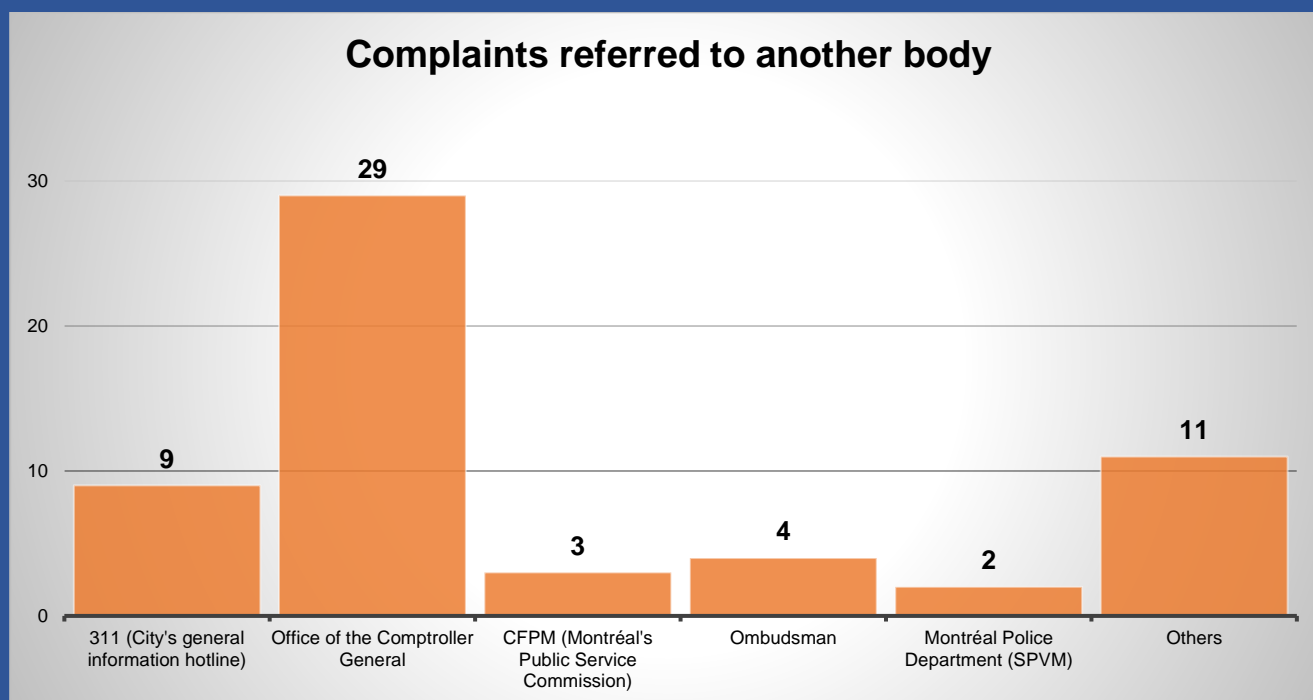
When a complaint is received, a preliminary analysis is performed to determine whether it falls under the mandate and jurisdiction of the Inspector General.

Since it manages the complaints hotline on its own, the Inspector General of Montréal receives many complaints that do not fall under its mandate or jurisdiction.



When a complaint does not fall under the mandate or jurisdiction of the Inspector General, it is sent, with the complainant's consent, to the appropriate body or the complainant is invited to contact the appropriate department or organization directly.

**In 2016, fifty-eight (58) complaints received by the Office of Inspector General were referred to another body.** The following graph illustrates the breakdown of complaints referred to other bodies.

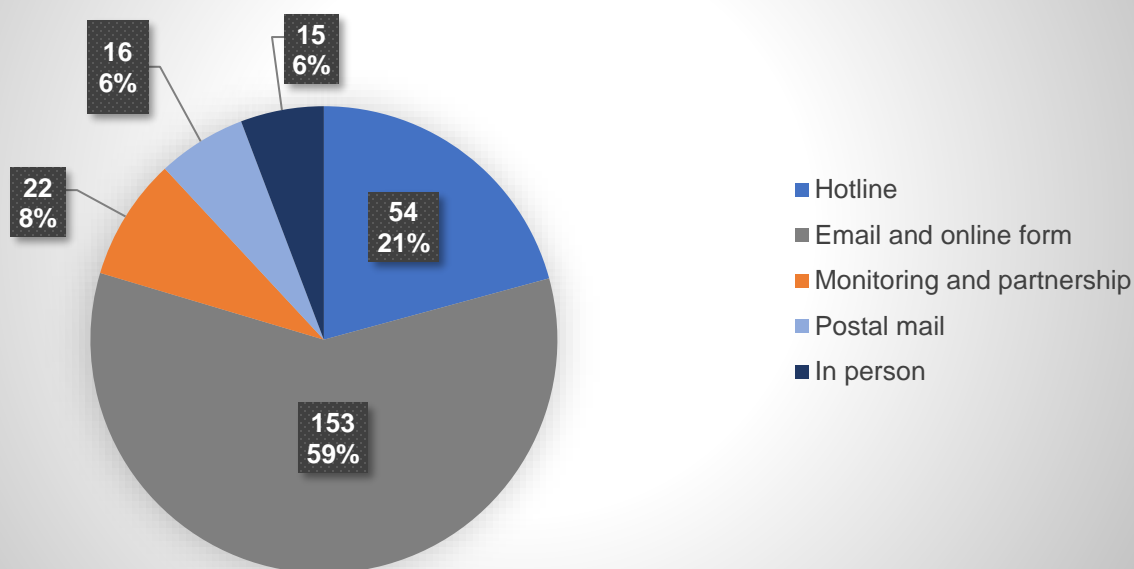


The following graphs and tables provide more detailed statistics on the complaints received in 2016, whether or not they fell under the mandate or jurisdiction of the Inspector General:

Complaints by type	
Irregularity in the contracting process or the carrying out of contracts	51.15%
Collusion, corruption or extortion	6.92%
Fraud, theft or misuse of property	6.54%
Breach of ethics or conflict of interest	5%
Mismanagement or violation of the applicable rules	3.85%
Zoning issues, irregularity in real estate management or the granting of permits	3.46%
Irregularity in a staffing process or other human resources cases	2.7%
Other miscellaneous cases	20.38%
<b>Total</b>	<b>100%</b>

Complaints by source	
Supplier, subcontractor or bidder	28.85%
Citizen	26.54%
Current or former employee, elected official or member of an elected official's cabinet, former elected official or former member of an elected official's cabinet	20%
Anonymous or unknown	10.77%
Monitoring	7.31%
Partner	1.15%
Other	5.38%
<b>Total</b>	<b>100%</b>

**Complaints received in 2016  
by point of contact**



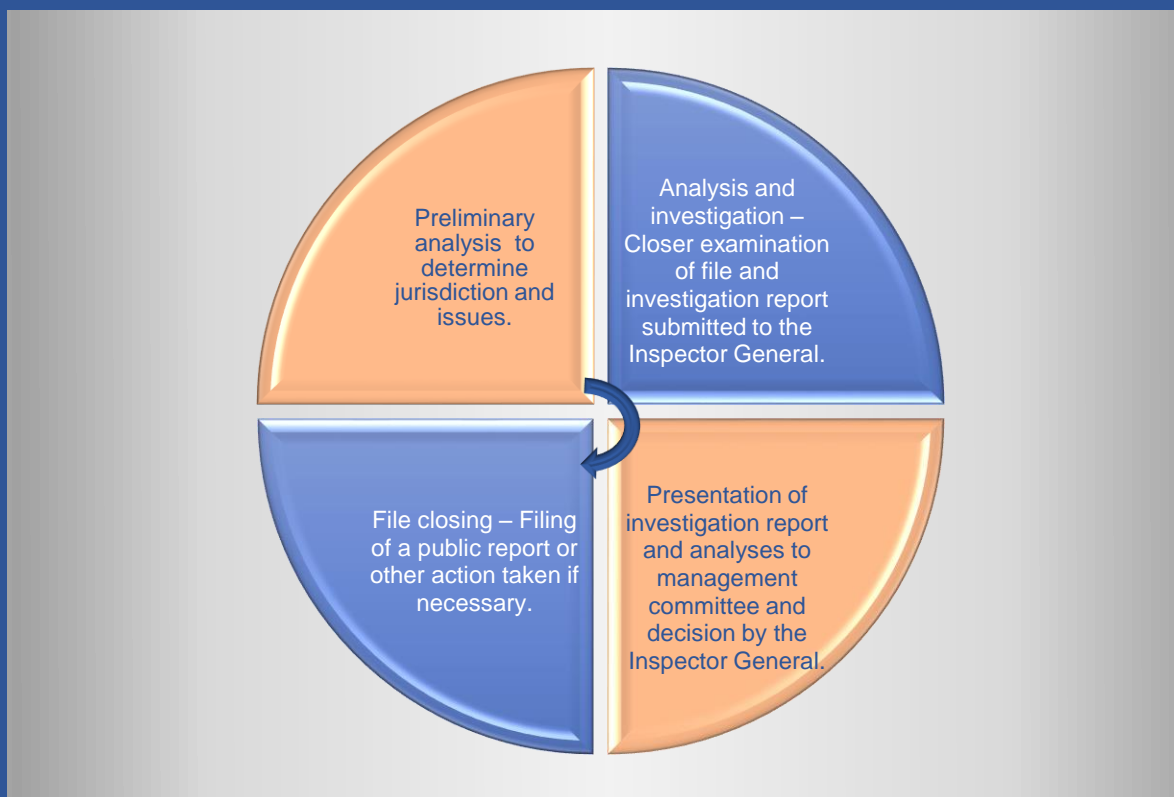
## 10.2 INVESTIGATION PROCESS

### From receipt of complaint to opening of an investigation file

When a complaint falls under the mandate and jurisdiction of the Inspector General, an investigation file is opened. Through his investigations, the Inspector General is able to intervene in contractual matters. An investigation is launched either in response to a complaint or on his own initiative.

All cases undergo a rigorous analysis and investigative process involving many verifications and the corroboration of information.

All investigation files are subject to the following process:





## Closing an investigation file

A number of situations are possible when closing a case:

### FOUNDED

The case is closed with the mention that following an investigation and analysis, the complaint proved to be founded. One of two things can happen:

- The Inspector General deems it appropriate to file a public report with a decision-making body. There are two types of public report:
  - Recommendation reports (section 57.1.23 par. 2 of Montréal's City Charter;
  - Decisions pronouncing the cancellation of a contracting process, rescinding of a contract or suspension of the carrying out of a contract when the conditions set out in section 57.1.10 of Montréal's City Charter are met.
- The Inspector General deems that the case is founded but does not believe there is reason for the issue to be brought to the attention of a decision-making body. In such a case, there is no public report on the investigation but the Inspector General will intervene with the municipal body in question.

### UNFOUNDED

The case is closed because the complaint proves to be unfounded after investigation and analysis.

### INSUFFICIENT INFORMATION

The case is closed as there is insufficient information to pursue the investigation and nothing else can be obtained from the whistleblower because he is anonymous or has no more details.

### NOT A PRIORITY

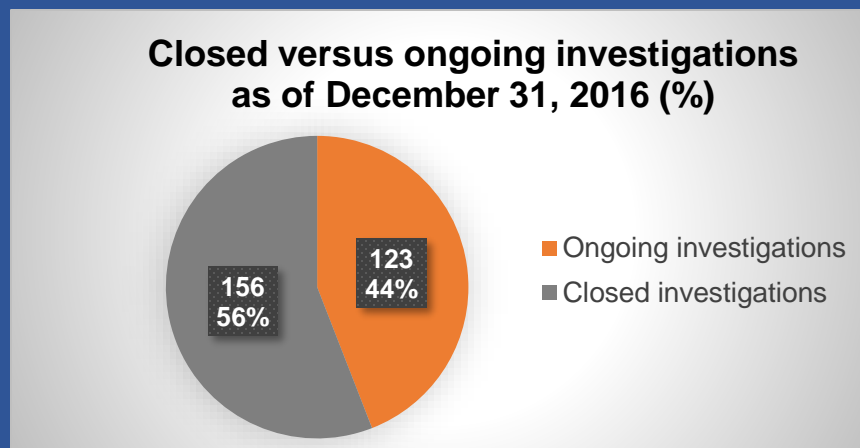
The case is closed because although it falls under the jurisdiction of the Inspector General, the high number of complaints received by the Office of Inspector General and its limited resources force the Inspector General to set priorities based on an evaluation of each case.

## 10.3 CASE-RELATED STATISTICS

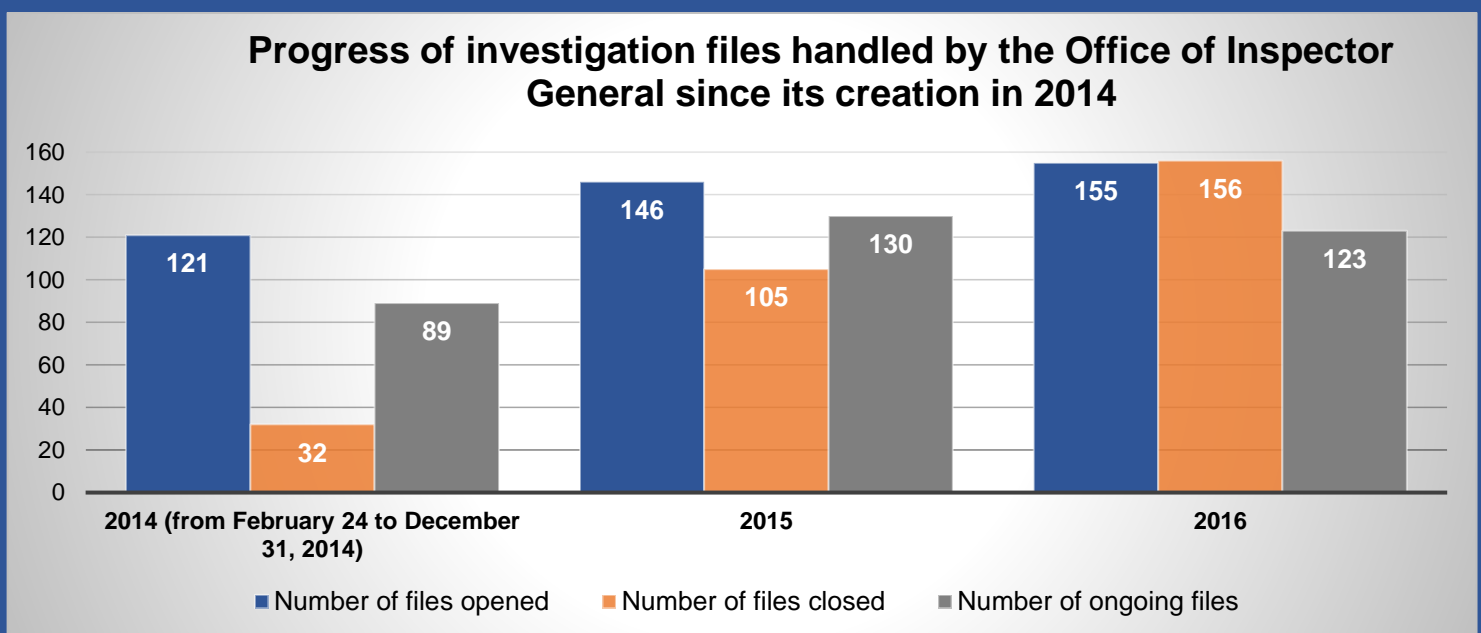
In 2016, the Office of Inspector General opened one hundred fifty-five (155) investigation files and closed one hundred fifty-six (156).

More files were closed than opened during the year because twenty-eight (28) of the files closed dated back to 2014 and forty-nine (49) to 2015. Thus, only seventy-three (73) investigation files were opened and closed in 2016.

As of December 31, 2016, **one hundred twenty-three-cases** were still being investigated, including five that had been opened in 2014 and thirty-six in 2015.



The following graph illustrates the progress of the cases handled by the Office of Inspector General since its creation:



# 11. THE INSPECTOR GENERAL'S TEAM

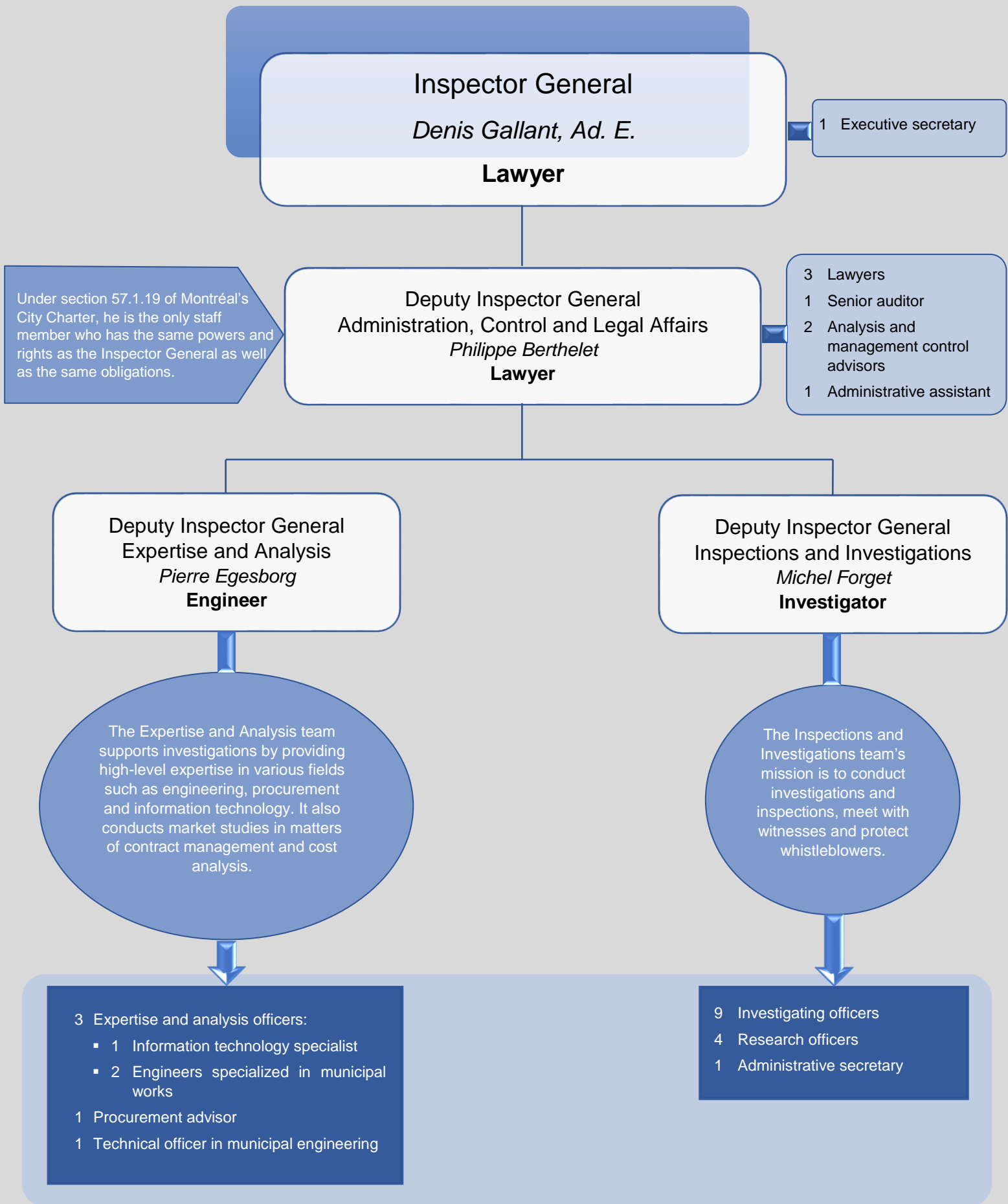


The Office of Inspector General of Montréal's structure consists of two (2) teams, Inspections and Investigations and Expertise and Analysis, that work together to ensure investigations are conducted efficiently and with integrity and professionalism.

The organization chart on the following page shows the structure in effect in the fiscal year 2016 along with the roles of the two (2) teams.

As of December 31, 2016, the Office of Inspector General's team consisted of thirty-one (31) members, including the Inspector General.







## DELEGATION OF POWER

All members of the Inspections and Investigations and Expertise and Analysis teams hold powers delegated to them by the Inspector General pursuant to section 57.1.19 of Montréal's City Charter.

Therefore, they can meet with or contact officers, elected officials, members of selection or administrative committees, bidders and anyone who is bound by contract to the City and its related legal persons.

With respect to exercising the power to require information or documents and the power to initiate an inspection, these team members are authorized as needed and in writing by the Inspector General or the Deputy Inspector General – Administration, Control and Legal Affairs to:

- require the production of a document or information;
- access premises or a building;
- access data in a computer;
- order any person on the premises to provide reasonable assistance.

This delegation does not, however, confer the power to cancel a call for tenders, rescind a contract or suspend the carrying out of a contract. Only the Deputy Inspector General – Administration, Control and Legal Affairs has such delegated power under section 57.1.19 of Montréal's City Charter.

## A MULTIDISCIPLINARY TEAM

The Office of Inspector General of Montréal is a multidisciplinary office. To ensure the highest levels of integrity and reliability within the Office of Inspector General, all employees are subject to security and background checks.

The office thus benefits from the varied expertise of professionals from a host of fields, a major asset considering the Inspector General's legal mandate.

The office's staff members have expertise in the following areas, among others:

- Legal
- Auditing
- Information technology
- Investigative methods and procedures
- Procurement
- Analysis and research
- Accounting
- Engineering
- Municipal works



## TRAINING

To keep their knowledge up to date and maintain the highest level of professionalism, expertise and competency, the staff members of the Office of Inspector General have completed several training courses of varying length relating to the Inspector General's legal mandate.

In 2016, the team underwent training mainly in the following fields;

- Municipal law;
- Procurement and the call for tenders system;
- Non-profit organizations;
- Collusive schemes (fraud and other fraudulent tactics);
- Integrity and transparency;
- Auditing and accounting standards;
- Investigation strategies;
- Access to information;
- HR management.

An expertise and analysis officer specialized in information technology earned the designation of Certified Forensic Examiner after taking a course to develop skills and knowledge in computer forensics, digital forensic techniques and computer crimes.

Also, several staff members completed the certification program offered by the Association of Inspectors General:

- The Deputy Inspector General earned the designation of Certified Inspector General; and
- Two inspection and investigation officers, and two deputy inspectors general of the Inspections and Investigations and Expertise and Analysis teams earned the designation of Certified Inspector General Investigator.

## EQUAL ACCESS TO EMPLOYMENT

The following table illustrates the staff breakdown at the Office of Inspector General as of December 31, 2016, according to the groups targeted by the *Act respecting equal access to employment in public bodies*.

Category	Number	Percentage (%)
Men	16	53%
Women	14	47%
Aboriginal peoples*	0	0%
Visible minorities*	4	13%
Disabled persons*	0	0%

\*These groups include both men and women



## 12. NEWS IN 2016

### Symposium

Un inspecteur général, une valeur ajoutée

PALAIS DES CONGRÈS DE MONTRÉAL, LES 22 ET 23 SEPTEMBRE 2016



On September 22 and 23, 2016, the Office of Inspector General of Montréal held its first symposium titled "The Added Value of an Inspector General" at the Montréal Convention Centre (Palais des Congrès).



Organized in collaboration with the Association of Inspectors General, this symposium offered an opportunity to promote this still unique model in Québec and Canada and to highlight the added value of inspectors general across North America in the fight against fraud, waste, corruption, collusion and other abuses, especially in public contracts.



This unique event afforded participants an opportunity to, among other things:

- discover the Office of Inspector General of Montréal;
- understand the essential role and different types and functions of the 254 offices of inspectors general in the United States;
- understand the challenges inspectors general face;
- learn about the major investigations conducted by some offices of inspectors general;
- reap the benefits and spinoffs that follow investigations, verifications and inspections of an office of inspector general.

The offices of inspectors general all work to protect the same values: integrity, transparency, public trust in public administrations and the accountability of elected officials and officers.

**The work accomplished by offices of inspectors general over the years is concrete proof that they serve a purpose and that others should be created within municipalities, ministries and governments across Québec and Canada.**



# Symposium

Un inspecteur général, une valeur ajoutée

PALAIS DES CONGRÈS DE MONTRÉAL, LES 22 ET 23 SEPTEMBRE 2016



The Inspector General is proud of the interest generated by this symposium. The more than 160 people in attendance included representatives from the municipal, government, public and academic sectors, as well as professionals working abroad. The symposium also attracted mayors and auditors general from all over the province, as well as their counterparts elsewhere in Canada.

The symposium "The Added Value of an Inspector General" was an opportunity for the Inspector General of Montréal to welcome speakers and exceptional participants, each an expert in their own field, to share their experience on topical areas of interest.

The interest expressed by these municipalities, ministries and governments express in the concept of an inspector general illustrates their willingness to fight collusion, corruption and other fraudulent tactics employed, in particular, in contracting processes. This is a milestone for a young organization such as the Office of Inspector General as well as for the municipal field in Québec.

## RENDERING OF ACCOUNTS

The Inspector General is pleased to announce that, as planned, the symposium was entirely self-financed. In other words, not only were all the costs covered by the revenues generated by the event, but it even resulted in a small surplus. The Inspector General would like to thank the organizations that made a financial contribution, which reduced the budget costs.

- The Association of Inspectors General covered all the travel and accommodation expenses of speakers Stephen B. Street, Philip A. Zisman, Pasqualino Russo, Robin J. Kempf, James W. Heath and Steven Pasichow, most of whom are members of the Association.
- For its part, the Center for the Advancement of Public Integrity of Columbia University's Faculty of Law assumed the travel expenses of speaker Jennifer G. Rodgers, the center's executive director.
- York University's School of Public Policy and Administration covered the travel expenses of speaker-panelist Susan Ann Dimock.
- Sherbrooke University's Anti-Financial Crime Program sponsored a coffee break at the Convention Centre.

REVENUES		Amount
Ticket sales		\$60,150.00
Sponsorship revenue from Sherbrooke University's Anti-Financial Crime Program		\$1,600.00
TOTAL REVENUE		\$61,750.00
EXPENSES		Amount
Room rentals		\$5,166.00
Meals (lunches-breaks-dinner-cocktail)		\$27,401.81
Rental of technical equipment		\$11,487.00
Simultaneous translation service		\$5,275.60
Graphics and printing		\$1,897.63
Promotional tools		\$3,728.00
Ticket sale management fees		\$2,541.05
Hosting and accommodation of speakers		\$1,228.76
Translation costs		\$1,638.75
Fees - Dispensing of continued education accredited by the Québec Bar Association		\$967.75
Parking and meals for volunteers		\$265.67
TOTAL EXPENSES		\$61,598.02
SURPLUS		\$151.98





The following pages describe the presentations made at the symposium.

**SEPTEMBER 22, 2016**

### Opening remarks

Montréal Mayor Denis Coderre kicked off the symposium. Let us all recall that Denis Coderre was behind the creation of the position of Inspector General of Montréal.

Montréal Mayor **Denis Coderre** (see opposite).



### “Office of Inspector General of Montréal, A First in Canada.”



The Inspector General of Montréal, Denis Gallant, introduced his office, the very first office of inspector general in Québec and in Canada. Mr. Gallant outlined the mandate, jurisdiction, powers, duties and obligations conferred by the legislator.

Shown here, **Denis Gallant**, Inspector General of Montréal.

## "Presentation of the Association of Inspectors General"

The symposium was made possible by the invaluable cooperation between the Office of Inspector General of Montréal and the Association of Inspectors General.

The President (also Inspector General of Louisiana), Executive Director and Treasurer of the Association, respectively, Stephen B. Street, Philip A. Zisman and Pasqualino Russo, were on hand to explain the history and development of the concept of an inspector general in the United States, as well as the role and mission of the Association of Inspectors General.

This Association provides training and delivers certification to members and offers immeasurable support to the inspector general community, especially to upcoming or newly created offices.



Shown here, from left to right: **Philip A. Zisman**, Executive Director of the Association of Inspectors General, **Stephen B. Street, Jr.**, President of the Association of Inspectors General and Inspector General of Louisiana, and **Pasqualino Russo**, Treasurer of the Association of Inspectors General.

## "Survey of Emerging State and Local Offices of Inspector General in the United States."



Robin J. Kempf, Assistant Professor at John Jay College of Criminal Justice (affiliated with New York University), presented her doctoral dissertation on emerging state and local offices of inspector general in the United States. Her research in this area deals with the evolution and progression of the concept of an inspector general in the United States and on the different types of office models.

Shown here, from left to right: **Robin J. Kempf**, Assistant Professor at John Jay College of Criminal Justice, and **Denis Gallant**, Inspector General of Montréal.

## "What CAPI Can Do for You"

In her presentation, Jennifer G. Rodgers introduced the organization she heads: the Center for the Advancement of Public Integrity (CAPI), a training and research centre that aims to improve the capacity of public offices and practitioners to deter, identify, and combat corruption by providing them with the necessary tools and resources. CAPI is the result of a partnership between New York University's Department of Investigation (DOI) and Columbia Law School.

Shown opposite, **Jennifer G. Rodgers**, Executive Director of the Center for the Advancement of Public Integrity, Columbia Law School, and **Denis Gallant**, Inspector General of Montréal.



## Panel: "Connections Between Agencies Fighting Against Corruption and Collusion"



Matthew Boswell, Senior Deputy Commissioner of the Competition Bureau of Canada, and Robert Lafrenière, Anti-corruption Commissioner of the Permanent Anti-Corruption Unit (UPAC), presented their respective offices. Denis Gallant then moderated a panel discussion on the connections between agencies fighting corruption and collusion. The focus of the discussion was the importance of cooperation between law enforcement organizations.

Above: **Denis Gallant**, Inspector General of Montréal, **Matthew Boswell**, Senior Deputy Commissioner of the Competition Bureau of Canada, **Robert Lafrenière**, Anti-Corruption Commissioner of the Permanent Anti-Corruption Unit, and **Michel Forget**, master of ceremonies and at the time, Inspections and Investigations Officer at the Office of Inspector General of Montréal.

## "Win-Win Approach Between Audit and Investigation: A Case Study (Snow Removal and Its Practices in Montréal)"

Citing the case of the Montréal snow removal industry, this presentation sought to show how a complementary approach involving an audit and an administrative investigation can be successful.

In this case, snow removal contracts awarded by the City were analyzed in depth simultaneously by the Office of the Auditor General of Montréal and by the Office of Inspector General of Montréal.

Mohamed Chérif Ferah, Senior Auditor at the Office of the Auditor General of Montréal, explained the audit process and the conclusions of Montréal's Auditor General in this case. Then, Dave Charland, who headed the Office of Inspector General's investigation, presented the highlights of the investigation whose strategy was developed based on the collusion indicators identified by the Office of the Auditor General. This presentation brought out the differences between the approaches of the two offices and illustrated the complementary nature of their mandates and powers in the fight against collusion in public contracts.

Shown above, from left to right: **Dave Charland**, Inspections and Investigations Officer at the Office of Inspector General of Montréal, **Mohamed Chérif Ferah**, Senior Auditor at the Office of the Auditor General of Montréal, and **Michel Forget**, master of ceremonies and at the time, Inspections and Investigations Officer at the Office of Inspector General of Montréal.



## "The Recommendations of the Inspector General: Impacts"



During the final presentation on September 22, 2016, Philippe Berthelet and Minh Tri Truong (at the time respectively Deputy Inspector General and Deputy Inspector General – Inspections and Investigations) discussed some of the investigations conducted by the Office of Inspector General of Montréal, the ensuing recommendations and their impact on practices.

Shown here, from left to right: **Minh Tri Truong**, Deputy Inspector General – Inspections and Investigations, until October 2016, **Philippe Berthelet**, at the time Deputy Inspector General, and **Michel Forget**, master of ceremonies and at the time Inspections and Investigations Officer at the Office of Inspector General of Montréal.



SEPTEMBER 23, 2016

### Opening remarks

The opening remarks on the second day of the symposium were made by the Deputy Premier of Québec, Lise Thériault.

Shown opposite, the Deputy Premier of Québec, **Lise Thériault**.



### "Creation of an Office of Inspector General and the Revival of Detroit"



Above, **James W. Heath**, Inspector General of Detroit.

The city of Detroit provides a glowing example of the added value of an inspector general and how he can contribute to a city's revival.

Detroit's Inspector General, James W. Heath, presented the circumstances that led to his appointment mentioning, in particular, the city's steady decline that started in the 1950s, the criminal prosecution of Mayor Kwame Kilpatrick and the city's bankruptcy in 2013.

## "Ensuring Integrity in Major Public Works Projects – The World Trade Center Site and Beyond"

This symposium provided yet another example of the success of offices of inspector general: The programs put in place by the Office of Inspector General of the Port Authority of New York & New Jersey to ensure integrity in major public works projects.

Steven A. Pasichow, Deputy Inspector General and Director of Investigations within this agency, discussed the characteristics of these programs and their application in such sites as the reconstruction of the World Trade Center following 9/11.

Shown opposite, from left to right: **Denis Gallant**, Inspector General of Montréal, and **Steven A. Pasichow**, Deputy Inspector General/Director of Investigations, Port Authority of New York & New Jersey.



## "Panel: Challenges of Protecting Whistleblowers and Informants"



To wrap up the symposium, a panel was formed to stimulate discussions on how to protect whistleblowers and informants.

Moderated by Juliette Jarvis, Research Officer at the Office of Inspector General of Montréal, this panel shed light on the challenges of protecting whistleblowers from the perspective of an investigator and a journalist as well as on the legal, ethical and academic issues involved.

Above, from left to right: **Juliette Jarvis**, Research Officer at the Office of Inspector General of Montréal, **Claude Mathieu**, Professor and Director of the graduate program in financial crime prevention at the University of Sherbrooke, **Yves Boisvert**, columnist at *La Presse*, **Susan Ann Dimock**, philosophy professor at York University in Toronto, **Denis Gallant**, Inspector General of Montréal, **Robert Pigeon**, Assistant Director of Investigations and Specialized Services at the Quebec City Police Department.





## 12. News in 2016 (cont'd)

### MONTRÉAL'S NEW CONTRACT MANAGEMENT POLICY



#### Extrait authentique du procès-verbal d'une assemblée du conseil municipal

Assemblée ordinaire du lundi 22 août 2016  
Séance tenue le 23 août 2016

Résolution: CM16 0963

Déclarer, le conseil de la Ville compétent pour une période de 2 ans, à l'égard de tous les arrondissements, afin d'adopter une Politique de gestion contractuelle unique applicable à l'ensemble de ceux-ci, conformément à l'article 85.5 de la *Charte de la Ville de Montréal* / Approuver la Politique de gestion contractuelle

Vu la recommandation du comité exécutif en date du 17 août 2016 par sa résolution CE16 1369;

Il est proposé par M. Francesco Miele

appuyé par M. Pierre Desrochers

- 1 - de déclarer le conseil de la Ville compétent, pour une période de deux ans, à l'égard de tous les arrondissements afin d'adopter une Politique de gestion contractuelle unique applicable à l'ensemble de ceux-ci, conformément à l'article 85.5 de la *Charte de la Ville de Montréal*;
- 2 - d'approuver la Politique de gestion contractuelle, jointe au dossier décisionnel;



#### Extrait authentique du procès-verbal d'une assemblée du conseil d'agglomération

Assemblée ordinaire du jeudi 25 août 2016  
Séance tenue le 25 août 2016

Résolution: CG16 0507

#### Approuver la Politique de gestion contractuelle

Vu la recommandation du comité exécutif en date du 17 août 2016 par sa résolution CE16 1369;

Il est proposé par M. Alan DeSousa

appuyé par M. Richard Bergeron

Et résolu :

d'approuver la Politique de gestion contractuelle, jointe au dossier décisionnel.

Adopté à l'unanimité.







In 2016, Montréal adopted a new Contract Management Policy.

Certain policy changes adopted on August 23, 2016 by City Council (CM16 0963) and August 25, 2016 by the Agglomeration Council (CG16 0507) stem from the Inspector General's recommendations to strengthen the provisions aimed at countering collusion and other fraudulent tactics affecting the integrity of contracting and the carrying out of contracts.

These recommendations were made public in the *Recommendation Report Concerning the Cancellation of the Contracting Process involving Two (2) Snow Removal Contracts in the Borough of Mercier-Hochelaga-Maisonneuve (MHM-102-1621 and MHM-104-1621)*.

## ORIGINS AND OBJECTIVES OF THE CITY'S CONTRACT MANAGEMENT POLICY

Montreal's *Contract Management Policy* (hereinafter: CMP) was first adopted on December 16, 2010 to meet the obligations set out in section 573.3.1.2 of the *Cities and Towns Act* (CQLR c C-19) stipulating that every municipality is required to adopt a contract management policy.

The CMP applies to all contracts, regardless of their monetary value, nature or competent municipal body involved. This therefore includes all contracts awarded or under the responsibility of the Agglomeration Council, City Council, borough councils and officers.

Under section 573.3.1.2 par. 3 of the *Cities and Towns Act*, the policy must include, in particular:

- measures to ensure compliance with any applicable anti-bid-rigging legislation;
- measures to ensure compliance with the *Lobbying Transparency and Ethics Act* (chapter T-11.011) and the *Code of Conduct for Lobbyists* (chapter T-11.011, r. 2) adopted under that Act;
- measures to prevent intimidation, influence peddling and corruption;
- measures to prevent conflict of interest situations;
- measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract; and
- measures to govern the making of decisions authorizing the amendment of a contract.



## Revision of certain provisions

- The new version of the CMP is drafted in the form of a regulation. As such, it contains a section defining certain concepts and groups the provisions by theme for ease of reading.
- In terms of content, numerous changes have been made, including the following:

### **Stronger measures for the prevention of corruption, collusion and other fraudulent tactics.**

On June 20, 2016, in his *Recommendation Report Concerning the Cancellation of the Contracting Process Involving Two (2) Snow Removal Contracts in the Borough of Mercier-Hochelaga-Maisonneuve (MHM-102-1621 and MHM-104-1621)*, the Inspector General recommended that the CMP be revised to give full effect to the objectives of the policy designed to fight collusion.

At the time, the old version of the CMP did not contain a general prohibition against collusion and only required that the bid signatory solemnly swear that, to his knowledge, the bid was prepared without collusion or arrangements between competitors.

The Inspector General had denounced the situation given that he could not intervene in a case where the bid signatory denied knowledge of collusive activities by the company's director of operations, who also happened to be his son.

"As part of our Contract Management Policy review process, we listened to the suggestions of elected officials and the **recommendations of the OIG**. These allowed us to fine-tune our Policy, and we are pleased to submit to the relevant bodies a comprehensive, forward-looking and stronger document. The fight against corruption, collusion and other fraudulent tactics is never ending. "We must continuously improve our management practices and that meant drafting a new CMP suited to today's situation." - Montréal Mayor Denis Coderre [loose translation]

Excerpt from the Inspector General's recommendation report:

"The Inspector General recommends that a revision of the City's *Contract Management Policy* be conducted so that, when there are fraudulent tactics like the ones observed during this investigation, full effect be given to the objectives of the policy designed to fight collusion. This revision should also aim at preventing the unintended consequences that may result from the application of this policy. Indeed, the City's *Contract Management Policy*, as currently worded, does not provide an adequate control of collusion. It easily offers to the companies bidding on the City's calls for tenders a way to avoid the application of the foreseen consequences."





The new CMP contains a broader provision that adds a prohibition that applies to everyone:

[Loose translation]

**17. No one may, directly or indirectly, in the context of preparing or presenting a bid or a contract by mutual agreement, participate or attempt to participate in collusion, corruption, or in a fraudulent tactic, or participate or attempt to participate in another illegal act of the same nature which is susceptible to compromise the integrity of the call for tenders process or the choice of a contracting party by mutual agreement, or the management of the resulting contract.**

*In submitting a bid or agreeing to a contract by mutual agreement with the City, the signatory solemnly declares that the bidder or the contracting party by mutual agreement did not violate, directly or indirectly, the first paragraph.*

### **Register of persons excluded pursuant to the CMP henceforth applies to contracts by mutual agreement**

For CMP violations, in particular, of the aforementioned section 17, the penalties will be doubled:

- At the discretion of the City (sometimes automatic), the bid may be rejected (if the contract has not yet been awarded) or the contract may be rescinded (if the violation is discovered during its performance).
- Registration in the *Register of Persons Excluded Pursuant to the CMP* (Registre des personnes écartées en vertu de la PGC). This register contains the names of persons not permitted to contract with the City for a set period of time, ranging from one (1) year to five (5) years, depending on which section of the CMP was violated. Sections 31 to 35 of the CMP deal with different cases that lead to a person being listed in the register.

As amended in 2016, the CMP not only excludes persons listed in the register from participating in any call for tenders but also henceforth, prevents them from entering into a contract by mutual agreement with the City, which was not the case in the previous version. These persons also cannot act as subcontractors in a contract awarded by the City.

Any party that contracts with the City must make sure that it does not do business with a subcontractor listed in the register (section 19 of the CMP).

The following persons can be included in the Register of Persons Excluded Pursuant to the CMP:

- The bidder or the contracting party at the City, depending on the situation;
- Any related person of the bidder or contracting party that violates the CMP, including any legal person or corporation to which this person is related.

“Related person” means in the case of a legal person, a director or any other officer of the legal person or a person holding shares carrying more than 10% of the voting rights attached to the shares of the capital stock of the legal person that may be exercised under any circumstances and, in the case of a general, limited or undeclared partnership, a partner or any other officer of the partnership.



## A stronger role for the Inspector General

**The new version of the CMP contains provisions creating an obligation to cooperate with the Inspector General of Montréal.**

- Section 25 of the CMP reiterates the Inspector General's power to require the production of information and documents relevant to his mandate as well as his inspection powers, set out in section 57.1.9 of Montréal's City Charter.
- Moreover, section 25 of the CMP imposes three additional duties on all stakeholders, directors, officers and employees of suppliers and bidders doing business with the City:
  - To offer their **full cooperation** to the Inspector General and his representatives;
  - To provide **complete, timely and accurate** responses to requests from the Inspector General and his representatives;
  - To **report in person at the time and place stipulated** by the Inspector General or his representatives in order to respond to the requests for information.
- Cooperation with the Inspector General and his representatives is therefore expected from all persons who have a contractual relationship with the City.

Section 25 of the CMP creates a contractual obligation to cooperate with the Office of Inspector General of Montréal. The CMP applies to all contracts and is an integral part of the tendering documents.

Failure to cooperate will thus be considered a breach of the contractual clauses, triggering the Inspector General's right to use the powers conferred on him by section 57.1.10 of Montréal's City Charter.

The potential penalties are severe: the Inspector General may cancel the contracting process, rescind the contract or suspend its performance, if the seriousness of the situation so warrants.



## Amalgamation of the City's policies

- Before the changes made in 2016, Montréal had twenty (20) contract management policies: one policy for the central municipality and one policy for each of the nineteen (19) boroughs. It should be noted that the Inspector General's jurisdiction extends to all the boroughs.
- While all the policies were the same, they could have been modified at any time.
- For the sake of consistency, it was decided to give City Council jurisdiction for two (2) years regarding adoption of the CMP. This has made it possible Montréal to have a single policy for the entire territory. All the City's business units now apply the same policy and penalties for the same offences. In the same manner, the *Register of Persons Excluded Pursuant to the CMP* is now centralized.

## CMP training

- When the new CMP was adopted, the Municipal Administration decided to create a training program, overseen by the City's Legal Affairs Department (Services des affaires juridiques). The operational component of the program will be handled by the Procurement Department (Service de l'approvisionnement).
- Under section 57.1.8 of Montréal's City Charter, the mandate of the Inspector General includes training council members and City employees to recognize and prevent any breach of integrity or violation of the applicable rules in the awarding or carrying out of contracts by the City.
- Considering that he is required to monitor implementation of the measures stipulated in the CMP and that he initiated some of the policy changes, the Inspector General took the initiative to participate in developing the CMP training program.
- Since fall 2016, the Office of Inspector General has been working closely with the Legal Affairs Department (Service des affaires juridiques) to prepare the content of the course that will be offered to the City's officers and employees. In 2017, training sessions will be offered to individuals who regularly apply this policy in their work to make them aware of the rules and the importance of the policy's objectives so that they can identify breaches in the contracting process.



## 13. CASES INVESTIGATED IN 2016

The Inspector General's primary role is to conduct investigations, on his own initiative or in response to complaints, to render decisions and to produce recommendation reports.



### PUBLIC REPORTS FILED IN 2016

In 2016, the Inspector General of Montréal filed seven (7) public reports with decision-making bodies, including (4) involving the rescinding of four contracts in progress (under section 57.1.10 of Montréal's City Charter) and three (3) recommendation reports (under section 57.1.23).

Through his public reports, the Inspector General is able to shed light on some of the schemes employed in the contract awarding and management processes. Publicly exposing a situation involving collusion, corruption, misconduct, breaches of integrity or violation of the rules in place or fraudulent tactics remains the best way to prevent and combat their occurrence as well as to issue recommendations aimed at improving the City's practices, whether they are the work of one individual or are more widespread. The recommendations issued by the Inspector General are aimed mainly at implementing the necessary tools to detect, prevent and combat the various schemes observed.

The full versions of the public reports filed by the Inspector General are available on the office's Website at [www.bigmtnl.ca](http://www.bigmtnl.ca)

### OTHER INTERVENTIONS OF THE INSPECTOR GENERAL IN 2016

Other investigations were completed in 2016 that did not require the filing of a public report with a body. The action taken by the Inspector General in these investigations not only enables him to address problematic situations upstream and improve current practices but also to make those involved in awarding and managing contracts aware of their accountability, powers and duties in the contracting process.

The annual report is an appropriate vehicle for recognizing some of these accomplishments of which the public would otherwise be unaware.



The following pages discuss, by theme, the Inspector General's public reports and interventions in cases that were not made public. The annual report covers investigation files closed as of December 31, 2016.

## FEEDBACK ON LAST YEAR'S ANNUAL REPORT (2015):

After the 2015 Annual Report of the Inspector General was filed, the Standing Committee on the Inspector General submitted a report to Montréal's City Council and Agglomeration Council on May 16 and 19, 2016, respectively. This report discusses the Committee's observations and recommendations regarding the activities of the Inspector General and its office in 2015.

**Complimentary about the work performed to date, the Committee members stated in the report that in their view, "the reports and ad hoc interventions of the Inspector General clearly attest to his essential role and the quality and relevance of his analyses and interventions." The Committee congratulated the Inspector General for his invaluable contribution, through his reports and analyses, to improving contract and municipal project management practices and asked the Administration to take his conclusions into account.**

Moreover, based on the findings reported by the Inspector General in his annual report, the Committee recommended that the Administration take steps to instill within its administrative units, a culture of accountability and transparency where managers are held responsible for their actions. In addition, the Committee opined that the Administration should ensure that files submitted to elected officials be sufficiently documented. Lastly, the Committee recommended that tools for continuing education in contract awarding be developed for elected officials and regularly updated to ensure informed decision-making on their part.

## FOLLOW-UP OF A CASE DISCUSSED IN THE 2015 ANNUAL REPORT:

Non-public file involving the need to establish a procedure for conducting random draws (p. 48 of the 2015 Annual Report).

*Background:* The Inspector General had conducted an investigation into the procedure used for a random draw to determine the winner of a call for tenders. The investigation had shown that the draw had not been conducted in accordance with all the principles of transparency. Following the Inspector General's intervention, the office had made a recommendation to the City's Procurement Department (Service de l'approvisionnement) to establish a procedure for situations in which a random draw is required to determine the successful bidder.

*Follow-up:* In 2016, the Inspector General learned that a procedure had been adopted and is now detailed in the *Guide for Weighting and Evaluation Systems Used by Selection and Technical Committees*.

Non-public file involving a situation of contract division (p. 48 of the 2015 Annual Report).

*Background:* The investigation conducted by the Inspector General revealed that a company was awarded, by the same administrative unit, several contracts by mutual agreement for the same type of work. Combined, the issued purchase orders totalled more than \$75,000. It was a prohibited contract division situation.

*Follow-up:* The Inspector General learned that in 2016, the administrative unit issued invitations to tender and that on February 27, 2017 a public call for tenders was launched to meet the all of the needs of the unit for the summer season.





## 13.1 VIOLATION OF MONTRÉAL'S CONTRACT MANAGEMENT POLICY

In 2016, the Office of Inspector General dealt with several cases involving non-compliance with the provisions of Montréal's Contract Management Policy (CMP). As mentioned earlier, this policy, which seeks to strengthen the principles of healthy competition, ethics, equity and integrity, underwent major revision in August 2016, following some recommendations made by the Inspector General.

### Anti-Collusion Measures

Recommendation Report Concerning the Cancellation of the Contracting Process Involving Two (2) Snow Removal Contracts in the Borough of Mercier-Hochelaga-Maisonneuve (MHM-102-1621 and MHM-104-1621)

Filed with Montréal's City Council on June 20, 2016.



#### FOLLOW-UP OF A PRIORITY ANNOUNCED IN 2015

Last year, the Inspector General announced that one of his priorities for 2016 would be to closely monitor the awarding and carrying out of snow removal contracts.

#### BACKGROUND

The investigation of the Office of Inspector General had shown that Louis-Victor Michon, Director of Operations at J.L. Michon Transports inc., had initiated numerous contacts with a competitor concerning a call for tenders for snow removal contracts in various sectors of the City. His intention was to convince the competitor not to bid on the contract that J.L. Michon Transports inc. had obtained following the previous call for tenders. He also wanted his competitor to convince other contractors to do the same.

The evidence gathered consisted of clear and unequivocal admissions by Louis-Victor Michon and of recordings of two (2) conversations between the companies' representatives that had been voluntarily provided to the Office of Inspector General by the competitor who had been approached by Louis-Victor Michon.

The steps taken by Louis-Victor Michon were to conclude agreements of a collusive nature with a competitor in order to “protect” the snow removal contract that J.L. Michon Transports inc. had obtained in the past and to increase his chances of obtaining the contract again.



J.L. Michon Transports inc. was the lowest bidder for two (2) contracts (of more than six (6) million dollars each) and City Council was preparing to award these contracts to the company. The Inspector General therefore recommended that the call for tenders be cancelled to prevent a company that uses collusive tactics from obtaining public contracts.

It should be noted that the Inspector General did not have the power to cancel the call for tenders on his own as he was limited by the very restrictive wording of the CMP then in effect. He therefore recommended that the CMP be revised, particularly the measures aimed at fighting collusion (see page 39).

## FOLLOW-UP

### Standing Committee on the Inspector General

In its report of August 22, 2016 to City Council, the Committee unanimously recommended that the measures put forth in the Inspector General’s report be implemented. The Committee also recommended that J.L. Michon Transports inc. be excluded from all calls for tenders for five (5) years.

### Cancellation of the call for tenders for two (2) contracts contemplated by the Inspector General’s investigation and re-issue of the call for tenders

On June 21, 2016, i.e. the day after the Inspector General filed his report, City Council resolved to remove from the call for tenders, the two (2) contracts that were going to be awarded to J.L. Michon Transports inc. (CM16 0770). On August 24, 2015, the Executive Committee approved the cancellation of these contracts (CE16 1393). A new call for tenders was issued for the two (2) contracts contemplated by the Inspector General’s report. On September 26, 2016, City Council awarded these contracts to Dénéigement Moderne inc. (CM16 1072). As the result of the Inspector General’s report and the re-issue of the call for tenders, the City saved more than one million dollars (\$1,112,346).

### **Listing in the Register of Persons Excluded Pursuant to the Contract Management Policy**

On September 26, 2016, City Council confirmed that J.L Michon Transports would be excluded from all calls for tenders and subcontracts and would be prevented from entering into contracts by mutual agreement with the City for five (5) years (CM16 1072).

On November 21, 2016, City Council resolved to exclude Louis-Victor Michon as well as any company to which he is a related person. As a result, Déneigement Malvic inc. of which Louis-Victor Michon is an officer and director, was excluded from all calls for tenders and subcontracts and was prevented from entering into contracts by mutual agreement with the City for five (5) years (CM16 1266).

City Council also rescinded the \$2,295,000 contract for transporting snow in the Sud-Ouest borough awarded in 2013 to Déneigement Malvic inc. and that was valid until 2018.

Louis-Victor Michon and J.L. Michon Transports inc. will now be listed in the Register of Persons Excluded Pursuant to the CMP until June 8, 2021, while Déneigement Malvic will be listed until November 7, 2021.

### **Revision of the CMP**

On August 23 and 25, 2016, a new CMP was adopted by City Council and the Agglomeration Council (see pages 39 to 42 for the major changes).

### **Revocation of Financial Markets Authority's authorization**

In February 2017, the Financial Markets Authority revoked the authorization it had granted to J.L. Michon Transports inc. allowing the company to enter into public contracts and subcontracts. On March 2, 2017, the company was listed in the Register of Enterprises Not Eligible for Public Contracts (Registre des entreprises non admissibles aux contrats publics (RENA)) and will remain listed until March 1, 2022.

\* \* \*

Rescinding and recommendations concerning various contracts awarded by boroughs for the rental of tow trucks with operators during snow removal operations.

Made public on September 26, 2016.



## **BACKGROUND**

The investigation of the Office of Inspector General revealed that for the past few years, three (3) contractors have been using collusive schemes in calls for tenders involving the rental of tow trucks with operators to tow vehicles during snow removal operations. The contractors are: Jean-Marc Lelièvre, President of Remorquage Taz inc., Steve Lenfesty, President of Remorquage Mobile, and Réal Tourigny, President of Auto Cam 2000.

To ensure they secured the contracts, these contractors colluded on whether to submit a bid for certain calls for tenders and on the price and number of tow trucks to indicate in their respective bids. They divided certain sectors among themselves and agreed to "respect" each other's sectors. The contractors admitted that they communicated with each other and with other competitors in order to exchange information and find out their intentions with regards to certain calls for tenders.

**The bids filed by Remorquage Taz inc., Remorquage Mobile and Auto Cam 2000 were established with collusion and therefore violate certain provisions of the CMP, which forms an integral part of the tendering documents.**

*"The acts taken are a real obstacle to a free market and deviate the call for tenders process from its primary objective, which is to generate greater competition in order for the client to obtain the best service at the best price."\**

*"What is most notable to the Inspector General in the present investigative file is that it is obvious that contractors still do not grasp what constitutes collusion [...] the contractors do not seem to understand that the acts that they admitted having committed, and described in detail, correspond to the definition of collusion."\**

\*Passages taken from the Inspector General's decision.



Since the facts revealed were sufficiently serious, the Inspector General, on his own initiative, rescinded the contracts in progress that had been awarded following a process tainted by collusion and fraudulent tactics.

Furthermore, the Inspector General recommended that the City exclude the three (3) contractors, as well as any of their related persons, from all calls for tenders and subcontracts, and prevent them from entering into contracts by mutual agreement with the City for five (5) years.

## FOLLOW-UP

### Standing Committee on the Inspector General

In its report of October 24, 2016 to City Council, the Committee stated that "the Inspector General's report is clear and leaves no doubt as to the actions the public administration must take in the near term."

The Committee supported the Inspector General's decision to rescind the contracts in progress and his recommendation to exclude the contractors, their respective president and any related person from City contracts for five (5) years.



### **Rescinding of contracts in progress and re-issue of call for tenders**

The three (3) boroughs that still had contracts in progress with the contractors covered by the Inspector General's report (Rivière-des-Prairies–Pointe-aux-Trembles, Villeray–Saint-Michel–Parc-Extension and Ville-Marie) all rescinded them in October 2016. These boroughs re-issued a call for tenders, which culminated in the awarding of contracts to new contractors between December 2016 and February 2017 (CA16 30 120421, CA16 14 0370, CA17 24 0012 and CA17 24 0013).

### **Rescinding of additional contracts**

Some boroughs that had contracts with one of the three (3) contractors for the rental of tow trucks rescinded the contracts even though they were not included in the Inspector General's investigation. This was the case with the Rosemont–La Petite-Patrie borough, which had a contract with Auto Cam 2000 (CA16 26 0336 of December 5, 2016) and the Lasalle borough, which had a contract with Remorquage Mobile (CA17 20 0018 of January 16, 2017).

### **Listing in the Register of Persons Excluded Pursuant to the Contract Management Policy**

On November 21, 2016, City Council resolved to exclude Remorquage Taz inc., Remorquage Mobile, Auto Cam 2000, Jean-Marc Lelièvre, Réal Tourigny and Steve Lenfesty, as well as any related person, from all calls for tenders and subcontracts and to prevent them from entering into contracts by mutual agreement with the City for five (5) years (CM16 1256). Going forward, these individuals and companies will all be listed in the Register of Persons Excluded Pursuant to the CMP until September 25, 2021.

## **Measures concerning business ties with individuals involved in preparing tendering documents**

Both the old CMP and its August 2016 modified version require that at the time of filing, the bid signatory confirm that the bidder did not hire, for any purpose whatsoever, an individual to help prepare the tendering documents. Moreover, the CMP prohibits the bidder from hiring such an individual within twelve (12) months following the beginning of the bid period (section 6.1 of the old version of the CMP and sections 6 and 7 of the new version).

Under section 8 of the new CMP, the successful bidder is required to inform the City, in writing, of any ties of this nature during the term of the contract, within five (5) days of their emergence.

These measures seek to prevent any situation likely to compromise the impartiality and objectivity of the tendering process and management of the resulting contract.





Penalties are imposed for any violation of these rules:

- Under the old version of the CMP, the bid was automatically rejected, or if it had already been awarded, the contract could be rescinded at the City's discretion. The bidder and any person that violated the CMP was automatically excluded from all calls for tenders for three (3) years.
- Under the new CMP, the bid may be rejected or the contract rescinded, at the City's discretion. If the contract has already been awarded, the successful bidder and any related person that violated the CMP can be excluded from all calls for tenders for three (3) years, at the City's discretion.

In 2016, the Office of Inspector General dealt with several cases that posed a problem with regards to these provisions of the CMP. Although a public report on these cases was never issued, the Inspector General took action with the parties involved that merits discussion in this annual report.

Contract for the preparation of plans and specifications for remediation work under  
the responsibility of the City's Wastewater Treatment Division  
(Direction de l'épuration des eaux usées)

## BACKGROUND

In this file, the purpose of the call for tenders was to award a professional services contract for the preparation of plans and specifications for remediation work and for replacement of manual valves in the interceptor network under the responsibility of the City's Water Department (Service de l'eau). For ease of reading, this contract will be referred to as the design contract.

Prior to this call for tenders, the City launched a call for tenders to have the equipment slated for replacement inspected and its condition evaluated. This contract will be referred to as the preliminary contract.

At the end of the preliminary contract, the successful bidder drafted a recommendation report that was appended to the call for tenders for the design contract.

While a number of firms expressed an interest, only one bid was submitted for the design contract, and City Council proceeded with the contract award.

The Inspector General's investigation showed that six (6) months before the call for tenders was issued, the successful bidder of the design contract had hired an engineer who had worked for his former employer on the preliminary contract. Reporting directly to the project manager, this engineer had been responsible for coordinating the equipment inspections. He was hired by his new employer during the mandate.

It turns out that the successful bidder had proposed this same engineer as a member of its team without declaring the situation in its bid. However, the investigation showed that the engineer did not participate in the firm's bid preparation and was not aware that his new employer had proposed him as a member of the team to be assigned to the design contract. Moreover, the firm did not know that its new employee had been involved in the preliminary contract. The fact is that the successful bidder is a large company with many employees. To propose a team in its bid, the firm selects the professionals with the best skills to perform the work. Only when the firm is awarded the contract does it inform its employees of their assignment to a project.

## INTERVENTION BY THE INSPECTOR GENERAL

Due to the investigation launched by the Office of Inspector General, the engineer was never assigned to the design contract by the successful bidder.

Since the engineer did not in any way participate in the preparation of the bid and did not know that he would be assigned to the project, the Inspector General did not consider it necessary to rescind the contract awarded to the engineer's employer.

However, on November 29, 2016, the Inspector General sent a letter to the legal affairs director of the successful bidder to obtain an official commitment from the firm that the engineer would never be assigned to the design contract. The Inspector General also required the firm to undertake to put in place sufficient and effective mechanisms to ensure that the team members it proposes in its bids never participate in the preparation of the bid documents. The Inspector General also asked to be kept informed of the type and implementation date of these mechanisms.

On January 27, 2017, the firm confirmed in writing that the engineer has never been nor will he ever be assigned to the project. The firm also made the commitments required by the Inspector General. The Inspector General will soon follow up on the measures put in place by the firm.

This case provides the Inspector General with the opportunity to point out that the CMP is an essential document that forms an integral part of the tendering documents and, by extension, of the contracts concluded by the City. The CMP contains a number of prohibitions and requires the signatory of the bid to make certain declarations. Bidders must not, under any circumstances, blindly make commitments in this regard. The CMP entails obligations for companies, including the obligation to take all the necessary steps to ensure compliance with the principles therein.

The Inspector General would also like to point out that a violation of the CMP is a violation of a requirement of the tendering documents or of a contract and that if he finds such a violation and considers it sufficiently serious, he has the power to cancel the call for tenders, rescind the resulting contract or suspend the carrying out of an existing contract.

\* \* \*



## BACKGROUND

The Office of Inspector General launched an investigation after receiving a complaint alleging irregularities in a call for tenders for an IT professional services contract of several million dollars. At the end of a bid publication period, the City had received only one bid.

The investigation revealed several worrisome aspects in this case.

First, the testimony and documentary evidence gathered revealed that the resources proposed by this sole bidder in response to the call for tenders had worked on a mandate for the City division responsible for the call for tenders before its publication period. These resources would have supplied certain inputs that were used in preparing the specifications. When interviewed by the Office of Inspector General, the bid signatory confirmed that the company had four (4) to five (5) resources working for the City when it filed its bid. This fact was never disclosed in the bid.

The fact is that these resources had been hired by the City, through a framework agreement, for the same project as the one contemplated by the call for tenders. However, this framework agreement was expiring at the end of the year and a new agreement was late in coming. Since a specific project was involved that would take about four (4) years to complete, the City decided to issue a call for tenders. It therefore had to determine the profiles of the resources required.

The head of the City section involved in the call for tenders confirmed that the bidder's four (4) to five (5) resources had supplied inputs that were used to estimate the resource needs for the project (they worked on preparing the profiles of the resources required). This same section head identified the bidder's resources as individuals who directly contributed to or could have influenced the bid preparation. One of the City's project managers admitted that these individuals had access to a lot of information.

Lastly, in the early months of 2016, contracts by mutual agreement were awarded to the sole bidder while waiting for the contract contemplated by the call for tenders to be awarded so that its resources (those already in place, i.e. the same resources as proposed in the bid) could continue working even though the framework agreement had expired. The investigation showed that the City stakeholders involved in the file wanted the sole bidder to secure the contract and that the resources previously hired remain in place.

In the end, the experience criteria in the call for tenders for one of the desired profiles were restrictive and greatly limited the number of potential bidders, to such an extent that only five (5) people in Québec met the criteria, one of whom was among the resources proposed by the lowest bidder. The City project manager responsible for the file even admitted that one of the criteria limited the acceptable resources to those who had already worked on the first phase of the project.

However, what struck the Inspector General the most was that three (3) City employees with varying degrees of responsibility for the call for tenders admitted to not knowing about the CMP. A senior manager involved in the file even admitted not knowing such a policy existed.

## INTERVENTION BY THE INSPECTOR GENERAL

The Inspector General's investigation took place before the contract was awarded. Following the office's interventions, the manager, executive and section head involved in the project all confirmed that the contract would not be awarded and the City would re-issue the call for tenders.

The CMP does not only entail obligations for companies that bid on or sign City contracts. By virtue of their duties, the City's elected officials and employees are responsible for ensuring the integrity of the contractual process on a day-to-day basis. The attention they pay to their files and their conscientious interventions are directly tied to their ability to detect irregularities.

Consequently, elected officials and employees need to know the content of the CMP and its objectives. This succinct policy is one of the first tools to which elected officials and employees should refer when dealing with their files. The stated principles of the CMP are basic rules that must always be respected.

Because he considers it urgent, the Inspector General is working with the Legal Affairs and Procurement Departments to develop a training program on the new version of the CMP.

\* \* \*



## 13.2 NON-COMPLIANCE WITH TENDERING REQUIREMENTS

Rescinding of the contract for the acquisition of 14 pump sets for the Atwater plant (call for tenders 14-12725)

Made public on June 20, 2016.



### BACKGROUND

The investigation of the Office of Inspector General showed that a contract worth almost twenty-five (25) million dollars for the acquisition of pump sets was awarded to Xylem, which besides not complying with several tendering requirements, was not the lowest bidder. The investigation also revealed numerous irregularities in the bid analysis performed by the City's Potable Water Division (Direction de l'eau potable (DEP)) and SNC-Lavalin (the firm mandated by the City to prepare the specifications and supervise the work).

As regards the bid analysis process, it appears that the requirements concerning important aspects of the specifications were unilaterally revised and reduced by the DEP and SNC-Lavalin after the bids were opened since none of the five (5) bidders were declared compliant after the initial bid analysis. The investigation showed that, among other things, none of the pump cooling systems corresponding to the technical requirements were available on the market but that DEP and SNC-Lavalin waived this requirement because they did not want to cancel the call for tenders and start over. As a result, after the second analysis, only Xylem's bid was deemed compliant even though it did not meet the technical criteria in the tendering documents. The Inspector General also observed a lack of transparency with respect to the way in which the tendering documents were revised: there is no document indicating the results of the first bid compliance analysis, nor detailed reports of the meetings which would allow for an understanding of the decisions made.

Moreover, Xylem's bid should have been rejected at the eligibility stage, even before the compliance analysis by the technical committee. The fact is that the bid did not respect one of the basic eligibility requirements for submitting a bid. The criteria required the bidders to provide a letter signed by one of their clients and attesting to the reliability of the pumps, failing which the bid would be automatically rejected. However, DEP and SNC-Lavalin deemed the failure to provide such a letter a "minor non-compliance."

*"The failure to provide such a letter, qualified as a [TRANSLATION] "minor non-compliance" by the DEP and SNC-L, goes against the principle of the equality of bidders and procured an unfair competitive advantage to the successful bidder to the detriment of bidders who responded satisfactorily to the requirement and the firms who took possession of the specifications who did not bid believing that were not able to meet the requirement." - excerpt from the decision*



*"Even worse, the head of division at the DEP, implicated in the file confessed that he does not really know what a market study is. As well, he is skeptical of the added value of a market study because SNC-L had confirmed that more than one player existed who could bid on the call for tenders.*

*The failure to take sufficient steps, or at the very least, take further steps with Kingsbury and Michell, had the effect that the technical specifications, as they were written, were not adapted to the market and impracticable." - excerpt from the decision*

The failure to perform a complete assessment of the required product's availability and to conduct a formal, serious and well-documented market study before issuing the call for tenders made it impossible for the City to obtain the best product at the best price. The fact that certain criteria were set that the DEP acknowledged during the investigation were not necessary may have unduly limited the market and competition. Moreover, allowing a company to secure a contract when the product it offers does not meet the requirements, whereas they are clearly stated in the specifications, could undermine the principle of fair and equal treatment of bidders and create an unfair advantage for the successful bidder.

General by making him believe that the company had indeed provided the letter attesting to the reliability of its pumps, as required by the tendering eligibility criteria. In fact, in the firm's response to the Inspector General's request for information, Xylem provided a letter dated June 10, 2014, which it claimed was submitted to the City along with its bid. However, the Inspector General's verification revealed that the letter in question was never provided to the City; it was signed and issued on September 11, 2015, almost fourteen (14) months after the bids were opened and two (2) months after the Inspector General's request for information.



The Inspector General concluded that the failure of the DEP, SNC-Lavalin and Xylem to respect the basic eligibility criteria of the call for tenders undermined the principle of fair and equal treatment of bidders and the integrity of the tendering process. Moreover, the fact that once the bids were opened, the DEP and SNC-Lavalin waived a technical requirement for the pump cooling system despite it being deemed essential and clearly indicated as mandatory in the specifications also constitutes a breach of the fundamental principles and rules governing the contract award process.

Given the seriousness of these breaches and Xylem's attempt to mislead the Inspector General, the Inspector General had no choice but to rescind the contract awarded following call for tenders 14-12715.

## FOLLOW-UP

### **Standing Committee on the Inspector General**

In its report of August 25, 2016 to City Council, the Committee opined that the contract awarded to Xylem was justifiably rescinded. The Committee explained that it met with the representatives of the Office of Inspector General and the municipal departments concerned. For their part, some municipal stakeholders believed that the Inspector General's decision should be reversed. However, after meeting with these stakeholders, the Committee wrote that its members remained perplexed and could only conclude that the presentation did not really answer the questions raised in the Inspector's General decision.

In its report to City Council, the Committee stated that the failings and errors noted in the case demonstrate the need for all municipal stakeholders to have access to appropriate information and training, the importance of being able to distinguish between bid eligibility and bid compliance, and the need for total transparency in their analysis.

The Committee made the following recommendations:

- Considering how carelessly the file was handled, the units responsible should change their practices;
- In all cases, the tender wording should be fully respected and not be changed arbitrarily during the process;
- A rigorous market analysis should always be conducted before a call for tenders is issued;
- The Procurement Department (Service de l'approvisionnement) should be the administrative unit responsible and accountable for all questions relating to bidder eligibility;
- Training programs and information on the entire tendering process, on the awarding of contracts and contract management should be developed and kept up-to-date for employees, management staff and municipal elected officials;
- The mandate of the Standing Committee on Contract Vetting (Commission permanente sur l'examen des contrats) should be expanded to include a more in-depth study and follow-up of mandates assigned by the Executive Committee.

### **The City's response to the recommendations of the Standing Committee on the Inspector General**

In its response to the Committee's recommendations, the Executive Committee stated the following:

"The City's departments and boroughs issue hundreds of calls for tenders every year whose nature, scope and complexity vary tremendously and almost all of which proceed without incident and culminate with a formal contract. This was not the case with the file covered by the Committee's report. The officers involved acted in what they believed was the best interest of the City. The Executive Committee notes that their interpretation of the rules applicable to this file differs from that of the Inspector General, who rescinded the contract, a decision that was not challenged by our Administration.

This situation demonstrates the importance of being extra vigilant when analyzing calls for tenders that contain elements open to interpretation. The Executive Committee therefore encourages all the departments concerned to learn from the Atwater pump acquisition case to improve their practices and management tools with a view to continuous improvement."

\* \* \*



Rescinding of the contract for the renovation, replacement and addition of signage in the Saint-Laurent borough (call for tenders 15-031)

Made public on October 20, 2016.



## BACKGROUND

The investigation conducted by the Office of Inspector General in this file revealed that the Saint-Laurent borough awarded a contract for the renovation, replacement and addition of outdoor signage for municipal buildings and green space to a company that held a specialized contractor licence rather than a general contractor licence as required by the tendering documents. Moreover, as a specialized contractor, the successful bidder did not even have all the licence subclasses required by law to carry out the work described in the tendering documents.

In this decision, the Inspector General stressed the importance for a public client to ensure the requirements in its specifications are necessary, failing which they may unnecessarily limit competition. After consulting with the Québec Building Board (Régie du bâtiment du Québec), the Inspector General noted that the requirement to hold a general contractor's licence to perform the work was excessive and limited the pool of potential bidders. The investigation revealed that the Saint-Laurent borough did not check whether it was necessary to require the bidder to hold a general contractor's licence. Moreover, and herein lies the bigger problem, the borough employees did not check the effect such an additional requirement would have on the call for tenders even after a potential bidder filed a complaint.

*"The Inspector General is of the opinion that procurement officers should play a bigger advisory role in the preparation of calls for tenders, including the administrative aspects of the content. The officers from this department should question the administrative aspects of requests by the requesting department and make the necessary inquiries with the relevant bodies. [...] In the opinion of the Inspector General, the borough's verification obligations do not stop when the publication period for a call for tenders ends. When information comes to light that may cast doubt on a condition or requirement of a call for tenders, the borough has the duty to act." - excerpt from the decision*



Since a tendering requirement was not met, the Inspector General rescinded the contract awarded to the firm. By awarding the contract to the firm despite its failure to hold the general contractor's licence required in the specifications, the Saint-Laurent borough failed in its obligation to accept an eligible, compliant bid.

This failure is objectively “serious” since it undermines the integrity of the contract award process. By ignoring the failure to comply with the clearly indicated requirements, the Saint-Laurent borough broke the rules it itself had established in the call for tenders, thereby giving the successful bidder a competitive advantage.

## FOLLOW-UP

### Rescinding of contract and re-issue of call for tenders

On November 1, 2016, the Saint-Laurent borough took note of the Inspector General's decision to rescind the contract (CA16 08 0651) and issued a new call for tenders (CA17 08 0070).

\* \* \*

Rescinding of the snow removal contract (call for tenders 12-12312) in the Ahuntsic-Cartierville borough

Made public on February 15, 2016.



## BACKGROUND

This investigation served as a follow-up of the general investigation of the snow removal industry conducted by the Office of Inspector General and that resulted in the *Report on Snow Removal and Its Practices in Montréal*, filed with City Council on November 23, 2015.

This investigation revealed that a snow removal contract of close to \$1.8 million awarded by the Ahuntsic-Cartierville borough to A & O Gendron inc. for five (5) years (2012 to 2017) was subcontracted whereas a clause in the contract formally prohibits this practice. In fact, all the snow removal operations for almost half the territory covered by the call for tenders had been subcontracted to a third party.

The Inspector General expressed concern about the fact that the borough managers were aware of the subcontracting practice since the contract was awarded in 2012. It is unfortunate that the Inspector General is required to intervene in a situation involving an obvious and known breach of an important aspect of a contract, particularly since it is incumbent upon the managers to handle the day-to-day management of the contract.

*“The persons named in the contracts have the primary responsibility to manage the contracts to the fullest extent in obvious cases, especially since the specifications give a “Director” sufficient means to compel a contractor to comply with the provisions of a contract. In the aftermath of the Report on Snow Removal and Its Practices in Montréal, the Inspector General invited the City’s decision-making authorities to enhance monitoring of this sector of activity.”*  
- excerpt from the decision



Since this was clearly a breach of a contractual requirement, the Inspector General declared the snow removal contract rescinded. It is the opinion of the Inspector General that this breach is objectively “serious” since it concerns the very identity of the contracting party and moreover, since subcontracting was identified in the *Report on Snow Removal and Its Practices in Montréal* as a market control tool that encourages bargaining and the risk of collusion between contractors.

## FOLLOW-UP

### Rescinding of contract

The Ahuntsic-Cartierville borough council took note of the Inspector General’s decision (CA16 09 0071). The borough issued a new call for tenders, splitting the sector in two (2).

\* \* \*



Filed with the Ville-Marie borough council on September 1, 2016.

## BACKGROUND

In this notice, the Inspector General made public the outcome of his investigation concerning the contract awarded to Eurovia Québec Construction inc. for various work on the borough's road network.

The successful bidder was required to have authorization from the Financial Markets Authority (Autorité des marchés financiers) (AMF) to enter into public contracts.

When the bids were checked for compliance, the lowest bid, submitted by Demix Construction, was found to be non-compliant because its authorization to contract was expired when the call for tenders was issued. It was therefore rejected. The Ville-Marie borough awarded the contract to the second lowest bidder, Eurovia, which did hold a valid authorization from the AMF.

However, according to section 21.41 of the *Act respecting contracting by public bodies*, a company that submits an application for renewal of its authorization at least ninety (90) days before its expiration remains authorized to contract with public bodies until the AMF rules on its application, unless the authorization is revoked in the meantime. In this case, Demix had filed its application for renewal more than ninety (90) days before the expiry of its initial authorization from the AMF and had made sure to attach to its bid an acknowledgement of receipt for the application. The authorization to contract with a public body issued to Demix by the AMF was therefore still in effect when the bids were submitted.



**The obligation for a public client to award the contract to the lowest compliant bidder is a public policy provision.**

**Having found that the borough had erred in its decision to declare Demix's bid non-compliant and since a public client is entitled to rescind a contract if it inadvertently breaches a public policy provision, the Inspector General recommended that the Ville-Marie borough rescind the contract awarded to Eurovia and award it to the lowest compliant bidder, i.e. Demix.**

\* \* \*

## BACKGROUND

This investigation was opened following receipt of a complaint alleging certain irregularities in the subcontracting of a water main construction contract, in particular, the fact that the drilling subcontractor did not have authorization from the Financial Markets Authority (Autorité des marchés financiers) (AMF) to enter into public contracts, even though the estimate exceeded the \$25,000 threshold.

The contract between the general contractor and the City contained several clauses stipulating that the successful bidder had to provide, before the start of work, the names of its subcontractors and that these subcontractors had to have authorization from the AMF for subcontracts of \$25,000 or more, taxes included.

The investigation revealed that the general contractor did not inform the City within the prescribed time limit that a subcontractor was working on the site, thereby breaching the contract. It took the individuals in charge of the file at the City some time to realize that work was being carried out by a company whose name did not appear on the list of subcontractors provided by the general contractor. Moreover, when the general contractor provided the City with the subcontractor's name, it stated that the AMF's authorization was not required for this subcontract, even though the work estimate was \$24,475 **before taxes**. However, the subcontractor list completed by the general contractor states that AMF authorization is required for subcontractors when the value of the contract is equal to or greater than \$25,000, **taxes included**.

The individuals in charge of the file at the City did not realize that the value of the contract including taxes exceeded the \$25,000 threshold and that therefore the subcontractor required authorization from the AMF. The City relied on the contractor's statements without conducting additional verifications.

Testimonies obtained during the investigation also revealed that the individuals in charge of the file at the City never checked whether the subcontractor had authorization from the AMF since it felt that it was the general contractor's responsibility to ensure compliance with this obligation.

## INTERVENTION BY THE INSPECTOR GENERAL

**The investigation revealed careless application of the rules both by the individuals in charge of the file at the City and the general contractor.**

Following the Office of Inspector General's intervention, the general contractor stopped doing business with the subcontractor. However, the fact remains that some individuals in charge of files at the City do not seem to know who is responsible for checking subcontractor compliance. Although the general contractor is responsible for providing a list of its subcontractors and ensuring their compliance, the Inspector General is of the opinion that the City has a duty to monitor the general contractor and ensure that the rules are being respected. Not only must the City ensure the general contractor attests to the compliance of its subcontractors, it must also ensure that the compliance is maintained throughout the contract.

**The Inspector General therefore recommends that the City set up a formal, structured and clear control and verification mechanism to ensure subcontractor compliance on its work sites.**

### 13.3 CONTRACT AWARDS TO NON-PROFIT ORGANIZATIONS

Recommendation Report Regarding Various Contracts or Proposed Contracts (or Planned to be Awarded) to the Non-Profit Organization Montréal en histoires Within the Context of the 375th Anniversary of Montréal

Filed with the councils concerned on December 5, 2016.



#### BACKGROUND

The Office of Inspector General conducted an investigation of the process used by the Lachine and Sud-Ouest boroughs to award contracts by mutual agreement to the non-profit organization Montréal en histoires (MEH).

The investigation revealed that these contracts, worth close to one (1) million dollars each, were awarded despite the public policy rules governing contract awards. MEH obtained the contracts even though it did not have the equipment, expertise, skills or personnel to execute the main part of the contracts on its own. Three quarters of the contract costs were associated with the purchase and installation of equipment for which MEH would have had to rely on suppliers and subcontractors.

MEH was therefore awarded contracts by mutual agreement due to its status as a non-profit organization. However, the services required were not actually going to be provided by MEH but by business ventures with which it did business and that were acting as suppliers or consultants.

Moreover, the administrative management and executive production of the projects obtained by MEH were entrusted to a private company (Torrentiel), which was contractually linked to MEH and owned by MEH's officers. An analysis of the documentary evidence and the testimonies gathered allowed the Inspector General to highlight the confusion between the two (2) entities. The Inspector General concluded that MEH was a front for Torrentiel, and that the latter was able to obtain public funds from contracts concluded by mutual agreement with MEH, which presented itself as a non-profit organization. The City and the boroughs believed they were dealing with a non-profit organization, unaware that it was controlled by a private company.

*The fact is that MEH is acting as a conduit, using its status as a non-profit organization exempt from the contract award rules to allow business ventures (suppliers and subcontractors) to obtain public funds from mutual agreement contracts worth close to one (1) million with the Lachine and Sud-Ouest boroughs.”*  
- excerpt from the Inspector General's report

*"The Inspector General notes numerous breaches of the rules and concludes that the exception allowing a non-profit organization to obtain a contract by mutual agreement, notwithstanding its high value, was misused. The exception was used as a "catch-all" to delegate to the organization parts of the contract that should have been obtained by specialized firms by way of public tender, in order to stimulate competition. Under the pretext of convenience, the mandatory rules governing contract awards were breached. The end result is that contracts were awarded to MEH despite the fact that it could not execute them on its own." - excerpt from the Inspector General's report*

The exception that applies to non-profit organizations is an exception to the principle of equal opportunity for all persons qualified to contract with a municipality. It must therefore be interpreted narrowly, and extreme caution must be used when resorting to subcontracting in order to prevent misuse of the legislative exception to avoid the tendering procedure required by law.

Lastly, an analysis of the processes followed revealed a lack of transparency and risky practices as regards the sound management of public funds, in particular, concerning the payment schedules approved for MEH. The fact is that MEH requested and obtained payment schedules in which it would receive more than 90% of the contract amount within sixty (60) days of its signature. This practice places the boroughs at risk should the contracts not be completed to their satisfaction.

As part of this investigation, the Office of Inspector General also examined two (2) draft contracts that the Large Parks, Greening and Mount-Royal Department (Service des grands parcs, du verdissement et du Mont-Royal) (SGPVMR) planned to award MEH. Although the Municipal Administration decided not to award these contracts, the investigation showed similar problematic practices as in the contracts awarded by the Lachine and Sud-Ouest boroughs.



The contractual processes followed by the boroughs ran counter to the law and the principles of sound management. They undermined the integrity of public procurement mechanisms and adversely affected free competition, equal opportunity and the possibility of obtaining the best possible price.

Since the contracts were awarded to MEH in violation of the public policy principle that requires all public clients to go to tender for contracts of over one hundred thousand dollars (\$100,000), and since the exemption for non-profit organizations could not apply, the Inspector General considered that the contracts had to be declared null and void.

However, notwithstanding the objective seriousness of the irregularities noted, neither the failure to comply with the mandatory provisions of the law nor the major irregularities noted fulfill the conditions required for the Inspector General to exercise his power to rescind contracts. As a result, the Inspector General could not, on his own initiative, rescind the contracts awarded to MEH. He could only make a recommendation in this regard.

## FOLLOW-UP

### Rescinding of the contracts by the respective borough councils

On December 6 and 15, 2016, the Lachine and Sud-Ouest borough councils, respectively rescinded the contracts awarded to Montréal en histoires and covered by the Inspector General's report (CA16 19 0405 and CA16 22 0509).

### Development of a tool for City employees

The City's Legal Affairs Department (Service des affaires juridiques) prepared a work document to help the City's employees ask the right questions before awarding a contract by mutual agreement of \$100,000 or more to a non-profit organization. This tool will therefore ensure that contract awards comply with the rules and that situations such as the one observed with Montréal en histoires, where the legislative exception was misused, will not recur.

\* \* \*

Another file involving a contract award to a non-profit organization was investigated by the Office of Inspector General in 2016 but was not made public.

Contract awarded to a non-profit organization for printing and  
distribution of notices to Montréal residents

## BACKGROUND

In this file, the contract awarded by mutual agreement to a non-profit organization was for the printing and distribution of notices to Montréal residents. A call for tenders was initially issued for this contract; however, since none of the bidders held authorization from the Financial Markets Authority (Autorité des marchés financiers) (AMF), as required in the tendering documents, a contract was not awarded at the end of the tendering process.

The investigation revealed that during the initial call for tenders period, a request was submitted to the City's Procurement Department (Service de l'approvisionnement) to delay the bid opening date because of the time required for the AMF to process the applications in order to give companies time to obtain their authorization. Doing so would have ensured free and open competition. In this regard, all the contractors interviewed told the Office of Inspector General that a contract of over one (1) million dollars was unusual in the field, which is why none of them held authorization from the AMF. However, the City opted not to extend the bid submission deadline.

The investigation revealed that, following the unsuccessful call for tenders, the City decided to award the contract by mutual agreement to a non-profit organization that had participated in the call for tenders despite





the fact that it did not meet some of the criteria in the original call for tenders, notably the criterion requiring authorization from the AMF.

**The investigation conducted by the Office of Inspector General revealed that the City's employees did not apply the appropriate contract award rules on the pretext that a non-profit organization was involved.** The fact is that the officers in charge of the call for tenders refused to award a contract only to turn around and award a contract by mutual agreement for the same services as in the call for tenders to a non-profit organization, ignoring the fact that it did not comply with the requirements in the tender specifications.

Moreover, just as in the public file concerning Montréal en histoires, the investigation showed that the non-profit organization that was awarded the contract subcontracted the “distribution” portion, which accounted for more than half of the services to be provided to the City.

What's more, a member of the non-profit organization's board of directors was employed as a division manager by the City at the time of the award. This person used his status as a City employee to promote the company in order to obtain public contracts. According to the Inspector General, this person did not respect the conflict of interest rules in the Employee Code of Conduct in that he directly intervened in the tendering process and then in the award of the contract by mutual agreement in order to give preference to the organization on whose board he served.

Lastly, the investigation found that the decision-making summary presented to the Executive Committee for the awarding of the contract by mutual agreement was missing information and contained inaccuracies and falsehoods. For example, certain elements that were necessary for the elected officials to fully understand the file were incorrect or missing. In particular, the fact that the organization would not be executing the major part of the contract and that it did not comply with some of the criteria in the tender specifications was never brought to their attention.

**The Inspector General considers that a City employee who participates in the activities of a non-profit organization, particularly as a member of the board of directors, should not be able to use or have the organization benefit from privileged information, the network and influence to promote the organization in order to obtain a contract with a City entity. The Inspector General also believes that employees responsible for drafting the decision-making summary presented to elected officials must ensure that the elements and arguments in support of the request are true and contain all the necessary information to support their decisions.**

## INTERVENTION BY THE INSPECTOR GENERAL

A public report was not issued in this file since at the time of the investigation, the budget for the contract by mutual agreement had been spent. At the end of the investigation, the City issued a call for tenders for a master agreement for the acquisition of printing services and distribution of notices to Montréal residents.

This call for tenders contained the same requirements as the initial call for tenders for which no bidder was deemed compliant. The bidders had to hold the authorization from the AMF. The Office of Inspector General followed up on this call for tenders and learned that the non-profit organization that was awarded the contract by mutual agreement submitted a bid. However, the organization's bid was deemed ineligible since it did not meet the specifications, in particular it did not hold its authorization from the AMF and did not have sufficient experience in regards to the “distribution” part. The contract was awarded to another bidder.



## 13.4 CARELESS MANAGEMENT OF PUBLIC FUNDS

The Inspector General wishes to point out that the City manages public funds collected from its citizens. Its day-to-day transactions are funded by taxpayers. The City therefore has an obligation to act in their best interests and ensure it does not waste public funds. The prime responsibility for managing public funds lies with the individuals handling the files. Any decision made concerning how a project will be managed or how a call for tenders will be issued is likely to affect project costs, whether in terms of the criteria in the specifications and free and open competition, in the day-to-day management of the work or authorization of additional work and the granting of contingencies or additional budgets. Both the employees and elected officials of the City must carefully consider the approaches they recommend and act in the best financial interests of the City.

In 2016, the Inspector General noted careless management of public funds in many of the files in which it publicly intervened and in particular those cited in the Recommendation Report Regarding Various Contracts or Proposed Contracts (or Planned to be Awarded) to the Non-Profit Organization Montréal en histoires Within the Context of the 375th Anniversary of Montréal.

The same problem was found in another file for which a public report was not issued because it did not meet the conditions set out in section 57.1.10 of Montréal's City Charter allowing the Inspector General to intervene.

### Contract to restore the heritage pavilion Mordecai-Richler

#### BACKGROUND

The Office of Inspector General conducted an investigation following extensive media coverage of cost overruns in a restoration project involving the heritage pavilion Mordecai-Richler overseen by Montréal's Parks Department (Service des grands parcs).

The pavilion restoration project was characterized both by its heritage aspect and by a certain politicization and extensive media coverage. There were several stakeholders involved in this project, including various City departments and Québec's Ministry of Culture and Communications (Ministère de la Culture et des Communications du Québec) (MCCQ).

The Office of Inspector General found several factors that contributed to the increased cost of work during the project. The initial cost was estimated at some three hundred eighty thousand dollars (\$380,000). However, by the end of 2016, the City had spent more than six hundred thousand dollars (\$600,000).

The spiraling costs were mainly due to questionable management by the Parks Department. The repair of the pavilion took more than five (5) years, increasing delays in the work and decision making. This was due to many changes in the project's management and decision-making chain of the Parks Department and the City.



These many changes hampered communication among the stakeholders. The Parks Department's project managers did not understand the procedures and requirements of heritage work and therefore were late in consulting with the MCCQ. As a result, the City had to modify the plans and specifications after the bids were opened.

Consequently, before awarding the contract to the contractor, the City had to negotiate and reach an agreement with the contractor on the new requirements imposed by the MCCQ, resulting in delays and cost revisions.

When it drew up the plans and specifications, the architectural firm retained by the City did not take into consideration the presence of lead in the paint. During the contract, the contractor asked the City to certify that the paint was lead-free before undertaking certain work. An analysis of the pavilion's structure confirmed the presence of contaminants in the paint.

The City did not seek quotes on the market as required by the *Cities and Towns Act*, accepting instead the contractor's offer to decontaminate the structure for \$85,000.

While decontaminating the structure, it was discovered that the pavilion roof was in severe disrepair. The work was once again halted pending a new structural assessment. The condition of the roof components, made of wood, had been inspected by the architectural firm two (2) years before the start of the restoration work.

After assessing the situation and based on recent inspection reports, the authorities of the Parks Department decided to demolish the pavilion roof, complete the decontamination and secure the pavilion structure before winter. By demolishing the pavilion roof without consulting the MCCQ, the City broke the rules, thereby jeopardizing the Ministry's contribution to this project.

In the end, the City was supposed to re-issue a call for tenders in early 2017 for the plans and specifications to rebuild the pavilion roof and complete the work.

**The Office of Inspector General therefore concluded that the instability in terms of the project managers, their oversight, their lack of experience with heritage work and poor communication among stakeholders made it more complicated to plan the work and caused more delays, resulting in major cost overruns.**

**The Inspector General considers this an example that illustrates the consequences of careless management of public funds.**

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### 13.5 REFERENCED PRODUCTS AND REQUIREMENTS THAT COULD RESTRICT THE MARKET

The Office of Inspector General receives a number of complaints about products referenced in tender specifications.

As stated in his 2015 Annual Report, the Inspector General reiterates that referencing products in tendering documents is not illegal. The courts have long recognized that a public client may limit a call for tenders to specific makes and models provided the call for tenders is open to all suppliers who can offer the item (*Les Équipements Diésels Abitibi Inc. v. Ville de Val D'Or*, [1981] C.S. 434).

However, in some cases, this practice can expose the City and boroughs to risk, namely, when referencing a product is not justified or necessary based on the needs and when the referenced product can only be obtained from one supplier. However, the public client does have the option of allowing equivalent products, a procedure that – when it is genuinely possible to have an equivalency recognized – tends to foster free and open competition.

Referenced Products  
Call for tenders 15-14729 launched by the IT Department (Service des technologies de l'information) for the acquisition of telecommunication equipment  
(Non-public file)

#### BACKGROUND

This file involved an IT contract. In keeping with the priority set out in last year's annual report, in 2016, the Office of Inspector General began monitoring IT contracts more closely.

The Office of Inspector General launched an investigation into a contract award that drew media attention. The City issued call for tenders 15-14729 with a view to awarding a contract for the purchase of telecommunications equipment. The complainant claimed that CISCO products were referenced in the specifications, thus preventing healthy competition. The Inspector General decided to investigate if there was any political interference in the contracting process, since articles in the press claimed there was.

Concerning the products referenced, the call for tenders did require that CISCO products be used, specifying, however, that equivalent products would be accepted provided they met the criteria in the call for tenders and in certain cases, were bench tested.

The investigation of the Office of Inspector General covered one (1) of the four (4) categories of equipment sought by the call for tenders: telecommunications equipment. In all, sixteen (16) CISCO products had been referenced, indicating the CISCO model numbers and catalogue extracts.



Call for tenders 15-14729 stated that “all items from a family must be produced by the same manufacturer failing which the bid will be rejected.” This clause was problematic for bidders who wanted to submit products that were equivalent to the referenced CISCO telecom products because two (2) of the products were from a highly specialized industrial line making – according to the complainant – their recognition as equivalents difficult or impossible. The Office of Inspector General consulted an outside expert, who said that while similar products were available on the market, he could not guarantee that they would meet all the tender specifications for equivalency recognition.

To be recognized as equivalent, the specifications required that the product be bench tested for a maximum of 25 days to demonstrate interoperability with the CISCO products already in place at the City. The suppliers were responsible for the cost of the bench testing. Since the City was already using CISCO products, it was assumed that the new products proposed by CISCO would be compatible. According to the outside expert consulted by the Office of Inspector General, the new CISCO products should have been bench tested like those of the other suppliers because they are not the same as the older generation and may therefore not be compatible.

The investigation showed that the City did not follow the rules of the equivalency process. Although the City claimed that an equivalent product would be acceptable, the conditions it set for recognition made it difficult for suppliers to qualify. Some of the requirements in the specifications prevented competitors from submitting a bid with non-CISCO products.

Also, the City introduced the bench testing requirements, when it did not have the ability to carry it out. What’s more, this bench testing was discriminatory since it was required of all suppliers except CISCO.

Lastly, the City introduced a requirement that the products had to be submitted to a technical follow-up, which was inappropriate since suppliers told the Office of Inspector General they would then have to share their product development secrets with the competition.

**Following its investigation, the Office of Inspector General concluded that there had been no political influence or interference in call for tenders 15-14729.**

**However, in the opinion of the Inspector General, the integrity of the contracting process was undermined.**

## **INTERVENTION BY THE INSPECTOR GENERAL**

Following the investigation by the Office of Inspector General, the City’s IT Department decided to cancel the call for tenders. In the opinion of the Inspector General, the City should clearly state its needs in the tendering documents so that products can be recognized as equivalent according to a procedure that contains appropriate, clear and realistic criteria.

Also, it would be a good idea for the City to use more than one supplier to avoid having to rely on just one.

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Requirements that Risk Restricting Competition  
Contract award by the Montréal Electrical Services Commission  
(Commission des services électriques de Montréal)  
(Non-public file)

## BACKGROUND

The Office of Inspector General conducted an investigation into a contract award for thermographic inspections by the Montréal Electrical Services Commission (Commission des services électriques de Montréal) (CSEM). The complaint alleged that the successful bidder received preferential treatment during the tendering process. The investigation could not clearly demonstrate that the CSEM attempted to give preference to the company, but in the opinion of the Inspector General, the CSEM's actions restricted competition in this tender.

In the past, before going to tender for this type of service, the CSEM would send a notice of upcoming call for tenders to firms specialized in this field, regardless of whether they were registered with the Government of Québec's E-Tendering System (Système électronique d'appel d'offres du gouvernement du Québec (SEAO)). However, no notice was sent concerning the call for tenders under investigation despite the fact that it was launched earlier than in previous years. The CSEM had also not informed the specialized firms that it would be making major changes to its tender management and tightening the requirements.

Moreover, the tender specifications included a preliminary Hydro-Québec industry standard despite the fact that the public utility had not approved its application and that none of the specialized firms were aware of the new standard except the successful bidder. Lastly, the specifications stated that in addition to holding certification from a recognized body, the firm had to ensure that the person who would be conducting the testing for the CSEM had obtained training from Hydro-Québec. However, the CSEM has no agreement with the public utility to provide the firms with the training, and the successful bidder was the only one to have completed such training.

**In the opinion of the Inspector General, by not informing all the specialized firms of the major changes planned for its inspections, the CSEM restricted competition and gave preference to the firm concerned by the complaint and to which the contract was awarded.**

## INTERVENTION BY THE INSPECTOR GENERAL

Following its investigation, the Office of Inspector General presented its observations to the president of the CSEM. Following this intervention, the CSEM terminated the contract concluded with the firm at the end of the call for tenders. A tender by invitation was issued to award a transitional contract to allow the firms to adopt Hydro-Québec's proposed changes to the inspection standard.

The CSEM also reminded its employees of the rules applicable to supplier relations and signed an agreement with Hydro-Québec to provide the firms with training. Lastly, the CSEM solicited the market, informing the specialized contractors of the new direction it planned to take for inspections in this field.



## 13.6 ACCOMPLISHMENTS OF THE MUNICIPAL ADMINISTRATION

The Inspector General also considers his annual report an appropriate vehicle for recognizing the City's accomplishments and employee vigilance in certain files.

Always striving to work upstream of problem situations and bringing manager and officer accountability back to the forefront, the Inspector General considers it important to show how by exercising discipline and paying attention to the files entrusted to them, City employees and elected officials can intervene before the end of the contracting process to ensure the rules are respected.

### Contract for the interior refit of a fire station

#### BACKGROUND

In this file, the Inspector General launched an investigation after receiving a complaint of collusion between the lowest bidder and the firm retained by the City to draw up the plans and specifications and oversee the work.

The investigation revealed several irregularities in the lowest bid, one of which rendered it non-compliant. The instructions to bidders required that they visit the site. This was a condition that had to be met to submit a bid. Due to the nature of the work and special characteristics of the site, this requirement was necessary and the Inspector General could find no reason to challenge its relevance.

The firm retained by the City to draw up the plans and specifications and oversee the work was responsible for checking the bids for compliance and making a recommendation to the City in this regard. The representative of the firm who handled the compliance check recommended that the contract be awarded to the lowest bidder without noticing the irregularities in its bid.

However, the person in charge of the project at the City picked up on the multiple irregularities and in particular, the lowest bidder's failure to make the required visit to assess the site's condition. This same employee also noticed that the firm's representative had found irregularities in all the bids except the lowest bidder's, even though they were serious.

Noticing the errors in the bid analysis, the City employee approached the firm's representative, who would not change his recommendation. When the employee told him that the lowest bidder had not made the required site visit, the representative simply suggested, by email, that the company "write a letter to the City confirming that it had visited the site, since the visit was mandatory," despite the fact that the bidder had never gone.

When interviewed by the Office of Inspector General regarding this email, the representative said that the lowest bidder had potential private projects with his firm but claimed that he only wrote the email to check whether the company had visited the site. However, he ultimately admitted that his email could have led the lowest bidder to lie “if he was smart,” that he indirectly tried to protect the company and that he never should have written such an email.

**The person responsible for the file at the City was very diligent and careful: he decided not to award the contract to the lowest bidder but to the second lowest bidder.**

**The Inspector General believes that in this file, the firm’s representative tried to induce a bidder to employ fraudulent tactics, a highly reprehensible act, especially since the representative in question is a member of a professional order. The Office of Inspector General therefore met with the syndic of the order to inform him of the situation and to file an ethics complaint.**

\* \* \*

### Contract for the acquisition of an intelligent street lighting system

## BACKGROUND

The Office of Inspector General received a complaint concerning a call for tenders for the acquisition of an intelligent street lighting system as part of the conversion of a street lighting system to a light-emitting diode (LED) system. The complaint alleged that the specifications were directed to one (1) company.

The investigation demonstrated that quite the contrary, the City ensured free and open competition and that the process established by the City’s project managers and outside consultants retained for the project was in fact a model of good practices.

The City first carried out a feasibility study to determine the benefits of the project and the expected savings. It then conducted a pre-project study together with an outside firm to ascertain the availability of the technology and equipment on the market and to look at what other countries were doing. The City also invited companies to present their products at its offices. It even attempted a different approach, requiring suppliers to provide intelligent lighting systems that are compatible and interoperable with three (3) suppliers instead of one so that the City would not have to rely on a single supplier in the future.

When drawing up the specifications, once again, the City used good practices in order to publish an exemplary document. Special attention was paid to the specifications so as not to require a specific product. The firm tasked with preparing the specifications even obtained the specifications of seven (7) cities that had already transitioned to LED. Bidders described the final specifications as a well-crafted, transparent document.

Although the requirements for experience with similar projects were strict, they were realistic and in no way restricted competition. The persons in charge of the file at the City opted for a multi-level approach to the bid evaluations. All the details of the evaluation matrix were also included in the specifications, demonstrating transparency for future bidders. However, the tender publication period was postponed several times to allow bidders to fine-tune their offers and adapt their product to the City's needs.

**The Inspector General considers the call for tenders for the acquisition of an intelligent street lighting system an exemplary model of large project development at the City as regards the elements investigated.**

\* \* \*



## 14. VISIBILITY OF THE OFFICE



### IMPORTANCE OF ENSURING THE VISIBILITY OF THE OFFICE OF INSPECTOR GENERAL OF MONTRÉAL

The visibility of the Office of Inspector General is important in that it is likely to have a positive impact on the number of complaints it receives. The more the office becomes known, the more likely it is that individuals will disclose information relevant to its mandate. Similarly, the more the public is aware of the office's presence, the more confidence it will have in the institution.

Various means are used to ensure the visibility of the Office of Inspector General, in particular the filing of public reports that are also made available to the general public through the office's Website, monitoring of certain activities and steps taken by the Inspector General to provide information on his responsibilities, mandate, activities and accomplishments.



## PRESENTATIONS MADE BY THE INSPECTOR GENERAL TO ORGANIZATIONS

The presentations made by the Inspector General and his team to organizations that tie into his mandate help make these entities aware of the office's existence, mandate and powers. They also enable the Inspector General to maintain an effective presence with these organizations.

In 2016, the Inspector General, Denis Gallant, and the Deputy Inspector General – Administration, Control and Legal Affairs, Philippe Berthelet, made presentations on the office and its activities to academics, professionals, contractor associations, City managers and various control and monitoring organizations as part of symposiums, conferences, seminars and informal presentations.

The Inspector General is proud of the success of and enthusiasm surrounding the office, which has now been in operation for three (3) years.

### ABROAD

On December 15, 2016, the Inspector General was invited to give a talk on the office's creation and achievements at an international seminar on municipal transparency organized by the Barcelona Metropolitan Area (AMB). Titled "The New Metropolitan Transparency Paradigm: Challenges for Good Governance," the event brought together academics, researchers, managers, professionals and elected officials from various spheres in Europe and the U.S. Denis Gallant's participation raised the profile of Montréal's Office of Inspector General and allowed him to develop a solid network of contacts. The AMB covered all travel and accommodation expenses.

## NETWORKING WITH U.S. OFFICES

With a view to raising their visibility and capitalizing on the experience of U.S. offices of inspectors general, the Inspector General and his team continue to forge ties and communicate with the Association of Inspectors General (AIG) and its members. As a member of the AIG, the Office of Inspector General of Montréal is subject to regular peer reviews to ensure the office under evaluation complies with the AIG's principles and standards.

On September 22 and 23, 2016, the Inspector General of Montréal, in collaboration with the AIG, held a symposium called "The Added Value of an Inspector General." Many U.S. inspectors general attended the event either as a speaker or a participant. More information about this symposium can be found on pages 29 to 36.

The Office of Inspector General's networking efforts was not limited to the U.S. offices of inspectors general. In November 2016, Minh Tri Truong and Michel Forget, respectively at the time Deputy Inspector General – Inspections and Investigations and Inspections and Investigations Officer, were invited to the offices of New York City's Department of Investigation (DOI). The purpose of the ten (10) day meeting was for them to familiarize themselves with and learn about the DOI's work methods and processes and to assess their potential for implementation at the Office of Inspector General. They also received training on each DOI investigative unit. Representatives from Québec's Permanent Anti-Corruption Unit (UPAC), Competition Bureau Canada and the Ontario provincial police were also present.



## DEVELOPMENT OF A COLLABORATIVE NETWORK

Conscious of the fact that he does not operate in a vacuum, the Inspector General collaborates with various control, monitoring and law enforcement organizations with complementary mandates and powers.

An added value of developing a network is that these organizations are made aware of the Inspector General's presence and activities and are therefore more likely to disclose information to the office when cases they are handling fall under the Inspector General's mandate. For example, **since its creation, the Office of Inspector General has received twelve (12) disclosures from partners.**

In 2016, the Office of Inspector General of Montréal signed a memorandum of understanding with the Competition Bureau of Canada to coordinate their efforts and share information in the fight against collusion and fraudulent tactics in public contract awards and management.

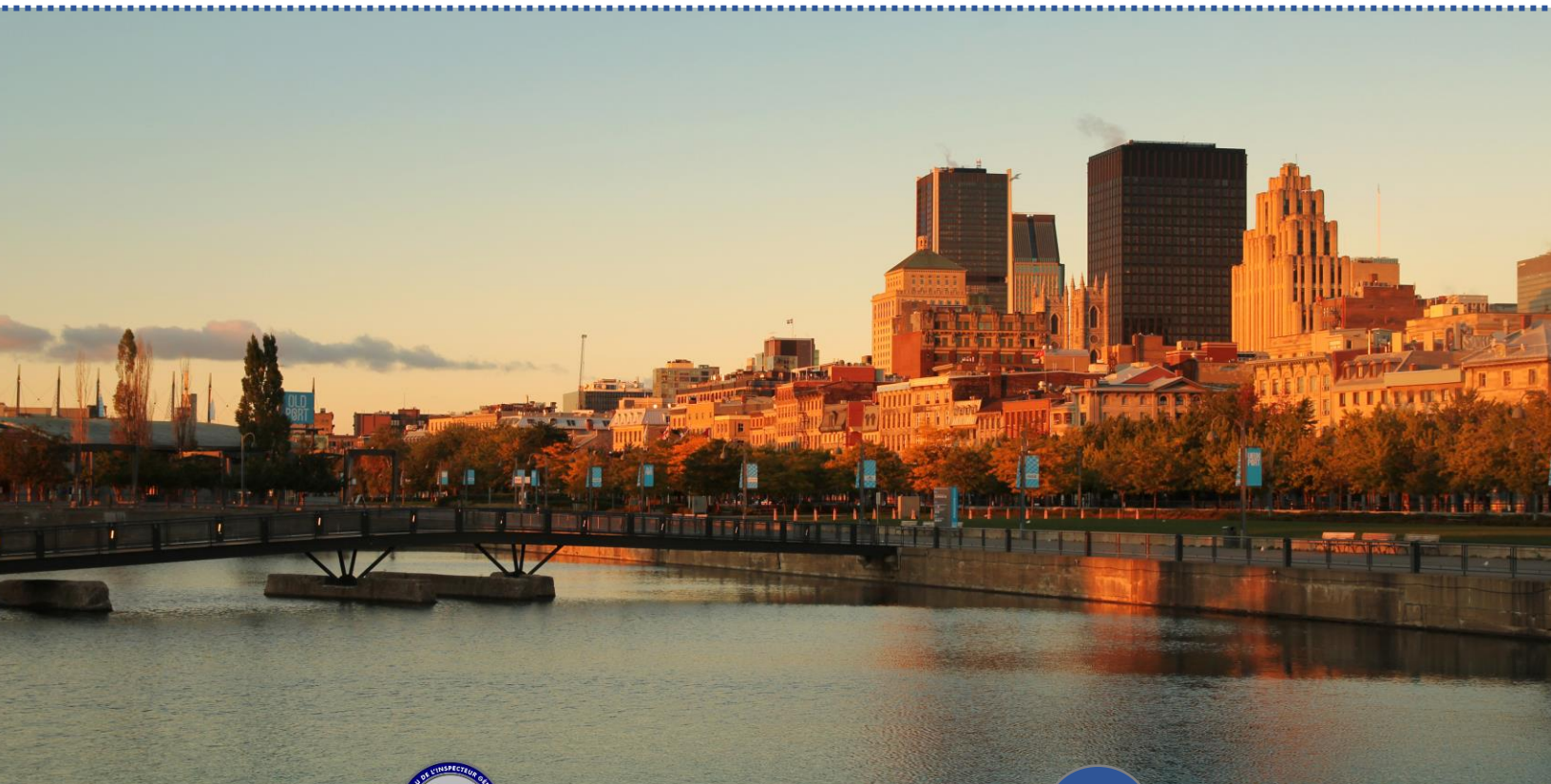


### CENTRAIDE / RED-CROSS FUNDRAISING CAMPAIGN

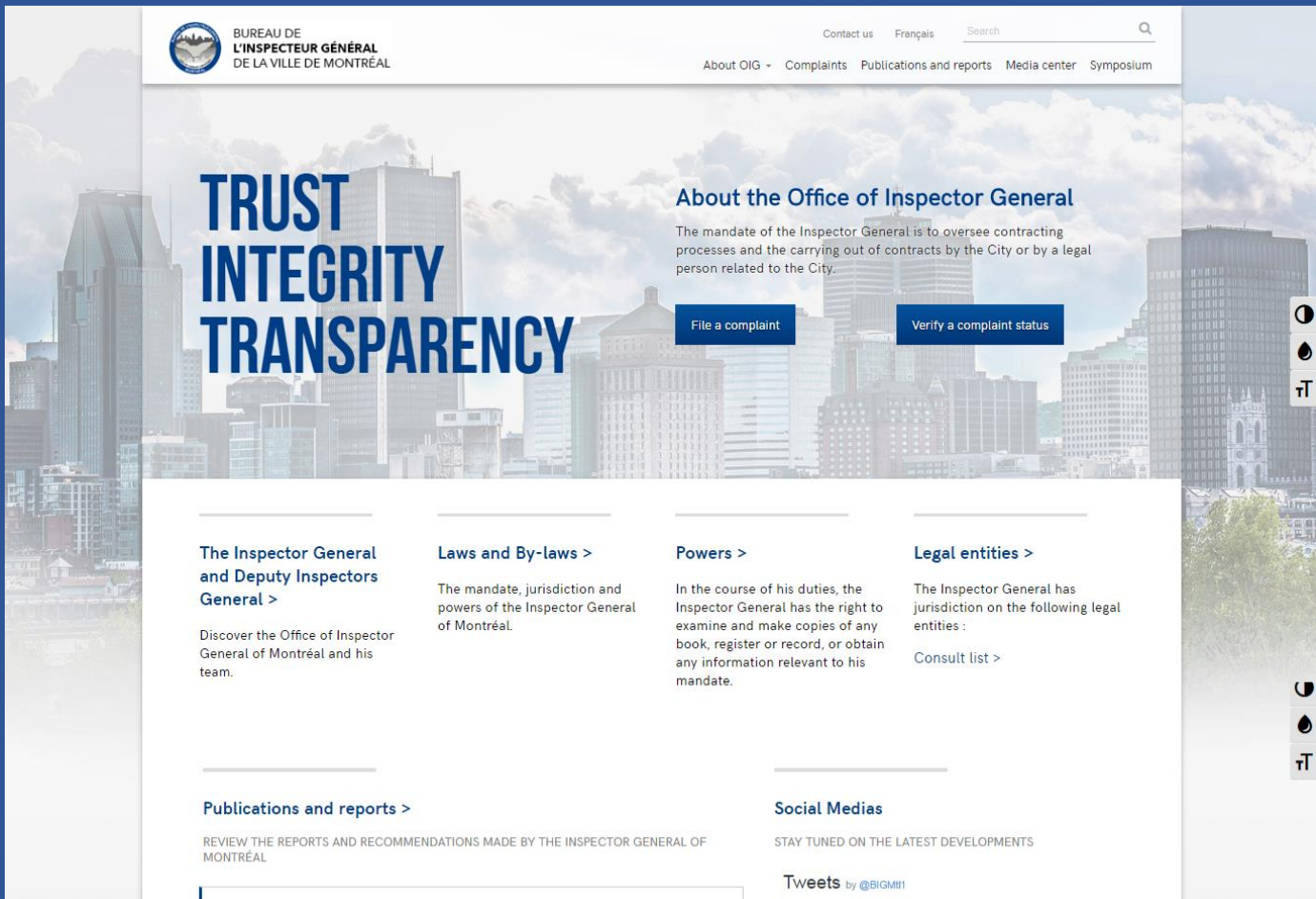


In 2016, the Office of Inspector General participated, for the third consecutive year, in the City's fundraising campaign for Centraide of Greater Montréal and the Canadian Red Cross in Québec.

The Inspector General is proud to report that thanks to employee donations, the office raised \$4,317.52, of which \$3,373.52 was given to Centraide of Greater Montréal and \$944 to the Canadian Red-Cross in Québec.



## 15. NEW OFFICE WEBSITE



In 2016, the Office of Inspector General overhauled its Website to make it more user friendly and to facilitate information retrieval.

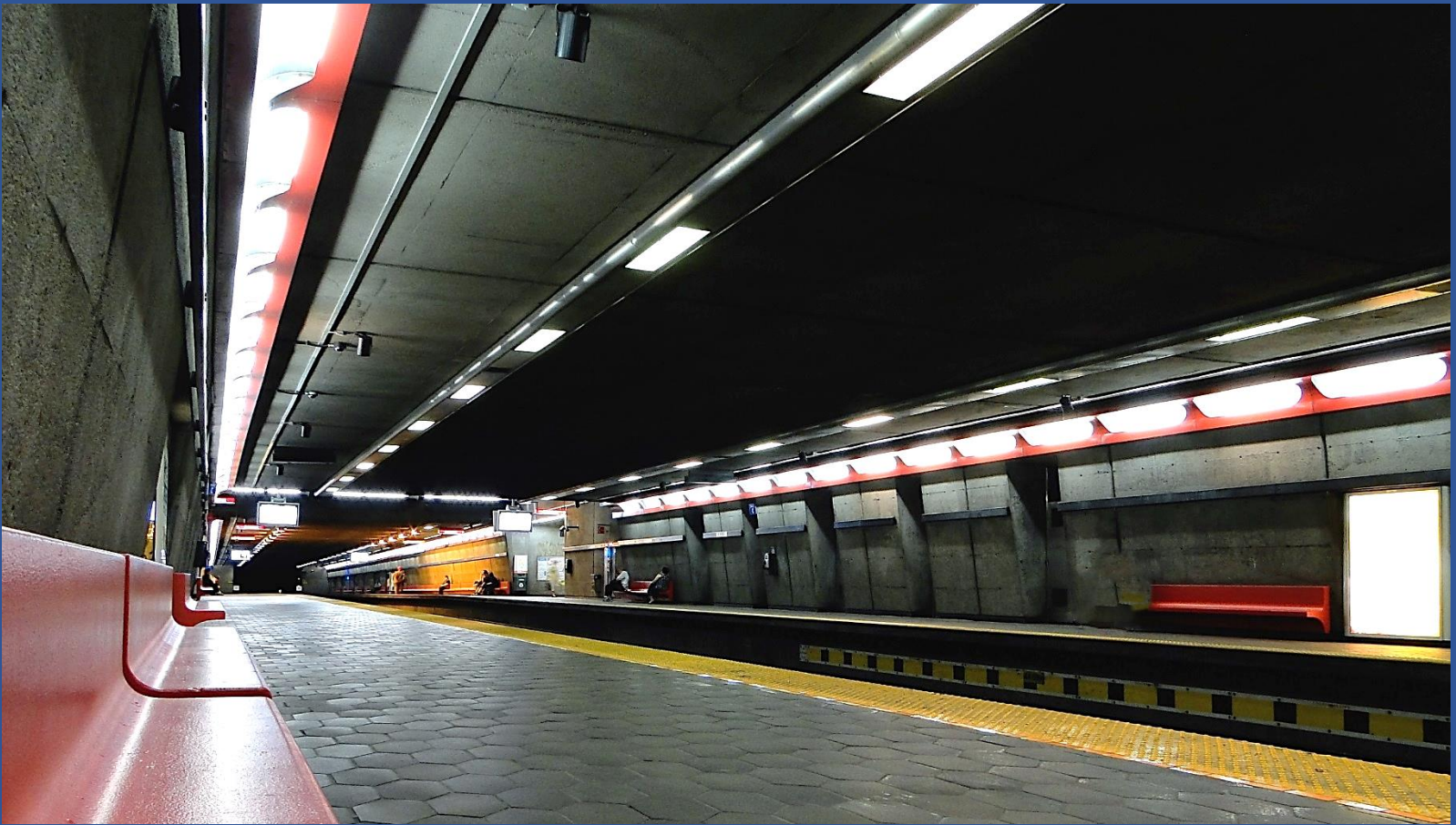
The Inspector General considers the Internet to be an unbeatable tool for communicating with citizens, elected officials, City employees, suppliers and the media. The site provides the institution with visibility and is designed to handle complaints.

It contains the Inspector General's decisions and recommendation reports, his annual reports and press releases. On the site, users can learn about the Inspector General's mandate and the powers conferred on him by legislation. Lastly, as mentioned earlier, it allows individuals to file a complaint using an electronic form and to check its status.

The Office of Inspector General also uses social media (via Twitter @BIGMt11) to share recent developments and important information about the office.







## 16. PRIORITIES FOR 2017



### Respond to complaints and conduct investigations

The Inspector General's priority is to handle complaints and conduct investigations. Accordingly, all of the office's actions and resources are aimed at supporting investigative operations.

An investigation can be launched:

- in response to a complaint; or
- on the initiative of the Inspector General.

### File relevant public reports

The Inspector General may address the City's decision-making bodies as often as he deems necessary. The Inspector General can issue two types of reports:

- recommendation reports (section 57.1.23 par. 2 of Montréal's City Charter); and
- decisions to cancel a contracting process, to rescind a contract or to suspend the performance of a contract (section 57.1.10 of Montréal's City Charter).

Through the decisions and recommendations made in ad hoc reports, the Inspector General of Montréal informs elected officials of problems as they arise and suggests solutions.

Consequently, the Inspector General intends to file as many ad hoc reports as necessary and will not wait for the publication of his annual report to publicly expose situations he considers problematic and that warrant being brought to the attention of elected officials and the public.



## Bring accountability back to the forefront

The Inspector General is intent on bringing manager accountability back to the forefront. To this end, the Inspector General intervenes before contracts are awarded to make managers aware of the vulnerability of the process and the good practices to follow to prevent collusive, fraudulent and deceitful schemes.

The Inspector General intends to intervene upstream whenever possible to help City officers and managers become accountable by fully assuming their role as stewards of the contracting process and resolving problematic situations before the contract is awarded.

Ongoing monitoring is also conducted for the same reason. By monitoring projects with a high risk of anti-competition or fraudulent schemes, from start to finish, the Office of Inspector General can intervene upstream of problematic situations, even before receiving a complaint.

## Train elected officials and City's employees

In 2017, the Inspector General will deliver training to elected officials and officers. This is in keeping with the Inspector General's mandate under section 57.1.8 of Montréal's City Charter to train council members and officers to recognize and prevent any breach of integrity and the rules applicable to making and performing contracts.

As previously mentioned, in 2016, together with the City's Legal Affairs Department (Service des affaires juridiques) and Procurement Department (Service de l'approvisionnement), the Office of Inspector General helped develop a course for officers on the new version of the Contract Management Policy adopted in August 2016 by City Council and the Agglomeration Council. In 2017, training will be delivered to hundreds of City employees who apply this policy in their work to make them aware of its rules and objectives.

At the same time, the Office of Inspector General has begun developing a training plan. To this end, the office set up a committee consisting of lawyers and expertise and analysis officers. This committee will develop various courses for the City's elected officials and officers that will be held throughout 2017 and whose aim will be to teach them how to identify, detect and prevent schemes that undermine the integrity of the contracting process.

Lastly, the Office of Inspector General develops projects in concert with Québec universities and university research centres in the U.S. and Europe with a view to participating in the training of or development of tools for practitioners in various spheres.

## Ensure the Office's visibility

As in previous years, the Office of Inspector General will continue its efforts to make the public aware of its interventions and presence through public reports, presentations to organizations whose activities tie into the Inspector General's mandate and by maintaining a collaborative network.



## Build a strong network of whistleblowers

Through its presence over the past three (3) years, the Office of Inspector General has developed a strong network of whistleblowers who report situations relevant to its mandate and enable it to rapidly initiate investigations or monitoring.

This network of contacts is the result of the trust and confidence the institution has earned through well-targeted interventions. The Inspector General takes the complaints he receives very seriously. His staff is trained to handle the information confidentially. Whistleblowers are protected from reprisals or attempted reprisals, and their anonymity is guaranteed.

## Municipal pool construction cases

The Inspector General has received several complaints concerning contracts awarded for the development of plans and specifications for municipal swimming pools, for their construction and for their management.

The Office of Inspector General is in the process of conducting several investigations, corroborating information and analyzing the facts. These files will continue to be monitored in 2017, and the Inspector General will decide whether to exercise his intervention powers in some of the contracts.

## Late payments by the City

During his investigations, the Inspector General found that the City is often late in paying its suppliers of goods and services. This situation has many repercussions:

- Risk of restricting competition: payment delays affect small businesses, where liquidity can be an issue. Over time, late payments can undermine healthy competition;
- Price inflation: Some contractors told the Office of Inspector General that they charged as much as 15% more to offset the effects of the City's late payments.

In some files, the Inspector General noted that the City sometimes made payments in advance to ensure suppliers were paid on time regardless of whether the services were delivered in part or in full. In one file, the Office of Inspector General found that seven hundred fifty thousand dollars (\$750,000) had been advanced without any verification just to avoid late payment.

**Aware that such practices place the City at great risk in its role as manager of public funds, the Inspector General will monitor these situations in 2017.**



# 17. BUDGET AND ACCOUNTABILITY

In 2016, the original budget of the Office of Inspector General of Montréal was five million five hundred seventy-eight thousand six hundred dollars (**\$5,578,600**). This budget consists of a fixed percentage (0.11%) of the City's total operating budget plus additional funds of two hundred forty-seven thousand seven hundred dollars (\$247,700) for the City's ethics hotline. As well, an appropriation surplus of eighty-three thousand three hundred thirty dollars (**\$83,330**) was granted to fund the repatriation of IT equipment to ensure the security and confidentiality of investigations.

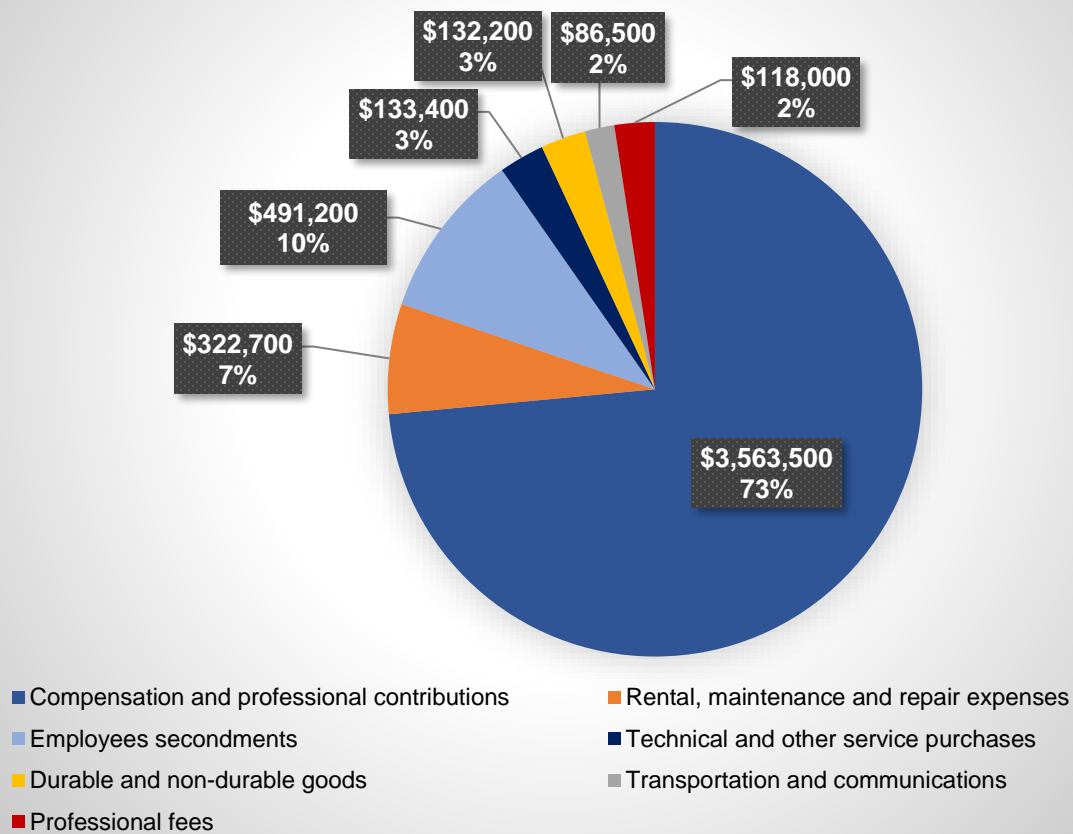
Aware of the economic context in which he operates, the Inspector General spends public funds wisely and always makes sure to leave room for specific needs in terms of human or material resources, special investigations and/or to strengthen the structure. As a result, he did not spend the entire budget allocated to him in 2016. An amount of seven hundred twenty-eight thousand six hundred dollars (\$728,600) was therefore not spent and was returned to the City surplus.

## Operating Budget and Expenses for the Year Ended December 31, 2016 (in thousands of dollars)

<b>ORIGINAL BUDGET</b>	<b>5,578.6</b>
<b>TOTAL EXPENDITURES</b>	<b>4,850.0</b>
Compensation and employer contributions	3,563.5
Employee secondment	491.2
Rental, maintenance and repair expenses	322.7
Technical and other service purchases	133.4
Contracts to access databases, namely:	
• <i>Employee training</i>	38.0
• <i>Translation and other services</i>	49.3
Durable and non-durable goods	132.2
• <i>Appropriations from the surplus - purchase of IT equipment</i>	55.9
Professional fees	118.0
• <i>Appropriations from the surplus - mandate for IT security support</i>	20.6
Transportation and communication	86.5
• <i>Appropriations from the surplus - telephony</i>	6.8
Other expenditures	2.5
<b>DIFFERENCE IN \$</b>	<b>728.6</b>
<b>DIFFERENCE IN %</b>	<b>13.1%</b>



## Operating expenses of the Inspector General in 2016





# APPENDIX 1

## Excerpts from Montréal's City Charter as Amended by the *Act respecting the Inspector General of Ville de Montréal*

### DIVISION VI.0.1

#### INSPECTOR GENERAL

##### § 1. — *Appointment*

**57.1.1.** The city shall appoint an inspector general and fix his or her salary.

The inspector general is appointed by the regular city council.

The resolution appointing the inspector general must be adopted, on the recommendation of the mayor, by a two-thirds majority vote of the council members.

A two-thirds majority vote of the council members is also required to dismiss the inspector general or suspend him or her without pay.

**57.1.2.** To be appointed inspector general and remain as such, a person must, as a minimum,

(1) have been a member of the Barreau du Québec or the Chambre des notaires du Québec for at least 10 years, provided that disciplinary action has not been or is not being taken against the person; and

(2) not have been found guilty anywhere of an offence for an act or omission that is either an offence under the Criminal Code (R.S.C. 1985, chapter C-46) or an offence, referred to in section 183 of that Code, under any of the Acts listed in that section and that is related to the employment.

**57.1.3.** The following persons may not act as inspector general:

(1) a member of a council of the city or the council of a reconstituted municipality, or a former member of any of those councils, in the latter case before the expiry of 12 months following the end of that member's term of office;

(2) an associate of a member mentioned in paragraph 1;

(3) a person who, personally or through an associate, has any direct or indirect interest in a contract with the city or with a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9.

**57.1.4.** The inspector general is appointed for a non-renewable five-year term and shall remain in office until a successor is appointed.

**57.1.5.** The inspector general shall perform the duties of office exclusively and on a full-time basis.

**57.1.6.** If the inspector general is unable to act or if the office of inspector general is vacant, the council shall,

(1) not later than at the sitting following the inability to act or the vacancy, designate, for a period of not more than 180 days, a person qualified to replace the inspector general; or

(2) not later than at the sitting following the inability to act or the vacancy, or not later than at the sitting following the expiry of the period fixed under paragraph 1, appoint a new inspector general in accordance with section 57.1.1.



**57.1.7.** Despite section 113 of the Cities and Towns Act (chapter C-19), the director general of the city does not have authority over the inspector general, who reports directly to the council.

§ 2. — *Mandate*

**57.1.8.** The mandate of the inspector general is to oversee contracting processes and the carrying out of contracts by the city or by a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9.

The inspector general shall recommend to the council any measure aimed at preventing a breach of integrity in the making of contracts by the city or the carrying out of such contracts. The inspector general shall also recommend to the council any measure designed to foster compliance with the applicable legal provisions and with the city's requirements regarding contracting or the carrying out of contracts. In addition, the inspector general shall verify, within the city, the implementation of such measures adopted by any council.

A further mandate of the inspector general is to train the members of the councils as well as the officers and employees to recognize and prevent any breach of integrity or of the applicable rules in the making of contracts by the city or the carrying out of such contracts.

The inspector general shall carry out his or her mandate with regard to contracts that come under an urban agglomeration power as well as those that come under a local power. The inspector general may make recommendations to any council of the city and shall verify the measures adopted by any such council, and the training he or she provides may be intended for the members of any council as well as all officers and employees of the city.

**57.1.9.** In the performance of his or her duties, the inspector general is entitled to examine any book, register or record or obtain any information relevant to his or her mandate from the city, any city officer or employee, any member of a city council or a selection committee, the office of a city mayor or of a designated councillor within the meaning of section 114.5 of the Cities and Towns Act (chapter C-19) or any staff member of such an office or of a person described in the fifth paragraph or a representative of that person. The inspector general may make copies of them.

The inspector general may, at any reasonable hour, enter a building or on land to conduct the examination provided for in the first paragraph. The inspector general may require the owner or occupant and any other person on the premises visited to give him or her reasonable assistance.

The inspector general may also use any computer or material or any other thing found on the premises visited to access data relevant to his or her mandate and contained in an electronic device, computer system or other medium or to inspect, examine, process, copy or print out such data.

The inspector general may determine the reasonable terms according to which the documents or information mentioned in the first paragraph are to be transmitted to him or her.

The person referred to in the first paragraph is:

- (1) a legal person
    - (a) that is part of the reporting entity defined in the city's financial statements;
    - (b) of which the city or a mandatary of the city appoints more than 50% of the members of the board of directors;or
    - (c) of which the city or a mandatary of the city holds more than 50% of the outstanding voting shares or units;
  - (2) a person that has a contractual relationship with the city or with a legal person described in subparagraph 1;
- or
- (3) a subcontractor of the person referred to in subparagraph 2 in relation to the principal contract referred to in that subparagraph.

The inspector general shall, on demand, provide identification and produce for the owner or occupant or any other person on the premises visited under the second paragraph a certificate of authority signed by the city clerk.

**57.1.10.** The inspector general may cancel any contracting process involving a contract of the city or of any legal

person described in subparagraph 1 of the fifth paragraph of section 57.1.9, or rescind or suspend the carrying out of such a contract if the inspector general

- (1) finds that any of the requirements specified in a document of the call for tenders or a contract has not been met or that the information provided in the contracting process is false; and
- (2) is of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.

The inspector general's decision must include reasons and be sent immediately to the clerk and the mayor of the city. If the decision concerns the contract of a legal person referred to in the first paragraph, it must be sent immediately to the secretary of the legal person.

On receipt of the decision, the clerk shall immediately send it to the contracting party concerned.

Any decision received by the clerk under the second paragraph must be tabled before the city council concerned or, in the case of a decision regarding a contract of a legal person referred to in the first paragraph, before the council having jurisdiction over the mandate of the legal person, at the first sitting of the council following receipt of the decision.

Any decision received under the second paragraph by the secretary of a legal person referred to in the first paragraph must be tabled at the first meeting of its board of directors following receipt of the decision.

**57.1.11.** A decision by the inspector general to cancel a contracting process takes effect immediately and ceases to have effect the day it is reversed under section 57.1.12.

A decision by the inspector general to suspend the carrying out of a contract takes effect immediately and ceases to have effect on the 91st day following the day it is received by the city clerk or the secretary of the legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 or, as applicable, the day it is reversed under section 57.1.12.

If not reversed under section 57.1.12, a decision by the inspector general to rescind a contract takes effect on the 46th day following the day it is received by the city clerk or the secretary of the legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 or the day it is confirmed by the city council concerned, if applicable.

**57.1.12.** The city council concerned or, as the case may be, the council having jurisdiction over the mandate of the legal person concerned may reverse a decision of the inspector general.

In the case of a contract of a legal person, the council cannot reverse a decision without considering the recommendation of the board of directors of the legal person. Consequently, any legal person concerned by a decision of the inspector general must send to the council having jurisdiction over its mandate, not later than the 15th day following receipt of the decision, its recommendation as to whether or not to reverse the decision. The recommendation must give reasons.

For the purposes of the second paragraph, if no recommendation is sent within the prescribed period, the board of directors of the legal person concerned is presumed to be in favour of maintaining the inspector general's decision.

The recommendation required under the second paragraph must be sent to the city clerk, who shall, at the first sitting of the council following receipt of the recommendation or following the expiry of the period fixed in the second paragraph, table it before the council having jurisdiction over the mandate of the legal person or inform the council of the absence of a recommendation.

A decision to reverse the cancellation of a contracting process or the rescinding of a contract must be made not later than the 45th day following the day the city clerk receives the inspector general's decision.

Any reversal decision regarding a contract of a legal person must be sent to the secretary of the legal person.

**57.1.13.** Any person may communicate any information to the inspector general that is relevant to the inspector general's mandate, except information regarding the health of a person or any of the following:

- (1) information regarding the existence of an order whose publication is deferred under the Executive Power Act (chapter E-18) or the order itself;
- (2) information regarding the existence of a decision resulting from the deliberations of the Conseil exécutif or the decision itself, information regarding the existence of a decision resulting from the deliberations of one of the cabinet committees of the Conseil exécutif or the decision itself, or information regarding the existence of a decision of the Conseil du trésor or the decision itself, before the expiry of 25 years from the date of the decision;
- (3) information regarding the existence of information which, if disclosed, would reveal a budget policy of the Government before it is made public by the Minister of Finance or the information itself;
- (4) a legal opinion concerning the application of the law to a particular case, or the constitutionality or validity of legislative or regulatory provisions, or a preliminary or final draft of a bill or regulation;
- (5) a study, if its disclosure might well affect the outcome of judicial proceedings, unless those proceedings concern parties other than the Government, the Conseil exécutif, the Conseil du trésor, the government departments, and the persons, agencies and bodies referred to or described in the second and third paragraphs of section 3 or in section 4 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1);
- (6) a communication from the Conseil exécutif to one of its members, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the communication;
- (7) a communication from a member of the Conseil exécutif to another member of the Conseil exécutif, before the expiry of 25 years from the date of the communication;
- (8) a recommendation from the Conseil du trésor or a cabinet committee to the Conseil exécutif, before the expiry of 25 years from the date of the recommendation;
- (9) a recommendation from a member of the Conseil exécutif to the Conseil exécutif, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the recommendation;
- (10) a study made within the Ministère du Conseil exécutif or the secretariat of the Conseil du trésor regarding a recommendation or request made by a minister, a cabinet committee or a public body, or regarding a preliminary or final draft of a bill or regulation, before the expiry of 25 years from the date of the study;
- (11) a record or report of the deliberations of the Conseil exécutif or a cabinet committee, before the expiry of 25 years from the date of the record or report;
- (12) a list of titles of documents containing recommendations to the Conseil exécutif or the Conseil du trésor, before the expiry of 25 years from the date of the list;
- (13) the agenda of a meeting of the Conseil exécutif, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the agenda;
- (14) a document from the office of a Member of the National Assembly or a document produced for that Member by the services of the Assembly, unless the Member deems it expedient to send the document himself or herself or request that it be sent;
- (15) a document from the office of the President of the Assembly or of a Member of the Assembly referred to in the first paragraph of section 124.1 of the Act respecting the National Assembly (chapter A-23.1) or a minister to which section 11.5 of the Executive Power Act (chapter E-18) applies;
- (16) a preliminary or final draft of a bill or regulation, other than a draft by-law of the city or of a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act, before the expiry of 10 years from the date of the draft;
- (17) a study directly relating to a document referred to in subparagraph 16, other than a draft by-law of the city or of a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act, unless the draft bill has been tabled in the National Assembly or the draft regulation has been made public in accordance with the law;
- (18) an opinion or recommendation issued or made less than 10 years earlier by a member of a public body or of its personnel in the discharge of his or her duties, or issued or made less than 10 years earlier, at the request of a public body, by a consultant or an adviser on a matter within its jurisdiction, unless the opinion or recommendation emanates from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act or unless it is prepared at the request of the city or the legal person;
- (19) an opinion or recommendation issued or made by an agency under the jurisdiction of a public body to a public body, or issued or made by an agency under the authority of a minister to the minister, if no final decision on the subject matter of the opinion or recommendation has been made public by the authority having jurisdiction and if the opinion or recommendation does not emanate from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act or has not been prepared at the request of the city or the legal person;

(20) a study prepared in connection with a recommendation made in the course of a decision-making process, until a decision is made on the recommendation or, if no decision is made, until five years have elapsed from the date the study was made, and if the study does not emanate from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act; or

(21) information regarding the existence of information or the information itself, if the information does not emanate from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act and if its disclosure would be likely to

(a) hamper an audit in progress;

(b) reveal an auditing program or operation plan;

(c) reveal a confidential source of information regarding an audit; or,

(d) seriously impair the power of appraisal granted to the Auditor General pursuant to sections 38, 39, 40, 42, 43, 43.1 and 45 of the Auditor General Act (chapter V-5.01).

A person who communicates information authorized under the first paragraph to the inspector general may do so despite the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector (chapter P-39.1), any other communication restrictions under other laws of Québec and any duty of loyalty or confidentiality that may be binding on the person, in particular with respect to an employer or a client.

The second paragraph does not however authorize the person to communicate information to the inspector general that is protected by professional secrecy between an advocate or a notary and a client.

**57.1.14.** The inspector general must take all necessary measures to protect the identity of persons who have communicated with him or her. Within the scope of his or her mandate, the inspector general may nonetheless communicate the identity of such persons to the police service of the city or to the Anti-Corruption Commissioner.

**57.1.15.** It is forbidden to take a reprisal against a person who has communicated with the inspector general or to threaten to take a reprisal against a person so that he or she will abstain from communicating with the inspector general.

In particular, the demotion, suspension, termination of employment or transfer of a person referred to in the first paragraph or any disciplinary or other measure that adversely affects the employment or working conditions of such a person is presumed to be a reprisal.

Any person who contravenes this section is guilty of an offence and is liable to a fine of

(1) \$2,000 to \$20,000 in the case of a natural person; and

(2) \$10,000 to \$250,000 in other cases.

For any subsequent offence, the amounts are doubled.

**57.1.16.** Any person who in any way hinders or attempts to hinder the performance of the inspector general's duties, misleads the inspector general by concealment or misrepresentation, refuses to hand over a document or information the inspector general may demand or examine, or conceals or destroys such a document or information is guilty of an offence and is liable to a fine of \$4,000 to \$20,000.

For any subsequent offence, the amounts are doubled.

**57.1.17.** Any person who, by an act or omission, helps or, by encouragement, advice, consent, authorization or order, induces another person to commit an offence under section 57.1.15 or 57.1.16 is guilty of an offence.

Any person who is found guilty under this section is liable to the same penalty as that prescribed for the offence the person helped or induced another person to commit.

**57.1.18.** If, in the opinion of the inspector general, a federal or Québec law or a by-law or regulation made under such a law may have been contravened, and if the contravention pertains to corruption, malfeasance, collusion, fraud or influence peddling in, for example, the making or carrying out of contracts, the inspector general must, without delay, disclose the wrongdoing to the Anti-Corruption Commissioner.

In addition, the inspector general shall send the Autorité des marchés financiers any information that may be relevant to its mandate under Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1).

§ 3. — *Designation of representatives of the inspector general*

**57.1.19.** For the purposes of his or her mandate, the inspector general may designate, in writing, an assistant from among his or her personnel.

Only a person who meets the requirements set out in sections 57.1.2 and 57.1.3 may be designated as an assistant:

The designation is valid for a period of not more than five years and is non-renewable.

The assistant shall perform the duties of office exclusively and on a full-time basis.

The assistant has the same powers and rights as the inspector general and is subject to the same obligations.

In addition, the inspector general may designate, in writing, a person from among his or her personnel to perform the following duties:

- (1) the duties set out in the first and third paragraphs of section 57.1.8;
- (2) the verification of the implementation of the measures adopted under the second paragraph of section 57.1.8;
- (3) the duties set out in section 57.1.9.

In the performance of his or her duties, a person designated under the sixth paragraph is subject to the same obligations as the inspector general.

§ 4. — *Ethics requirement*

**57.1.20.** The inspector general must disclose in every report produced any situation that could cause a conflict between the inspector general's or his or her assistant's personal interest and their respective duties of office.

§ 5. — *Operating expenses*

**57.1.21.** The budget of the city must include an appropriation to provide for payment of a sum to the inspector general to cover the expenses relating to the performance of his or her duties.

The appropriation must be equal to or greater than the product obtained by multiplying the total of the other appropriations provided for in the city's budget for operating expenses by 0.11%.

The appropriation constitutes a mixed expenditure subject to the by-law provided for in section 69 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations (chapter E-20.001).

**57.1.22.** The inspector general is responsible for the application of the city's policies and standards relating to the management of the human, material and financial resources assigned to the performance of his or her mandate.

§ 6. — *Reports, notices and recommendations*

**57.1.23.** Not later than 31 March each year, the inspector general shall send the city clerk and the mayor a report, to be tabled before the council at the first regular sitting following its receipt, presenting the results of the activities carried out under the inspector general's mandate and making recommendations, if applicable. The inspector general shall also send the report to the Anti-Corruption Commissioner and the Autorité des marchés financiers.

The inspector general may also, at any time, send the mayor and the 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 mayor shall table the report before the council at the first regular sitting following its receipt.



The inspector general may include any notices or recommendations in these reports that, in his or her opinion, must be brought before the council.

In addition, the inspector general may, at any time, submit any notice or recommendation he or she considers necessary to any decision-making authority of the city.

#### **§ 7. — *Protections***

**57.1.24.** Despite any general law or special Act, the inspector general and the employees under his or her direction or the professionals under contract may not be compelled to give testimony relating to any information obtained in the performance of their duties or to produce any document containing such information.

The inspector general and the employees under his or her direction may not be prosecuted for any act or omission in good faith in the performance of their duties.

No civil action may be instituted for the publication of a report of the inspector general prepared under this Act or the publication in good faith of an extract or summary of such a report.

Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be exercised nor any injunction granted against the inspector general, the employees under his or her direction or the professionals under contract acting in their official capacity.

A judge of the Court of Appeal may, on an application, summarily annul any proceeding instituted or decision rendered contrary to the first paragraph.

#### **§ 8. — *Audit of the accounts and affairs of the inspector general***

**57.1.25.** Despite section 107.8 of the Cities and Towns Act (chapter C-19), the auditing of the accounts and affairs of the inspector general does not include auditing for value-for-money.



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