



PUBLIC REPORT 2022

Report on the performance of contracts resulting from call for tenders 17-5849, “Design, construction, operation and maintenance of a recyclables sorting centre” and call for tenders 19-17343, “2020-2024 recyclables sorting and marketing service”

Sect. 57.1.23 of the *Charter of Ville de Montréal, metropolis of Québec*

SUMMARY

In 2017 and 2019, Ville de Montréal awarded two contracts involving the operation of recyclables sorting centres in Montréal. These contracts were awarded for call for tenders 17-5849, “Design, construction, operation and maintenance of a recyclables sorting centre” (hereinafter, the “Lachine Contract”) and call for tenders 19-17343, “2020-2024 recyclables sorting and marketing service” (hereinafter, the “St-Michel Contract”).

The two initial winning bidders were affiliated companies that experienced financial problems, and in February 2020, they were subject to a first day order under the Companies’ Creditors Arrangement Act. On July 27, 2020, the Superior Court issued an approval and vesting order to approve the sale of various assets of these initial winning bidders to a group of receiving companies namely consisting of Ricova RSC Inc., Ricova Lachine Inc. and Ricova Services Inc. The Lachine and St-Michel contracts were part of the assets that were sold.

Following the assignment, the Office of Inspector General received several denunciations alleging that Ricova Services Inc. was putting itself in a position of conflict of interest in taking over the Lachine and St-Michel contracts. Ricova Services Inc. was sorting the recyclable materials and then selling them to itself through another Ricova entity, Ricova International Inc.

It should be noted that the recyclable materials from the sorting centres have a market value and are sold by the companies performing the Lachine and St-Michel contracts. In addition, in response to a recycling market crisis in 2018 and the financial problems experienced by all sorting centre operators, Ville de Montréal included a clause in the Lachine and St-Michel contracts to share the revenues or losses resulting from the sale of recyclable materials in order to mitigate the expected losses at the time by compensating the winning bidders, as the case may be. In the event of an increase in the selling price, the same clause provided that the bidder that was awarded the contracts would pay a rebate to Ville de Montréal according to a predetermined formula.

The investigation conducted by the Office of Inspector General resulted in the following four findings:

- 1. Based on the facts revealed by the investigation, four Ricova entities are involved in the performance of the Lachine and St-Michel contracts: Ricova Services Inc., Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. Dominic Colubriale controls and personally manages each of these companies, operating them indiscriminately to make Ricova, as he stated himself, the most integrated company at all stages of recyclables management.*
- 2. Ricova Services Inc. would invoice Ville de Montréal for sorting operations under the Lachine and St-Michel contracts. However, as admitted by Dominic Colubriale himself, Ricova Lachine Inc. and Ricova RSC Inc. were created specifically to operate the Lachine and St-Michel sorting centres, and the investigation revealed that they were performing all of these obligations. However, neither of these two entities had an authorization to contract from the Autorité des marchés publics before they started to perform the aforementioned public contracts.*

3. Furthermore, Ricova Services Inc. invoices Ville de Montréal for the marketing and sale of the recyclables under the Lachine and St-Michel contracts. However, the statements received during the course of the investigation, including those by Dominic Colubriale, and the documentary evidence that was reviewed show that these obligations were instead being carried out by Ricova International Inc. In other words, the latter company finds the buyers, negotiates the prices with them, and enters into agreements to sell the recyclables. Ricova International Inc., however, did not have an Authorization to contract from the Autorité des marchés publics.
4. Lastly, according to the invoices submitted by Ricova Services Inc. to Ville de Montréal, the company claimed that it was meeting its recyclables marketing obligations by selling all the recyclables to Ricova International Inc. Ricova Services Inc. would therefore report to Ville de Montréal the selling price of the recyclables that it had obtained from Ricova Services Inc. to share revenue or losses from the sales.

However, the investigation revealed that the above price reported by Ricova Services Inc. was consistently lower than the price actually obtained by Ricova International Inc. from the purchasers of the recyclables. The difference between the two prices was due to the fact that Ricova International Inc. would keep a minimum amount of about \$20/tonne, which was in breach of the provisions of the Lachine and St-Michel contracts. For the St-Michel Contract alone, and for the period reviewed from August 2020 to July 2021 inclusively only, this average minimum deduction of \$20/tonne roughly totalled \$1,150,000.

In addition to constituting a contractual breach, the evidence that was gathered shows that the latter element was also a fraudulent act within the meaning of Ville de Montréal's by-law on contract management.

Dominic Colubriale stated that prior to taking over the Lachine and St-Michel contracts, Ricova International Inc. was purchasing the recyclables from the two previous winning bidders and was able to make a profit of \$50-60/tonne. However, while bearing in mind the possibility of an apparent conflict of interest since the same company was now operating the sorting centres and purchasing the recyclables from them, Dominic Colubriale chose to reduce, rather than eliminate, the amount that Ricova International Inc. would keep, setting at a minimum average of \$20/tonne the amount that would allow it to maintain a "consistent" and "fair" profit. The determination of this single amount came after his initial decision to deduct two separate prices, \$20 and \$ 30/tonne, depending on the type of recyclable material involved. However, Dominic Colubriale himself pointed out that this was too complicated and that he told his employees that they had to make sure that by the end of the month the amount would be about \$20/tonne.

It should be added that neither the invoices for the sale of recyclables by Ricova International Inc. or the other supporting documentation were sent by Ricova Services Inc. to Ville de Montréal for the purpose of sharing revenues or losses from the sale of recyclables.

Section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec provides two (2) cumulative conditions for the Inspector General to intervene. The Inspector General must have determined that one of the requirements in the call for tender documents or a contract was not observed. Second, she must be of the opinion that the seriousness of the breach observed justifies rescinding the contract.

In the present matter, as mentioned above, the investigation enabled the Inspector General to determine that there was non-compliance with the obligation to have an authorization to

contract, the provisions regarding revenue or loss sharing, as well as section 14 of the RGC, deemed to be an integral part of all contracts awarded by Ville de Montréal.

In terms of the seriousness of the first breach, the requirement to hold an authorization contract is a condition of public order [TRANSLATION] “designed to protect the public which has a vested interest in ensuring that contracts paid for with public funds are awarded to contractors with integrity.” As a result, the fact that Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. did not have such an authorization at the appropriate time was more than a mere formality, as was stated in Ricova Services Inc.’s response to the Notice.

Regarding the second and third breaches, they are serious both because of their fraudulent nature and the amounts involved, some of which exceeded \$1 million. In fact, the evidence pointed to an intertwining of various entities, all controlled by the same individual, that served as integrated or separate vehicles, depending on the facts and arguments alleged against them.

Whereas the recyclables market was disrupted in 2018 and recycling remained a major social issue, its implementation through the Lachine and St-Michel contracts required a strong relationship of trust with the winning bidder, all the more so because of Ville de Montréal’s financial participation in the sharing of revenues or losses. However, the Inspector General believes that in acting as they did, Dominic Colubriale and the entities he controlled irreparably undermined it.

To summarize, the Inspector General believes that the two conditions required by section 57.1.10 of the Charter of Ville de Montréal were met in the present case and, as a result, a rescinding of the Lachine and St-Michel contracts would be justified.

However, the proper operation of the Lachine and St-Michel sorting centres is undeniably essential to maintaining cleanliness and public health. According to the relevant provisions of the Charter of Ville de Montréal, a rescinding by the Inspector General would take effect 45 days after its submission to City Council. However, it would appear that, according to the applicable regulatory framework, the City Administration could not award new sorting contracts in such a short period of time. This could therefore result in an interruption in service.

Under these circumstances, the Inspector General has concluded that it would not be appropriate to use the rescinding powers under section 57.1.10 since such a decision which would not serve public interest. Nonetheless, given the breaches identified by the investigation, the Inspector General is recommending that City Council rescind the Lachine and St-Michel contracts as soon as possible.

Furthermore, due to their aforementioned violation of section 14 of the by-law on contract management and in light of the new penalty provisions adopted in 2020, the Inspector General believes that an ineligibility period of five (5) years would be appropriate for Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. and Ricova International Inc.

Table of Contents

1. Scope and extent of work	1
1.1 Details	1
1.2 Applicable standard of proof	1
1.3 Notice to Interested Parties.....	1
2. Context of the Office of Inspector General’s investigation	2
2.1 General operation of recycling in Montréal.....	2
2.2 Contracts that were investigated.....	2
2.1.1 Initial award of Lachine contract.....	2
2.1.2 Initial award of St-Michel contract.....	3
2.1.3 Assignment of Lachine and St-Michel contracts.....	3
2.2 Denunciations made and details	4
3. Findings of the investigation	4
3.1 Control exercised by Dominic Colubriale over the various Ricova entities	5
3.2 Obligations to receive, sort, process, market and sell recyclables and their performance by the entities controlled by Dominic Colubriale	8
3.2.1 Obligations of the winning bidder under the Lachine and St-Michel contracts.....	8
3.2.2 Method of performing the obligations according to the invoices submitted by Ricova Services Inc. to Ville de Montréal	8
3.2.3 Method of performing the obligations based on the facts revealed by the investigation.....	9
3.2.4 Ricova Services Inc.’s response to the Notice	15
3.2.5 Analysis and conclusion regarding the performance of the obligations to receive, sort, process, market and sell recyclables.....	17
3.3 Obligation to share revenues or losses and its performance by the entities controlled by Dominic Colubriale.....	19
3.3.1 Winning bidder’s obligation under the Lachine and St-Michel contracts	20
3.3.2 Method of performing the obligation based on the invoices submitted by Ricova Services Inc. to Ville de Montréal.....	23
3.3.3 Method of performing this obligation by the entities controlled by Dominic Colubriale according to the facts revealed by the investigation.....	24
3.3.4 Ricova Services Inc.’s response to the Notice	26
3.3.5 Analysis and conclusion regarding the performance of the obligation to share revenues and losses	27

4. By-law on contract management.....	28
4.1 Violations of section 14 of the by-law on contract management.....	28
4.2 Recommendation regarding the period of ineligibility	30
5. Conclusions and recommendations	32

1. Scope and extent of work

1.1 Details

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

The Inspector General does not conduct criminal investigations. She conducts investigations of an administrative nature. Throughout this report, wherever the term “investigation” is used, it means an investigation of an administrative nature, and under no circumstances shall it be interpreted as referring to a criminal investigation.

1.2 Applicable standard of proof

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

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

1.3 Notice to Interested Parties

Before making the results of her investigation public and, where applicable, using the powers conferred to her under section 57.1.23 of the *Charter of Ville de Montréal* in accordance with her duty of procedural fairness, the Inspector General sends a Notice to Interested Parties (hereinafter, the “Notice”) to the persons involved indicating the relevant facts gathered during the investigation.

Upon receiving the Notice, the persons concerned may submit in writing any comments, representations or observations they believe to be relevant.

Such a Notice was sent on December 6, 2021 to the attention of Dominic Colubriale, personally and in his capacity as director and CEO of the entities Ricova Services Inc., Ricova Lachine Inc., Ricova RSC Inc., Ricova International Inc., as well as to Ville de Montréal’s Environment Department.

While the initial four-week time period was scheduled to end on January 6, 2022, it was extended three times until March 7, 2022 at the request of Ricova Services Inc.’s legal counsel.

The facts and arguments invoked by Ricova Services Inc. were taken into account by the Inspector General and are covered in this report. Ville de Montréal did not respond to the Notice.

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

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

Before addressing the findings of the Office of Inspector General's investigation, a few introductory remarks are required to situate readers, in terms of both the general operation of recycling in Montréal and the contract history that led Ricova Services Inc. to take over the performance of the contracts being investigated.

2.1 General operation of recycling in Montréal

The Montréal agglomeration collects approximately 156,000 tonnes of recyclables each year. To be recycled, these materials must be transported to sorting facilities. Only two such centres serve the Montréal agglomeration: one in the St-Michel neighbourhood and another recently built in the borough of Lachine. Although the buildings belong to Ville de Montréal, the operation of the centres was contracted out to the private sector through two calls for tenders.

The recyclables brought to the centres are processed by separating cardboard, paper, glass, metal, and certain refundable items (e.g. refundable cans and Nespresso coffee pods). Once sorted and ready for shipping, these recyclables may have a certain market value. They are therefore marketed and sold by the sorting centre operators to various recyclers.

Some of these recyclables, particularly paper and cardboard, used to be sold to Chinese companies. However, since January 1, 2018, China established a new policy aimed at limiting access to its market for recyclables sorted abroad by imposing very strict quality criteria on the import of different types of recyclables into China.

This crisis led to a drastic drop in the selling prices of the recyclables sorted by sorting centres across Québec. There were resulting various government interventions, including financial assistance, to support sorting centre operators.

For its part, Ville de Montréal included in its sorting centre operation contracts a clause whereby it wanted to partly temper these possible variations in selling prices by participating in the sale of the recyclables, including by assuming a share of the potential losses that were expected given market conditions.

2.2 Contracts that were investigated

The investigation conducted by the Office of Inspector General focused on two contracts on the sorting and marketing of recyclables. As a result of financial problems experienced by the initial winning bidders of these contracts, the contracts were assigned to Ricova Services Inc. through a process under the *Companies' Creditors Arrangement Act*² overseen by the Québec Superior Court.

2.1.1 Initial award of Lachine contract

On September 28, 2017, Ville de Montréal awarded the contract resulting from call for tenders 17-5849, "Design, construction, operation and maintenance of a recyclables sorting centre" (hereinafter, the "Lachine contract") to La Compagnie de recyclage de papiers MD

² RSC 1985, c. C-36.

inc. Ricova Services Inc. submitted a bid, signed by its president, Dominic Colubriale, in response to call for tenders 17-5849, but ranked second behind the ultimate winning bidder.

As indicated in the title of the Lachine contract, the latter is divided into two separate phases, the first involving the design and construction of the new sorting centre, and the second its operation and maintenance. At the time of the Lachine contract award, the design-build component of the contract was valued at \$42,329,669.81, including taxes and contingencies, while the operation and maintenance component was expected to result in a maximum expenditure of \$3,822,326.73, including taxes.

In addition to the design-build phase of the Lachine contract, the initial operation and maintenance phase of the contract was 60 months and could be extended for two successive periods of three (3) years each.

Note that under the terms of the Lachine contract, this operation-maintenance phase would formally begin only after the sorting centre was issued the operating certificate. As of the date of this report, the sorting centre's operating certificate has not been issued, namely because of various ongoing contractual disagreements between the parties involved. However, since November 2019, sorting and marketing operations have been taking place at the Lachine sorting centre.

2.1.2 Initial award of St-Michel contract

On September 19, 2019, Ville de Montréal awarded the contract resulting from Call for Tenders 19-17343, "2020-2024 recyclables sorting and marketing service" (hereinafter, the "St-Michel contract") to Rebutis Solides Canadiens Inc.

At the time of the St-Michel contract award, the processing of the recyclables was expected to result in an expenditure of \$51,704,257.50, including taxes. However, the value of the total estimated expenditure increased to \$62,453,877, including taxes. The additional amount was due to the compensation that would have to be paid by Ville de Montréal to the winning bidder to offset revenue losses from the sale of the recyclables.

The St-Michel contract came into effect on January 1, 2020, and is scheduled to end on September 30, 2024 at the latest.

2.1.3 Assignment of Lachine and St-Michel contracts

On February 3, 2020, an initial first day order was issued in respect of La Compagnie de recyclage de papiers MD inc., Rebutis Solides Canadiens inc. and other affiliated companies under the *Companies' Creditors Arrangement Act*.

On July 27, 2020, the Superior Court issued an approval and vesting order to approve the sale of various assets of La Compagnie de recyclage de papiers MD inc., Rebutis Solides Canadiens inc. and other affiliated companies to a group of receiving companies namely consisting of Ricova RSC Inc., Ricova Lachine Inc. and Ricova Services Inc.

The order included the assignment of the Lachine and St-Michel contracts, including all the rights, benefits, interests and obligations arising therefrom, to the group of receiving companies, and ultimately specifically to Ricova Services Inc.

Note that the Ricova group of receiving companies had initially offered to accept an assignment of the Lachine contract, subject, namely, to renegotiation of the contract's

operating terms and conditions. However, these reservations were lifted, and the Lachine contract was accepted as is by the group of receiving companies.

2.2 Denunciations made and details

The Office of Inspector General received several denunciations after the assignment of the Lachine and St-Michel contracts to Ricova Services Inc., alleging that the company was putting itself in a position of conflict of interest. This arose from the fact that the Lachine and St-Michel contracts each contain a clause on the sharing of revenues or losses from the sale of recyclables with Ville de Montréal. However, Ricova Services Inc. would produce the recyclables and then sell them to itself through another Ricova entity, Ricova International Inc. These denunciations are the subject of this report.

Other denunciations were also received regarding compliance with the contractual requirements relating to the performance of the sorting centres, including the quality of the recyclables sorting. Although these denunciations were addressed, they refer, in the case of the Lachine contract, to facts and arguments that are the subject of a legal dispute between the parties involved, making it inappropriate for the Office of Inspector General to continue investigating this matter at the present time.

Lastly, it should be noted that while the Lachine contract included various obligations for the winning bidder, including the construction of a recyclables sorting centre, this report only covers the portion relating to the marketing and sale of recyclables.

3. Findings of the investigation

The Office of Inspector General's investigation revealed the following four findings:

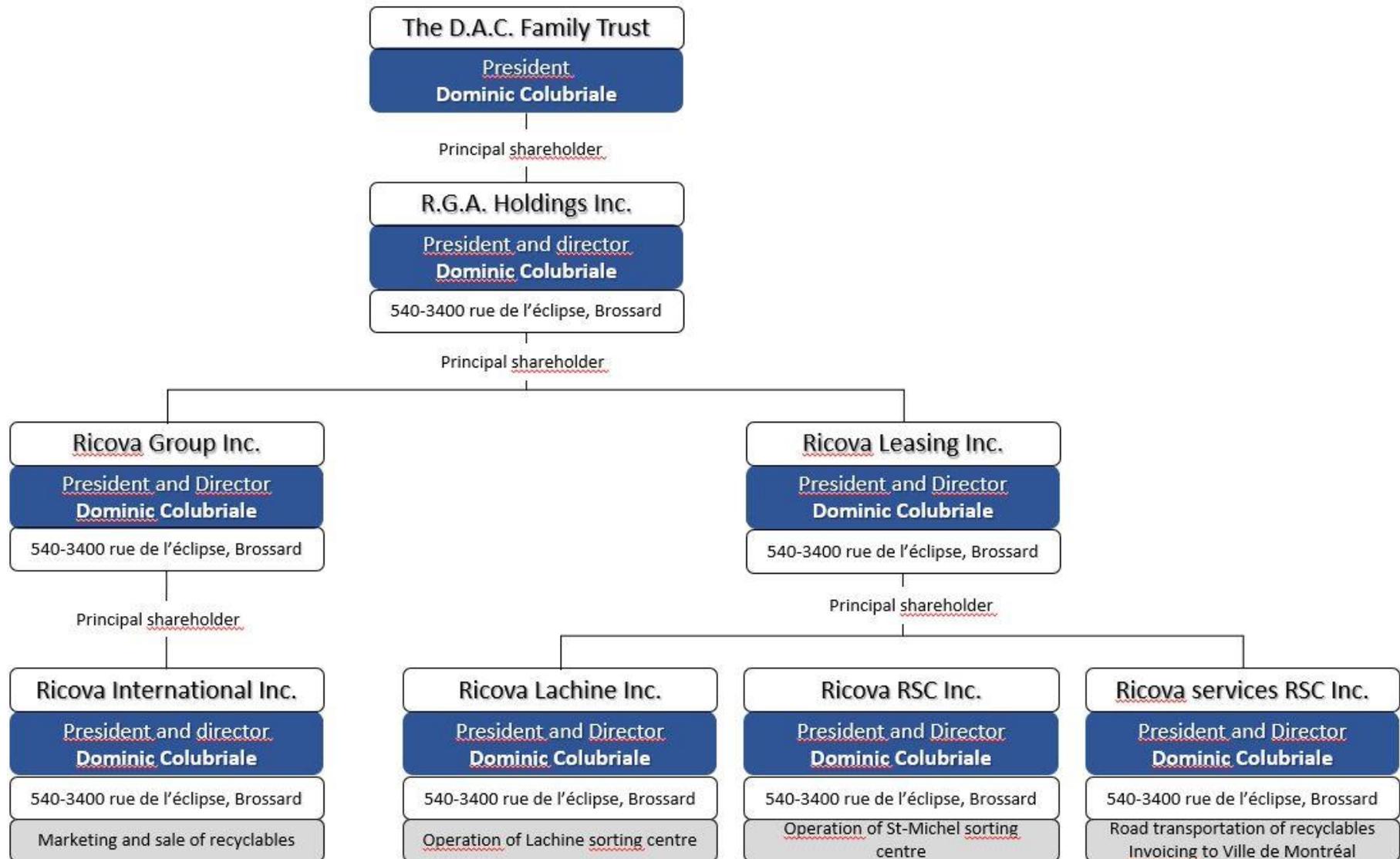
- Based on the facts revealed by the investigation, four Ricova entities were involved in the performance of the Lachine and St-Michel contracts: Ricova Services Inc., Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. As section 3.1 shows, Dominic Colubriale controlled and personally managed each of these companies, operating them indiscriminately to make Ricova, as he stated himself, the most integrated company at all stages of recyclables management.
- Ricova Services Inc. would invoice Ville de Montréal for sorting operations under the Lachine and St-Michel contracts. However, as admitted by Dominic Colubriale himself, Ricova Lachine Inc. and Ricova RSC Inc. were created specifically to operate the Lachine and St-Michel sorting centres, as shown in section 3.2, and the investigation has revealed that they were performing all of these obligations. However, neither of these two entities had an authorization to contract from the Autorité des marchés publics before they started to perform the aforementioned public contracts.
- Furthermore, Ricova Services Inc. was invoicing Ville de Montréal for the marketing and sale of the recyclables under the Lachine and St-Michel contracts. However, as appears from section 3.2, the statements received during the course of the investigation, including those by Dominic Colubriale, and the documentary evidence that was reviewed show that these obligations were instead being carried out by Ricova International Inc. In other words, the latter company would find the buyers, negotiate the prices with them, and enter into agreements to sell the recyclables.

Ricova International Inc., however, did not have an authorization to contract from the Autorité des marchés publics.

- Lastly, according to the invoices submitted by Ricova Services Inc. to Ville de Montréal, the company claimed that it was meeting its recyclables marketing obligations by selling all the recyclables to Ricova International Inc. It is therefore the selling price of the recyclables obtained from Ricova International Inc. that Services Ricova Inc. declares to the City for the purpose of sharing revenue or loss from sales. However, as shown in section 3.3, the investigation revealed that the above price reported by Ricova Services Inc. was consistently lower than the price actually obtained by Ricova International Inc. from the purchasers of the recyclables. The difference between the two prices was due to the fact that Ricova International Inc. would keep an amount of about \$20/tonne, which was in breach of the Lachine and St-Michel contracts. For the St-Michel Contract alone, and for the period reviewed only, from August 2020 to July 2021 inclusively, this average minimum deduction of \$20/tonne was equivalent to a total of about \$1,150,000.

3.1 Control exercised by Dominic Colubriale over the various Ricova entities

Before discussing the findings related to the performance of the Lachine and St-Michel contracts, it is important provide some context for all the entities bearing the name “Ricova.” These entities are shown in the following chart:



Among all of these entities, the four main ones for the purposes of the present matter are:

- Ricova Lachine Inc. and Ricova RSC Inc., the companies that carries out the recyclables sorting obligations for the Lachine and St-Michel contracts, as further detailed in Section 3.2 below;
- Ricova International Inc., the company that performs the marketing obligations for the sorted recyclables for the purposes of the two Lachine and St-Michel contracts, as further detailed in sections 3.2 and 3.3 below; and
- Ricova Services Inc., the company that is officially Ville de Montréal's co-contractor for the Lachine and St-Michel contracts.

As can be seen from the organizational chart, Dominic Colubriale is CEO, director and shareholder, directly or indirectly, of all the Ricova companies. This control exercised by Dominic Colubriale is not only theoretical but in practice as well. When he was met by the Office of Inspector General's investigating officers, Mr. Colubriale described himself as being very involved in the day-to-day operations of the various entities and believed that he had good control over them.

When asked about the entities' activities, Mr. Colubriale was able to describe in detail their operations, costs (e.g. number of weekly visits by cleaning staff at the recycling centres), past or current contractual issues (e.g. rescinding of the Ricova Services Inc. contract in the Côte-des-Neiges–Notre-Dame-de-Grâce borough, or the dispute with another company in the Eastern Townships), as well as sales agreements for different sorted recyclables with various purchasers from various countries and changes in prices and costs over time and transactions.

As more fully described below, Dominic Colubriale mentioned that he was very involved in the sales of recyclables to the point where he described himself as his own sales manager for Ricova International Inc. In addition, he said that he would review various invoices, including those for revenue or loss sharing, before they were sent to Ville de Montréal.

Mr. Colubriale also told investigating officers that his business plan was to make Ricova the most integrated company at all the stages of recyclables management, including collection (Ricova Services Inc.), separation (Ricova Lachine Inc. and Ricova RSC Inc.), marketing and shipping once all the recyclables had been sorted (Ricova International Inc.). Ricova Leasing Inc. owns the trucks required for the entities' operations.

In this respect, it should be noted that Dominic Colubriale always used "we" when referring to the various entities bearing the name "Ricova." He referred to the various entities indiscriminately, as if they formed a whole.

According to Mr. Colubriale, the address in Brossard is the location of the head office for all the companies. The employees located in Brossard work for all the companies.

Lastly, when Dominic Colubriale was asked why there were no taxes on invoices issued by Ricova Services Inc. to Ricova International Inc., his lawyer replied that as closely related corporations, the entities were exempt from GST and QST.

In short, the Inspector General noted from the preceding that Dominic Colubriale controlled and personally managed in an integrated manner the four companies assigned to carry out the various obligations of the Lachine and St-Michel contracts, namely Ricova Lachine Inc., Ricova RSC Inc., Ricova International Inc. and Ricova Services Inc.

3.2 Obligations to receive, sort, process, market and sell recyclables and their performance by the entities controlled by Dominic Colubriale

The Lachine and St-Michel contracts imposed a number of obligations on the winning bidder in connection with the recyclables collected in the city, including the following:

- Receiving, sorting and processing the recyclables brought to the sorting centres;
- Marketing and sale of sorted recyclable materials;
- Sharing of revenue or losses resulting from the sale of sorted recyclables.

The first two categories of obligations will be addressed in this section, while the third category will be covered in section 3.3.

3.2.1 Obligations of the winning bidder under the Lachine and St-Michel contracts

According to the clauses in the Lachine contract³ and the St-Michel contract⁴, once the recyclables were received, sorted and processed, the winning bidder was responsible for the marketing and sale of the sorted recyclables.

Marketing is an essential obligation of the Lachine and St-Michel contracts, being specifically indicated in the title of this second contract (“2020-2024 recyclables sorting and marketing service”).

In addition, the winning bidder and its subcontractors have other obligations of a public order nature under the *Act Respecting Contracting by Public Bodies*. In fact, under section 21.17 of that Act, any company wishing to enter into a public contract or a subcontract that involves an expenditure from a public body of more than \$1 million must hold an authorization to contract issued by the Autorité des marchés publics.⁵

The Lachine and St-Michel contracts are both public services contracts involving an expenditure of over \$1 million for Ville de Montréal. As such, an authorization to contract is required.

Lastly, according to the third paragraph of section 21.18 of the *Act Respecting Contracting by Public Bodies*, such an authorization must be maintained during the entire performance of the public contract. Note that this requirement was also included in the St-Michel contract through clause 10.16.01 of the Contract.

3.2.2 Method of performing the obligations according to the invoices submitted by Ricova Services Inc. to Ville de Montréal

Since the assignment of the contracts at the end of the aforementioned court order in July 2020, Ricova Services Inc. had been invoicing Ville de Montréal for all the obligations to be

³ Sections 6.1.3.1 and 6.1.12.1 of the general administrative clauses and sect. 1.3.1 and 5.1.1 of the technical operating specifications.

⁴ Sect. 2.1, 4 and 4.2 of the technical specifications.

⁵ Section 21.17 of the Act applies to municipal contracts, including those of Ville de Montréal, by reference to section 573.3.3 of the *Cities and Towns Act*.

performed at the end of the Lachine and St-Michel contracts, including the processing and marketing of the sorted recyclables.

The invoices for the sale of recyclables that were submitted to Ville de Montréal as supporting documents consisted of invoices issued by Ricova Services Inc. to Ricova International Inc.

3.2.3 Method of performing the obligations based on the facts revealed by the investigation

As the next sections will show, the facts revealed by the investigation show instead that the obligations to receive, sort and process the recyclables were performed by Ricova Lachine Inc. and Ricova RSC Inc., whereas the marketing and sale of the sorted recyclables was handled by Ricova International Inc.

3.2.3.1 Receipt, sorting and processing of recyclables by entities controlled by Dominic Colubriale as revealed by the investigation

Several elements show that the obligations involving the receipt, sorting and processing of the recyclables were performed by Ricova Lachine Inc. and Ricova RSC Inc.

First, there were the statements made by Dominic Colubriale himself to the Office of Inspector General's investigating officers when he told them that:

- Ricova Lachine Inc. and Ricova RSC Inc. were created to operate the Lachine and St-Michel sorting centres, respectively;
- The invoices issued to Ville de Montréal were sent through Ricova Services Inc. only since this entity was the only one to have an authorization to contract issued by the Autorité des marchés publics at the Lachine and St-Michel contracts were assigned.

This was backed by the Lachine and St-Michel sorting centre managers, who told investigating officers that they were employees of Ricova Lachine Inc. and Ricova RSC Inc., respectively.

These statements are corroborated by documentary evidence gathered during the course of the investigation. In fact, as will be covered in greater detail in section 3.2.3.2 below on the actual performance of the obligations to market and sell the recyclables, Ricova International Inc. issued its purchase orders for sorted recyclables to the attention of Ricova Lachine Inc. and Ricova RSC Inc., rather than Ricova Services Inc.

Similarly, when the glass processed at the Lachine and St-Michel sorting centres is sent to landfills, the landfills also make out their invoices to Ricova Lachine Inc. and Ricova RSC Inc.

Finally, it should be noted that neither Ricova Lachine Inc. nor Ricova RSC Inc. had an authorization to contract when the Lachine and St-Michel contracts were assigned in July 2020. Since then, Ricova RSC Inc. was granted an authorization to contract in late July 2021. However, Ricova Lachine Inc. still does not have one.

3.2.3.2 *Performance of marketing and sale of recyclables by the entities controlled by Dominic Colubriale as revealed by the investigation*

Regarding the marketing and sales obligations for the sorted recyclables under the Lachine and St-Michel contracts, the investigation revealed that they were carried out by Ricova International Inc.

In fact, all the recyclables processed at the sorting centres were marketed and sold to third parties by Ricova International Inc., including recyclables that had to be sold exclusively to a specific buyer, such as coffee pods to Nespresso or refundable cans to Tomra. The only exception was glass, which, as mentioned above, was not recycled and went directly through Ricova Lachine Inc. or Ricova RSC Inc. and the landfill site.

This finding is based on three separate categories of evidence, namely:

- Statements made by Dominic Colubriale;
- Statements made by the Lachine and St-Michel sorting centre managers, respectively, employees of Ricova Lachine Inc. and Ricova RSC Inc.
- All the documentation obtained during the investigation relating to marketing (e.g. purchase orders, invoices, electronic correspondence).

Lastly, it should be noted that Ricova International Inc. did not have an authorization to contract from the Autorité des marchés publics.

(i) Statements made by Dominic Colubriale

When met by the Office of Inspector General's investigating officers, Dominic Colubriale himself claimed that marketing was handled by Ricova International Inc. for all the sorted recyclables at the Lachine and St-Michel centres, with the exception of glass.

In fact, he claimed that all the recyclables sorted by the Lachine and St-Michel sorting centres were marketed by Ricova International Inc., including recyclables that were to be sold exclusively to a specific buyer (e.g. coffee pods to Nespresso or returnable cans to Tomra), as this is how the entities he controls were structured.

Dominic Colubriale then explained to investigating officers how the marketing process works, while showing his personal involvement in the process. Marketing is handled by employees at an office in Colombia who concluded sales with various buyers for the sorted recyclables, including those from the Lachine and St-Michel sorting centres. The Colombia office reports to an employee in Brossard, who in turn reports to Dominic Colubriale.

According to Dominic Colubriale, there is a daily conference call which the sales reps at the Colombian office took part in. The sales reps then discuss market conditions and the prices obtained for the various sorted recyclables, including those from the Lachine and St-Michel sorting centres.

Dominic Colubriale told investigating officers that he would take part in these conference calls himself most of the time, which he estimated at about 75%. Even though he is no longer closing sales himself, he said that he is very involved in sales and that he doesn't need a sales manager because, as he said, he was the sales manager.

For fibrous recyclables (paper, cardboard), the Colombia office employees are also responsible for making the required bookings for marine cargo and delivering the recyclables to buyers, who are mainly located in Asia.

For recyclables intended for international export, Dominic Colubriale estimated that virtually all of the time, Ricova International Inc. would handle their transportation to the port.

If the recyclables are purchased by a North American customer, Dominic Colubriale believed that Ricova International Inc. would still be primarily in charge of the process. However, in some other cases, the buyer would pick up the recyclables at its own expense at the sorting centres.

As for the coffee pods to be sold exclusively to Nespresso, the latter would pick them up at the Lachine and St-Michel sorting centres.

Regarding the involvement of the companies operating the sorting centres, namely Ricova Lachine Inc. and Ricova RSC Inc., Dominic Colubriale said that they are not involved in marketing. Instead, their role is executed by the Lachine and St-Michel sorting centre managers, who must regularly send the available quantities of sorted recyclables to the employees at the Colombian office.

Dominic Colubriale indicated that Ricova RSC Inc. and Ricova Lachine Inc., not Ricova Services Inc., would invoice Ricova International Inc. for the recyclables. As mentioned in section 3.2.3.1 above, according to him, the only reason the invoices to Ville de Montréal are issued by Ricova Services Inc. was because this entity was the only one to hold an authorization to contract issued by the Autorité des marchés publics.

Dominic Colubriale also mentioned that transportation to the Port of Montreal or by land to a North American buyer is generally done at no cost to the Lachine and St-Michel sorting centres, since Ricova International Inc. is responsible for arranging and paying for the shipping of the sorted recyclables by entrusting it to Ricova Services Inc. or to third parties.

Lastly, Dominic Colubriale maintained that by taking over the Lachine contract as part of the assignment order, he believed that he would not make any money, but that at least he would keep the Ricova International Inc. recyclables market.

(ii) Statements made by the sorting centre managers

For their part, the Lachine and St-Michel sorting centre managers provided a version of the facts that corroborated that of Dominic Colubriale. They told the Office of Inspector General's investigating officers that their role is to inform Ricova International Inc. of the quantities of recyclables that are available for the coming week, and then prepare the shipment of the sorted recyclables according to the terms provided by Ricova International Inc.

For example, according to a first sorting centre manager, he would send an email to sales stating his forecasts for the coming week, both in terms of available quantities and type of sorted recyclables. To his knowledge, part of the sales team is in Québec and the rest is in Colombia.

Still according to this first sorting centre manager, a sales team employee would also handle the logistics for the subsequent shipping of the recyclables. That sales employee would forward the booking documentation to a sorting centre employee. Finally, an employee on the sorting centre manager's team would notify him of the number of containers required to ship the recyclables, which would then be picked up by a carrier.

The second sorting centre manager stated that the sorting centre is not aware of or involved in the sale of the recyclables. Each day, an inventory count of the sorted recyclables ready for shipment would be sent to the sales team in charge of finding buyers. This second sorting centre manager confirmed that it was Ricova International Inc. that dealt with Nespresso or Tomra for the recyclables that were to be sold exclusively to them.

The second sorting centre manager stated that part of the sales team is located in Brossard and the other part in Colombia. However, he was unable to say who was working where.

Once the sale was closed by Ricova International Inc., the second sorting centre manager would receive from Ricova International employees all the documentation required for the sale and shipment of materials (e.g. purchase orders, port reservation numbers).

The sorting centre team then had to make sure to book the number of containers required to ship the recyclables.

Lastly, a truck would arrive to pick up the recyclables. The shipping of the recyclables for export (paper and paperboard) is organized by Ricova International Inc., while the shipping of the recyclables sold locally would differ according to each contract. This entire part would be handled by Ricova International Inc.'s logistics team.

(iii) Documentation obtained during the investigation

As mentioned at the beginning of this section, the Office of Inspector General obtained from Ricova Services Inc. and Ricova International Inc. written communications related to the marketing and organization of the shipping of the recyclables, along with the sale and shipping invoices for the recyclables.

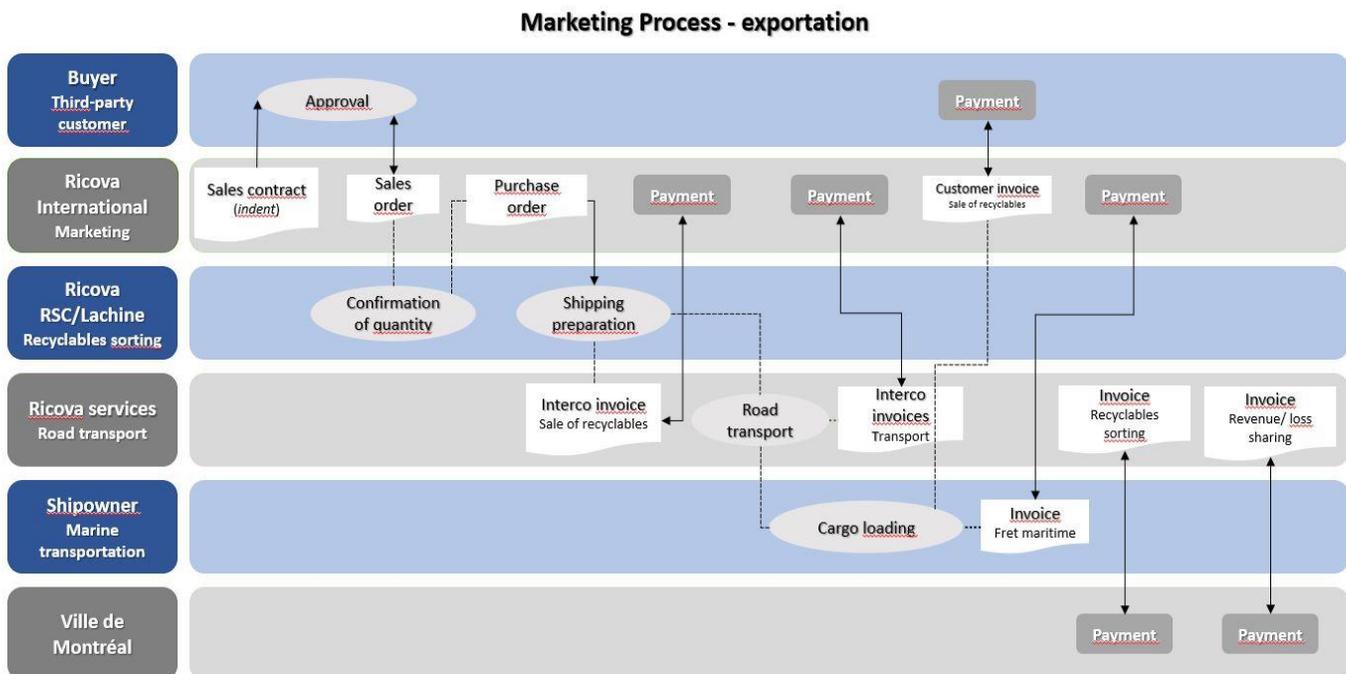
Based on the analysis of the documentation that was obtained, the typical performance of the marketing and sale by Ricova International Inc. would occur based on whether the recyclables were sold to a North American or international buyer (mainly in Asia):

Performance of marketing and sale of recyclables by entities controlled by Dominic Colubriale		
	Export of recyclables	Domestic sale of recyclables
1	<p>Ricova International Inc. would close a sale and issue a sales agreement to an international buyer specifying:</p> <ul style="list-style-type: none"> Quantity of recyclables (e.g. 80 containers total); Type of recyclables (e.g., mixed paper); Unit price (e.g. US\$125/tonne); Location of delivery (e.g., port in India). 	<p>The buyer sends an email to Ricova International Inc. stating the purchase instructions for the coming month, the purchase order number, and that a copy of the purchase contract would follow.</p> <p>It is stated that the selling price would be defined according to the market price for the month in question.</p>
2	<p>The sales contract is sent out internally at Ricova International Inc. to create a sales order and to request that the required quantity of recyclables be reserved at the Montreal sorting centres.</p>	<p>A purchase contract is issued by the buyer to the attention of Ricova International Inc. specifying:</p> <ul style="list-style-type: none"> Quantity required (400 tonnes); Type of recyclables (e.g., post consumer cans);

Performance of marketing and sale of recyclables by entities controlled by Dominic Colubriale		
	Export of recyclables	Domestic sale of recyclables
		<ul style="list-style-type: none"> Unit price (e.g. \$424/tonne); Delivery location (e.g. Ontario plant).
3	<p>The Lachine and St-Michel sorting centre managers would send an email to the Ricova International Inc. sales team in Colombia specifying:</p> <ul style="list-style-type: none"> Quantities and type of recyclables available 	<p>No documentation through which the sorting centres notified the Ricova International Inc. team members in Colombia of the quantities and types of materials available for this transaction was provided for this transaction.</p>
4	<p>A sales rep from Ricova International Inc. issues a purchase order made out to Ricova Lachine Inc. or Ricova RSC Inc. (depending on the available and required recyclables) specifying:</p> <ul style="list-style-type: none"> Quantity of recyclables (e.g., 10 containers); Type of recyclables (e.g., mixed paper); Unit price (e.g. \$50/tonne). <p>There is no discussion between Ricova Services Inc. and Ricova International Inc. regarding the selling price. This selling price was consistently lower than that obtained by Ricova International Inc. from the buyer.</p>	<p>A sales rep from Ricova International Inc. sends a purchase order to the attention of Ricova Lachine Inc. or Ricova RSC Inc. specifying:</p> <ul style="list-style-type: none"> Quantity of recyclables (e.g. 24.94 metric tonnes); Type of recyclables (e.g. tin cans); Unit price (e.g. \$350/tonne). <p>There is no discussion between Ricova Services Inc. and Ricova International Inc. regarding the selling price. This selling price is consistently lower than that obtained by Ricova International Inc. from the buyer.</p>
5	<p>A sales rep from Ricova International Inc. sends to the sorting centre manager all the documentation required for the shipment and freight of the recyclables (“booking instructions”). This documentation is produced by Ricova International Inc. to the attention of Ricova RSC Inc. or Ricova Lachine Inc., as the case may be.</p>	<p>A sales rep from Ricova International Inc. notifies an employee from Ricova Lachine Inc. or Ricova RSC Inc. of the date the recyclables were picked up by the carrier.</p>
6	<p>When the recyclables are shipped from the sorting centres to the Port of Montreal, Ricova Services Inc. issues a sales invoice to Ricova International Inc.</p> <p>The type of recyclables involved and their selling price is identical to what was predetermined on the purchase order previously issued by Ricova International Inc. to Ricova Lachine Inc. or Ricova RSC Inc.</p>	<p>When the recyclable materials are shipped from the sorting centres to the purchaser, Ricova Services Inc. issues a sales invoice to Ricova International Inc.</p> <p>The type of recyclable materials involved and their selling price is identical to what is predetermined on the purchase order previously issued by Ricova International Inc. to Ricova Lachine Inc. or Ricova RSC Inc.</p>
7	<p>After the containers are delivered to the Port of Montreal, Ricova Services Inc. issues an</p>	<p>The transport company issues an invoice to Ricova International Inc.</p>

Performance of marketing and sale of recyclables by entities controlled by Dominic Colubriale		
	Export of recyclables	Domestic sale of recyclables
	invoice to Ricova International Inc. for the road transport of these containers.	<i>Note: for some of the sales that were analyzed, there was no transportation invoice, either because the purchaser picked up the recyclables themselves at the sorting centre, or because Ricova Lachine Inc. or Ricova RSC Inc. paid the shipping costs.</i>
8	When the containers left the Port of Montreal, Ricova International Inc. issues a sales invoice to the buyer that now included freight-related information (booking number). The selling price is identical to what had been agreed in the sales agreement indicated in Step 1 (e.g. US\$125/tonne).	Ricova International Inc. issues a sales invoice to the buyer. The selling price is identical to what had been agreed in the purchase contract identified in Step 2 (e.g. \$424/tonne).
9	The marine charterer sent an invoice to Ricova International Inc. for the shipping of containers to the destination port agreed to in the initial sales agreement between Ricova International Inc. and the buyer (e.g. in India).	

The entire marketing and selling process for the sorted recyclables can be seen in the following diagram:



As shown in the table and diagram, an analysis of the documentation from Ricova Services Inc. and Ricova International Inc. revealed the following:

- i. With the exception of glass, which has no sale value and is transferred directly from Ricova Lachine Inc. or Ricova RSC Inc. to a landfill site, all the other recyclables are marketed and sold to local and international buyers by Ricova International Inc. This includes recyclable materials that have to be sold exclusively to a specific buyer (such as coffee pods to Nespresso and refundable cans to Tomra).
- ii. Ricova International Inc. does not take possession of the recyclables before they are marketed and sold. The recyclables remain at all times at the Lachine and St-Michel sorting centres operated by Ricova Lachine Inc. and Ricova RSC Inc.
- iii. To ship the sorted recyclables, Ricova International Inc. deals with charterers and carriers.
- iv. The pickup schedules for the sorted recyclables that were sold are provided to Ricova RSC Inc. and Ricova Lachine Inc. by Ricova International Inc.
- v. Employees of Ricova Lachine Inc. and Ricova RSC Inc. are not involved in setting the selling prices or in the sales agreements with buyers. The selling price is determined by Ricova International Inc. and the employees are only informed about it upon receiving the purchase orders from Ricova International Inc.
- vi. No invoices for the sale of sorted recyclables by Ricova Lachine Inc. or Ricova RSC Inc. to Ricova Services Inc. is obtained.
- vii. Ricova Services Inc. is not involved in the actual performance of the marketing, sales and shipping obligations, or in the obligations pertaining to the receipt, sorting and processing of the recyclables. The company is only involved in transporting recyclables from the sorting centres to certain domestic buyers or to the Port of Montreal (step 7 in the table) on behalf of Ricova International Inc., as well as the final invoicing of the sale of the sorted recyclables for the purpose of sharing sales revenues or losses with Ville de Montréal.
- viii. There is no discussion between Ricova Services Inc. and Ricova International Inc. regarding the selling price. This selling price is consistently lower than that obtained by Ricova International Inc. from the buyer.

3.2.4 Ricova Services Inc.'s response to the Notice

In response to the Notice sent to it that included all of the above facts, Ricova Services Inc. put forward the following arguments.

First, Ricova Services Inc. insisted on the fact that it was the sole co-contractor for Ville de Montréal and that it was not just a “billing company.” It had an authorization to contract issued by the Autorité des marchés publics and [TRANSLATION] “fulfills operational obligations through subcontracting agreements with Ricova RSC and Ricova Lachine, closely related companies, as allowed under the [Lachine and St-Michel contracts].”

Second, there is the issue of Ricova Lachine Inc. and Ricova RSC Inc. having to have an authorization to contract to perform said subcontracts. With respect to Ricova RSC Inc., Ricova Services Inc. responded that the latter company had diligently submitted its application for authorization on July 23, 2020, that it was finally issued the authorization on July 27, 2021, and that the delay in processing the application must likely have been due to

the health crisis. In so doing, Ricova Services Inc. concluded that *[TRANSLATION]* “under the circumstances, and in the context where the application for authorization was actually granted by the Autorité des marchés publics, we fail to see why Ricova Services should be blamed for outsourcing certain obligations to Ricova RSC, which was created specifically to handle certain activities related to the operation of the St-Michel centre.”

With respect to Ricova Lachine Inc., Ricova Services Inc. stated that the company had also applied for an authorization to contract. Although the application for authorization was still pending, Ricova Services Inc. argued that this could not be held against it since the Lachine contract was not in force and “will have no legal effect until the operating certificate is issued for this sorting centre.”

Lastly, with respect to Ricova International Inc., Ricova Services Inc. maintained that the company does not provide any marketing services to it and does not act as a broker on its behalf. On the contrary, as was the case when the Lachine and St-Michel contracts were performed by original winning bidders La Compagnie de recyclage de papiers MD inc. and Rebutis solides canadiens inc., Ricova International Inc. is simply a buyer of recyclables and does not take part in any way in the marketing obligations.

As such, Ricova Services Inc. also noted that the Notice states that the sales invoices for the recyclables were issued by Ricova Services Inc., *[TRANSLATION]* “which is consistent with the fact that this entity does in fact perform the obligations to market and sell the recyclables sorted at the St-Michel and Lachine centres. In addition, these invoices are issued to Ricova International, which is consistent with the fact that Ricova is the purchaser.”

3.2.5 Analysis and conclusion regarding the performance of the obligations to receive, sort, process, market and sell recyclables

After review and consideration in light of the evidence revealed by the investigation, the arguments put forward by Ricova Services Inc. cannot be accepted for the following reasons.

First, the Office of Inspector General asked to be provided with the two subcontracting agreements which, according to Ricova Services Inc.'s response to the Notice, it had entered into with Ricova Lachine Inc. and Ricova RSC Inc. However, Ricova Services Inc. indicated that said agreements "are not in writing." This means that three entities, all controlled and run by the same person, namely Dominic Colubriale, would have entered into a verbal agreement between them to perform contracts worth several million dollars, namely the Lachine and St-Michel contracts.

Second, even if it were to be accepted that Ricova Lachine Inc. and Ricova RSC Inc. were qualified as proper subcontractors of Ricova Services Inc., as the latter stated in its response to the Notice, Ricova Services Inc.'s position with respect to Ricova Lachine Inc. and Ricova RSC Inc. being required to have the authorization to contract is contrary to the applicable legislation and the content of the Lachine and St-Michel contracts. The fact remains that Ricova Lachine Inc. and Ricova RSC Inc. were required to have an authorization to contract on the date of execution of their subcontract:

21.18. An enterprise that enters into a contract with a public body or that enters into a public subcontract must hold an authorization on the date the contract or subcontract is entered into. In the case of a consortium, every enterprise in the consortium must hold an authorization on that date.

Moreover, an enterprise that responds to a call for tenders for a public contract or subcontract must hold an authorization on the date it submits its bid, unless the call for tenders specifies a different date which precedes the date the contract is entered into.

An authorization must be maintained throughout the contract or subcontract.⁶

However, it appears from Ricova Services Inc.'s response that Ricova RSC Inc. only obtained an authorization to contract in July 2021, even though in its response, Ricova Services Inc. admitted that Ricova RSC Inc. was created to assume the operation of the St-Michel sorting centre and that it has performed these obligations [TRANSLATION] "since the date of the assignment of the St-Michel contract to Ricova Services" in July 2020. The fact that an application was filed at the time Ricova RSC Inc. began to perform its obligations in July 2020 and that an authorization to contract was ultimately issued to it does not make it possible to retroactively remedy this breach.

The same conclusion applies even more to Ricova Lachine Inc., since it still has not obtained an authorization to contract. There are a number of problems with Ricova Services Inc.'s argument that the Lachine contract is not in force, thereby excusing the fact that Ricova Lachine Inc. did not have an authorization.

First of all, the Lachine contract is in effect. Note that said contract involved two separate parts, namely, one involving the construction of the sorting centre and the other its operation, with the operating certificate issued by Ville de Montréal constituting the crux of the matter.

⁶ *Act Respecting Contracting by Public Bodies.*

Although the certificate in question still has not been issued as of the date of this report, the Lachine contract is nonetheless in effect.

Moreover, the investigation reveals that since August 2020, Ricova Lachine Inc. operates the Lachine sorting centre, whereas from that date until a notice of default was served by Ville de Montréal in July 2021, Ricova Services Inc. was invoicing and receiving payment from Ville de Montréal for its services, at the unit price indicated in the Lachine contract. In addition, in a letter dated November 17, 2020, Ricova Services Inc. asks Ville de Montréal that the provisional acceptance be accepted retroactively to August 1, 2020.

Lastly, even if the operation of the sorting centre by Ricova Lachine Inc. for nearly 20 months is discounted, Ricova Services Inc.'s position does not meet the terms of section 21.18 above. In fact, it is the date the subcontract is entered into that matters, not the date of its commencement. However, it would appear from Ricova Services Inc.'s response to the Notice that the company maintains that these subcontracting agreements were entered into since the legal assignment of the Lachine and St-Michel contracts in July 2020.

Therefore, there was a failure to comply with the legislative obligations of having an authorization to contract.

With respect to the roles played by Ricova International Inc. and Ricova Services Inc. in the marketing and sale of the recyclables, Ricova Inc.'s position in its response to the Notice is contrary to the facts that were gathered showing how the two entities are actually run.

First, it is clear from the preceding, and as he told the investigating officers himself, that Dominic Colubriale controls all the entities involved in the performance of the obligations to receive, sort, process, market and sell the recyclables under the Lachine and St-Michel contracts. Similarly, he personally participate in their performance, describing himself on the one hand as his own sales manager for Ricova International Inc., and on the other, revising invoices issued by Ricova Services Inc. to Ville de Montréal.

Next, all the evidence that was gathered, whether consisting of the statements made by Dominic Colubriale himself, those of the two managers of the sorting centres operated by Ricova Lachine Inc. and Ricova RSC Inc., or the retrieved documentation, leads to the same determination: the marketing was being performed by Ricova International Inc.

The process is controlled from start to finish by the latter company and carried out in reverse order, namely, starting from the sale. In fact, it is this entity's sales reps, under the regular supervision of Dominic Colubriale, who claimed to attend 75% of their meetings, who would find buyers and recyclers, negotiate the prices and close sales to dispose of the recyclables from the sorting centres. Once the selling price has been established, Ricova International Inc. informs the sorting centres, i.e. Ricova Lachine Inc. and Ricova RSC Inc., not Ricova Services Inc., of the quantities required and the price it would pay them. No discussions were held on this second critical aspect.

This process is the same even for returnable materials, such as aluminum cans or Nespresso pods, which must be sold to certain entities. If Ricova Services Inc. were actually doing its own marketing as it claims in its response to the Notice, why would it not sell these recyclables directly to these designated entities rather than to Ricova International Inc.?

Instead, the evidence reveals that Ricova Services Inc. plays no role in the marketing and sale of recyclables. Ricova Services Inc. is not the one that found the buyers; Ricova International Inc. did. It is not Ricova Services Inc. who notifies Ricova International Inc. of the sorted recyclables that are ready to be shipped but Ricova Lachine Inc. and Ricova RSC Inc. It does not set or even negotiate the selling price of the recyclables with Ricova International Inc., but the latter was the one that set the price for Ricova Lachine Inc. and

Ricova RSC Inc. Ricova Services Inc. is only responsible for transporting the recyclables to the Port of Montreal or to certain domestic recyclers and then issuing invoices to Ricova International Inc. for that service, as well as for the sale of the recyclables, according to the terms imposed by the latter company to Ricova Lachine Inc. and Ricova RSC Inc.

In light of the preceding, the Inspector General is therefore unable to accept Ricova Services Inc.'s claim that it markets and sells the recyclables itself and that Ricova International Inc. is only a third party with respect to the Lachine and St-Michel contracts. Instead, the investigation revealed that it was Ricova International Inc. that has performed all these obligations since the assignment of the contracts, which, at the time of their award by Ville de Montréal, resulted in expenditures well in excess of \$1 million.

On Dominic Colubriale's own admission, his business plan consists in making Ricova the most integrated company at all stages of recyclables management. This was namely confirmed by the fact that he had told investigating officers that by taking over the Lachine contract as part of the transfer order, he believed that he would not make any money, but that he would at least maintain Ricova International Inc.'s recyclables market. This was also corroborated by all the evidence mentioned above on how these closely related companies operated.

Lastly, Ricova Services Inc.'s argument must also be rejected that the way it operates with Ricova International Inc. is the same way it used to operate with La Compagnie de recyclage de papiers MD inc. and Rebutis solides canadiens inc., or with other sorting centre operators other than Lachine and St-Michel. In addition to arguing for others by describing a business situation of another entity whose separate nature it was seeking to prove, Ricova Services Inc.'s claim failed to consider two key distinctions. Unlike Ricova Services Inc, these other sorting centre operators were still able to choose whether or not to sell their recyclables to Ricova International Inc. and negotiate the transaction price, where applicable.

In short, the Inspector General concludes that Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. are involved in the performance of the Lachine and St-Michel contracts without having the required authorization to contract at the appropriate time, in violation of the relevant provision of the *Act Respecting Contracting by Public Bodies*. Furthermore, the latter two entities still do not have it. With respect to Ricova International Inc.'s participation in the marketing and sale of the recyclables, this has an additional consequence in terms of the obligation to share the revenues or losses of the Lachine and St-Michel contracts, which will be discussed in the next section.

3.3 Obligation to share revenues or losses and its performance by the entities controlled by Dominic Colubriale

As mentioned in Section 2.1, the policy adopted by China in 2018 to limit access to its market for recyclables sorted abroad created significant problems not only for Ville de Montréal but also for all Québec sorting centres.

For its part, Ville de Montréal had included in the Lachine and St-Michel contracts a clause whereby it wanted to partly temper the possible variations in the sale prices by participating in the sale of the recyclables by namely assuming a share of the potential losses. The application of this clause will be the subject of this section.

3.3.1 **Winning bidder's obligation under the Lachine and St-Michel contracts**

The Lachine and St-Michel contracts states that the winning bidder receives two separate sources of remuneration:

- an amount to process the recyclable materials, calculated based on a unit price per tonne of sorted recyclables; and
- an amount from the sale of the sorted recyclables, all of which was subject to a revenue or loss sharing agreement with Ville de Montréal based on the prices obtained by the buyers's winning bidder.

The Lachine contract provides a unit price for the processing of recyclable materials of \$7.07/tonne on the date the operating certificate is issued, which was the price submitted by La Compagnie de recyclage de papiers MD inc. in response to call for tenders 17-5849, indexed according to the contract indexing formula.

The St-Michel contract provides for a unit price for the processing of recyclable materials of \$120/tonne, which was the price submitted by Rebutis Solides Canadiens inc. in response to call for tenders 19-17343, indexed according to the contract indexing formula.

With respect to the clause on the sharing of sales revenues or losses, it differs in its terms between the Lachine and St-Michel contracts.

3.3.1.1 *Lachine Contract*

According to the Lachine contract⁷, given the term of the contract and the possible variation in the selling price of the recyclables, Ville de Montréal agreed to pay additional compensation to the winning bidder if the average monthly selling price received by the winning bidder is below a threshold price. Conversely, if the average selling price obtained by the winning bidder exceeds this threshold price, the winning bidder agreed to give Ville de Montréal a monthly rebate.

The monthly compensation to be paid by Ville de Montréal in the event of a decrease in revenues from the sale of the recyclable materials is carried out according to the following terms:

- The compensation threshold price was set at \$95/tonne on the date the operating certificate was issued and is indexed annually to the CPI.
- The additional monthly unit amount of compensation paid by Ville de Montréal is equal to 50% of the difference between this threshold compensation price and the average selling price obtained by the winning bidder, multiplied by the tonnes sold during the month. For example:

Sale: 100 tonnes at \$80/tonne for a total of \$8,000
 Compensation threshold: \$95/tonne
 Difference with compensation threshold price: \$15/tonne
 Compensation payable by Ville de Montréal: \$750 or 50% of \$15/tonne multiplied by 100 tonnes sold

- Recyc-Québec, a Québec government-owned corporation, publishes a monthly average overall index of the selling prices obtained by participating sorting centres

⁷ Articles 6.5.2 and foll. and 6.5.3 and foll. of the general administrative clauses.

in Québec. If the average selling price obtained by the winning bidder is less than the average overall index published by Recyc-Québec, the latter amount is used to calculate the additional unit amount.

- The additional cumulative amounts payable by Ville de Montréal for the term of the Lachine contract were capped at \$1,500,000.

The monthly rebate to be paid by the winning bidder in the event of an increase in revenues from the sale of recyclables is based on the following terms:

- The monthly unit rebate threshold price was set at \$105/tonne on the date the operating certificate was issued and is indexed annually to the CPI.
- The monthly discount is equal to 100% of the difference between the average selling price obtained by the winning bidder and the threshold price of the unit rebate, multiplied by the tonnes sold during the month. For example:

Sale: 100 tonnes at \$120/tonne for a total of \$12,000

Rebate threshold: \$105/tonne

Difference with rebate threshold price: \$15/tonne

Rebate to be paid to Ville de Montréal: \$1,500, or 100% of \$15/tonne, multiplied by 100 tonnes sold

- The rebate is reduced to 50% of the above difference when the aggregate of the monthly rebates paid by the contractor equals the total amount of the compensation paid to Ville de Montréal. In other words, if Ville de Montréal had already paid the contractor \$100,000 to compensate for the drop in sales revenues, the contractor would share 100% of the revenues above the \$105/tonne threshold until it had repaid said amount, and then 50% of the excess revenue thereafter.

It should be noted, for the rest of the present case, that the unit price for recyclables processing of \$7.07/tonne namely included the costs associated with marketing the sorted recyclables, because, according to clauses 1.2.4.1 and 6.1.12.1 of the general administrative clauses and clause 5.1.4 of the technical operating specifications for the Lachine contract, the winning bidder is required to, respectively:

- *[TRANSLATION]* “Include in its prices (unit and lump sum) all taxes, including customs duties, except for GST and QST, which had to be claimed separately.”
- “Carry out and manage the marketing and sale as well as shipping (including transportation, handling, customs, etc.) of the sorted recyclable materials at no cost to Ville de Montréal, in compliance with all associated obligations, including those related to quality, the geographic destination and the use of the sorted recyclables in accordance with the specifications and the maximization of revenues for the payment of a rebate to Ville de Montréal in accordance with clause 6.5.2.”
- Include in its unit processing cost per tonne “the costs for marketing the sorted recyclables.”

3.3.1.2 St-Michel contract

According to the St-Michel contract⁸, given the term of the contract and the possible variation in the selling price of the recyclable materials, Ville de Montréal wanted to benefit from the sale of the recyclables it was supplying and assume a share of the losses associated with the sales according to the following scenarios:

- If the average selling price obtained by the winning bidder is below the threshold price of \$40/tonne, Ville de Montréal will pay it 100% of the difference between said average selling price obtained and the threshold price. For example:

Sale: 100 tonnes at \$30/tonne for a total of \$3,000
 Compensation threshold: \$40/tonne
 Difference with compensation threshold price: \$10/tonne
 Compensation payable by Ville de Montréal: \$1,000 or 100% of \$10/tonne multiplied by 100 tonnes sold

- If the average selling price obtained by the winning bidder is above the threshold price of \$40/tonne, but below the threshold price for the sharing of high revenues of \$105/tonne, the winning bidder pays Ville de Montréal 75% of the difference between the average selling price that was obtained and the threshold price. For example:

Sale: 100 tonnes at \$50/tonne for a total of \$5,000
 Rebate threshold: \$40/tonne
 Difference with rebate threshold price: \$10/tonne
 Rebate to be paid to Ville de Montréal: \$750, or 75% of \$10/tonne, multiplied by 100 tonnes sold

- If the average selling price obtained by the winning bidder is above the threshold price for the sharing of high revenues of \$105/tonne, the winning bidder pays Ville de Montréal 75% of the difference between the average selling price obtained and the revenue sharing threshold price of \$40/tonne, followed by an additional 15% of the difference in the monthly selling price obtained in excess of the threshold price for the sharing of high revenues of \$105/tonne. For example:

Sale: 100 tonnes at \$120/tonne for a total of \$12,000
 Rebate threshold: \$40/tonne
 High rebate threshold: \$105/tonne
 Difference with rebate threshold price: \$80/tonne
 Difference with high rebate threshold price: \$15/tonne
 Rebate to be paid to Ville de Montréal: \$6,225, or 75% of the difference with the rebate threshold (\$80/tonne), 15% of the difference with the high rebate threshold (\$15/tonne), multiplied by 100 tonnes sold

- The threshold prices are indexed to the CPI.

Similar to the Lachine contract, the St-Michel contract⁹ provided that *[TRANSLATION]* “the marketing fees for sorted recyclables must be included in the per-unit processing price per tonne provided by the winning bidder in the price schedule,” namely, the price of \$120/tonne submitted by Rebut Solides Canadiens inc. in response to call for tenders 19-17343 and indexed since the award of the St-Michel contract.

⁸ Clause 4.2.1 of the technical specifications.

⁹ Clause 4.2 of the technical specifications.

3.3.2 Method of performing the obligation based on the invoices submitted by Ricova Services Inc. to Ville de Montréal

In addition to an invoice for the processing of recyclable materials, Ricova Services Inc. submits the following billing documents to Ville de Montréal each month for the sharing of revenues or losses for the Lachine and St-Michel contracts:

- i. Supporting documentation for the sale of sorted recyclables:
 - Various sales invoices for sorted recyclable materials issued by Ricova Services Inc. to Ricova International Inc.;
 - Various invoices from the glass landfill site and various glass shipping invoices from a private transportation company;
- ii. Excel file compiling each shipment from the Lachine and St-Michel sorting centres;
- iii. Excel file showing a calculation table for the average selling price in view of revenue or loss sharing;
- iv. Excel file showing a calculation table for revenue or loss sharing;
- v. An invoice or credit note from Ricova Services Inc. to Ville de Montréal showing the total amount of revenue or loss sharing for the month.

According to the above billing documents, Ricova Services Inc. sells all the recyclables from the Lachine and St-Michel sorting centres to Ricova International Inc., except for glass, which was sent to the landfill, as mentioned in section 3.2.

The sales invoices for the sorted recyclable materials mentioned in “i.” are those that were identified in Step 6 in the table in section 3.2.3.2, namely, those that are issued by Ricova Services Inc. on the same day that the recyclables were shipped from the sorting centres. The unit selling price shown is the one which Ricova International Inc. required Ricova RSC Inc. and Ricova Lachine Inc. to use when it issued its purchase order in Step 4 of the table.

The average selling price was calculated by Ricova Services Inc. by dividing the total monthly sales revenues by the total tonnes of recyclables sold. The sales revenues were calculated using the selling prices reported by Ricova Services Inc.

The resulting monthly average selling price is then used in accordance with the formulas set out in the Lachine and St-Michel contracts to determine whether Ville de Montréal would compensate Ricova Services Inc. or vice versa.

It should be noted that revenue or loss sharing has not begun for the Lachine contract. In accordance with clauses 6.5.2.3 and 6.5.3.3 of the general administrative clauses, such sharing is to occur after the operating certificate was issued, which has not taken place as of the date hereof.

However, since the court order for the legal assignment of the Lachine contract, Ricova Services Inc. had sent Ville de Montréal, for each past month, the documentation required for the sharing of sales revenues or losses.

In a letter dated November 17, 2020, Ricova Services Inc. asked Ville de Montréal for a retroactive provisional acceptance on August 1, 2020, which would result in the sharing of sales revenues or losses retroactively on that date.

3.3.3 Method of performing this obligation by the entities controlled by Dominic Colubriale according to the facts revealed by the investigation

The investigation revealed that, following the performance of the obligation to share the revenues or losses from the sale of recyclables by the entities controlled by Dominic Colubriale, said entities indirectly bill Ville de Montréal a minimum amount of about \$20/tonne in each of the Lachine and St-Michel contracts. Described by Dominic Colubriale as being marketing service fees for the recyclables or Ricova International Inc.'s gross profit, the company subtracts this amount from the selling price it obtained from the purchasers of the recyclables. Ricova International Inc. would then send only the balance to Ricova Services Inc. for the purpose of revenue or loss sharing with Ville de Montréal.

This finding is based on two separate categories of evidence, namely:

- Comments made by Dominic Colubriale, and
- All the documentation obtained during the investigation relating to the marketing and sale of the recyclables (e.g. purchase orders, invoices, electronic correspondence).

3.3.3.1 Statements made by Dominic Colubriale

When met by the Office of Inspector General's investigating officers, Dominic Colubriale acknowledged that the selling price that Ricova International Inc. would obtain from various buyers for the sorted recyclables from the Lachine and St-Michel sorting centres is higher than the price submitted by Ricova Services Inc. to Ville de Montréal for the sharing of revenues or losses from the sale of the recyclables.

Dominic Colubriale explained that the selling price reported by Ricova Services Inc. to Ville de Montréal is established in reverse order, starting from the selling price obtained by Ricova International Inc. and by deducting various items. He states that this calculation is generally done as follows, while costing some of the items himself:

- i. The material is sold by Ricova International Inc., for example, at \$200/tonne.
- ii. Transportation costs, e.g. \$50/tonne, are subtracted, which left \$150/tonne.
- iii. Administrative, inspection, insurance and other costs, e.g. \$30/tonne, are deducted, which resulted in \$120/tonne.
- iv. Ricova International Inc. keeps \$20/tonne on average for its services.
- v. The selling price that is therefore reported to Ville de Montréal by Ricova Services Inc. for the sharing of sales revenues or losses is \$100/tonne.

With respect to the last average amount of \$20/tonne, Dominic Colubriale alternately qualifies it as a service cost, service charge or gross profit that Ricova International Inc. would keep.

According to Dominic Colubriale, this average amount of \$20/tonne is justified because of the integrated service that the entities he controls provide to Ville de Montréal, the selling prices and transportation costs for the recyclable materials that Ricova International Inc. manages to negotiate, as well as because of the various financial risks it assumes, including a drop in the current market price of recyclables and the potential refusal by buyers to take possession of the goods once the containers reach their destination.

Dominic Colubriale explained that in the past, when the Lachine and St-Michel contracts were performed by La Compagnie de recyclage de papiers MD inc. and Rebutts Solides Canadiens inc., he could make a profit of \$50/tonne or \$60/tonne.

However, when he took over the Lachine and St-Michel contracts, Dominic Colubriale said that he wanted to avoid conflicts of interest with Ville de Montréal given that the same company was now producing the recyclables and selling them to buyers. To avoid problems while ensuring a “consistent” and “fair” profit, he decided to only keep reasonable profits, i.e. about \$20/tonne.

According to Dominic Colubriale, during the first three months of the performance of the Lachine and St-Michel contracts, Ricova International Inc. kept about \$30/tonne on sales of plastic recyclables and about \$20/tonne on sales of fibrous recyclables. However, he felt that it was too complicated to make such a distinction based on the type of recyclables sold and therefore determined that the amount would be \$20/tonne for all the sold recyclables.

According to Dominic Colubriale, this amount may have varied according to the various sales and would sometimes be \$13/tonne and other times \$23/tonne. However, he mentioned that he told his employees that they had to make sure that by the end of the month the amount would be around \$20/tonne.

3.3.3.2 Documentation obtained during the investigation

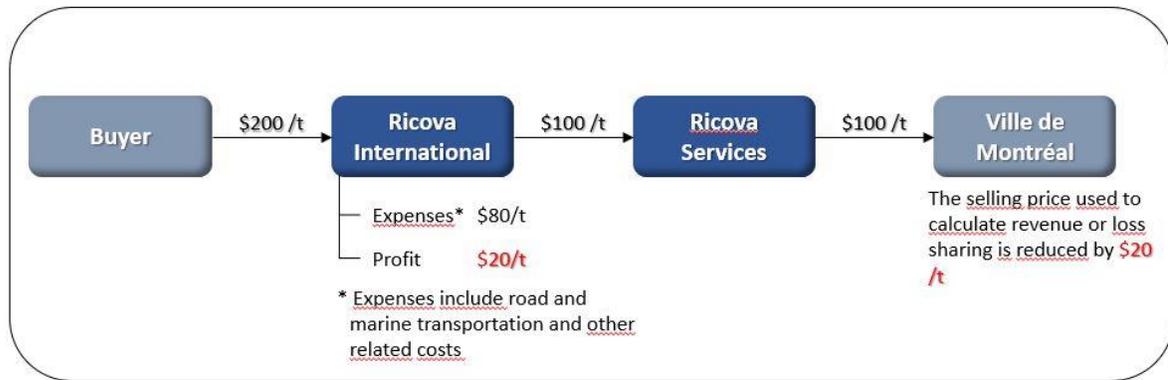
As mentioned in section 3.2.3, the Office of Inspector General obtained from Ricova Services Inc. and Ricova International Inc. written communications relating to the marketing and organization of the transportation of goods, as well as Ricova International Inc.’s invoices to customers and the invoices from suppliers for the transportation of the recyclable materials, brokerage fees and other expenses for the months of August, October and November 2020 and March 2021 for virtually all the recyclable materials¹⁰ from the Lachine and St-Michel sorting centres.

Based on their analysis, the following average differences were noted between the selling price obtained by Ricova International Inc. and the one reported by Ricova Services Inc. for the purpose of sharing sales revenues or losses:

- For the performance of the Lachine contract, there was an average difference of more than \$85/tonne;
- For the performance of the St-Michel contract, there was an average difference of more than \$100/tonne.

In both cases, when the amounts on invoices other than those for the sale of recyclables (e.g. marine freight invoices, ground transportation, customs brokerage, brokerage) are subtracted from the selling price obtained by Ricova International Inc., this leaves an average amount of at least \$20/tonne on all the recyclables that were sold. This same determination is made for the recyclables that must be sold to a specific buyer (coffee pods to Nespresso and refundable cans to Tomra). All of the above can be summarized in the following diagram:

¹⁰ Namely, the following materials, according to the item nomenclature and numbers found on Ricova Services Inc.’s invoices: Aluminum Cans (item no. 00003), Nespresso (item no. 70003), Fibres (item no. 00070, 00167, 00168 – 00169, 00170), HDPE MIX (item no. 00117), Metal Bales (item no. 00219), Bulk Metal (item no. 00149), and PET Bottle Bales (item no. 00174).



Thus, an analysis of the documentation that was obtained corroborates Dominic Colubriale's statements regarding the minimum amount of roughly \$20/tonne kept by Ricova International Inc. before the amount of sales reported by Ricova Services Inc. to Ville de Montréal for the purpose of sharing sales revenues or losses.

Considering the quantities of recyclables shipped from the St-Michel sorting centre and by applying the revenue/loss sharing formulas in the St-Michel contract, this minimum average amount of \$20/tonne is equivalent, for example, to a total of roughly \$99,600 for the month of March 2021 alone based on the invoices submitted by Ricova Services Inc. to Ville de Montréal. For the period of August 2020 through July 2021 that was analyzed, this amount corresponds to a total of approximately \$1,150,000.

Considering the quantities of recyclables shipped from the Lachine sorting centre and by applying the revenue/loss sharing formulas in the Lachine contract, this minimum average amount of \$20/tonne would be equivalent, for example, to a total of roughly \$60,500 for the month of March 2021 alone based on the invoices submitted by Ricova Services Inc. to Ville de Montréal.

3.3.4 Ricova Services Inc.'s response to the Notice

First, as mentioned in section 3.2.4 above, Ricova Services Inc. responded that it was solely responsible for fulfilling the marketing obligations by selling all the recyclables, except for glass, to Ricova International Inc. The latter company would acquire these recyclables, take ownership of them, and then resell them, along with the recyclables from several other sorting centres to its network of buyers. In doing so, Ricova International Inc. remains a third party under the Lachine and St-Michel contracts, and the revenue or loss sharing obligations therefore do not apply to it.

Second, Services Ricova Inc. noted that it "must fulfill its contractual obligations in good faith and must ensure that when it sells the materials to Ricova International, it does so at fair market value." In this respect, it maintained that "the price paid by Ricova International to Ricova Services for the various sorted recyclables under the terms of the Contracts is almost always higher than the average price for those recyclables published each month by Recyc-Québec. Thus, by obtaining a price that was higher than the average price for these same recyclables, Ricova Services would increase its revenue from their sale and thus also increase Ville de Montréal's share from the application of the profit-sharing clauses." Ricova Services Inc. produced an expert's report that it believed would support its claim that the prices at which the recyclables were sold to Ricova International were at or above their fair market value.

Third and last of all, Ricova Services Inc. was claiming that the amount of \$20/tonne which Ricova International Inc. would keep constitutes a “modest profit margin.” According to Ricova Services Inc., [TRANSLATION] “this does not mean that the \$20 amount is a marketing fee. Ricova International’s profit margin is derived from its business risk as a purchaser of recyclables. Ville de Montréal is not prejudiced in any way by the fact that Ricova International purchases these recyclables since the price it pays to Ricova Services is at least equal to their fair market value. Ricova Services could sell to buyers other than Ricova International, but then it would not get as good a selling price, which would not be to Ville de Montréal’s advantage.”

3.3.5 Analysis and conclusion regarding the performance of the obligation to share revenues and losses

First, with respect to the marketing obligation in the Lachine and St-Michel contracts, the fact that it was performed by Ricova Services Inc. cannot be accepted, whereas the evidence that was presented, in both section 3.2 and the present section, instead shows that Ricova International Inc. is fully responsible for this transaction.

As mentioned in section 3.2.3.2, this was even confirmed by Dominic Colubriale, the person who manages and controls the many Ricova entities. Furthermore, not only did Mr. Colubriale tell investigating officers that he considers the minimum amount of about \$20/tonne to be justified because of the integrated service that the entities he controlled provided to Ville de Montréal, but he added that he even reduced the amount from the initial \$50/tonne to avoid any conflicts of interest with Ville de Montréal since the same company was now operating the sorting centres and selling the materials.

The documentation gathered during the investigation corroborates and supports Dominic Colubriale’s statements regarding the minimum amount of about \$20/tonne that Ricova International Inc. would keep. The process for determining the price that Ricova Services Inc. was reporting to Ville de Montréal shows that said price was being imposed by Ricova International Inc. by working in reverse from the selling price it would obtain with the buyers.

In short, for all the above reasons, the Inspector General retains that Ricova International Inc. was responsible for performing the obligations to market and sell the recyclables under the Lachine and St-Michel contracts. In so doing, it is the selling price obtained by the latter that must be considered for the purposes of applying the clause on revenue and loss sharing.

To this end, the second argument put forward by Ricova Services Inc. maintaining that it obtains higher selling prices for recyclables than the Recyc-Québec average should not only be nuanced but it is also irrelevant for the rest of the analysis. On the one hand, the expert’s report submitted by Ricova Services Inc. is not as categorical as the latter would have liked, as it showed a performance that would vary according to the type of recyclables, the sorting centre and the given month.

Furthermore, even if the expert’s report were to conclude that the selling prices obtained by Ricova International Inc. is still above the Recyc-Québec average, that is not the issue here. Rather, what is under review is the average minimum amount of \$20/tonne that is being deducted by Ricova International Inc. before the sales amount reported by Ricova Services Inc. to Ville de Montréal for the purpose of sharing sales revenues or losses.

As mentioned in section 3.3.1, under the Lachine and St-Michel contracts, the marketing costs related to the sorted recyclables have to be included, where applicable, in the unit price for the processing of the recyclables. Deducting these costs when calculating revenue or loss sharing would result in Ville de Montréal being double-billed.

In its response to the Notice, Ricova Services Inc. would not qualify the \$20/tonne amount as a marketing fee, but instead considered it a “profit margin” which it viewed as “modest,” and which arose from “its business risk.” For his part, Dominic Colubriale, when speaking to investigating officers, would alternately refer to the amount as a service cost, a service fee or a gross profit. Based on Mr. Colubriale’s statements, it is an amount that he would adjust freely, stating that it was \$50-60/tonne before the Lachine and St-Michel contracts were transferred, and then \$20 to \$30/tonne depending on the recyclables, before being set at an average of \$20/tonne for all the recyclables.

It should be noted that the Lachine and St-Michel contracts are clear and referred to “revenues or losses” and not “profits” derived from the sale. As previously mentioned, the context was the disruption of the recycling market starting in 2018 and Ville de Montréal’s desire, expressed in the relevant clauses of the Lachine and St-Michel, to reduce the possible variations in the selling price of the recyclables by assuming a share of the potential losses.

It would therefore be incongruous, to say the least, to accept Ricova Services Inc.’s position that Ricova International Inc. could retain a share of the profits before sharing only what remaining of the profits with Ville de Montréal. Similarly, it is difficult to justify an interpretation that the Lachine and St-Michel contracts prohibit the deduction of marketing costs from the calculation of revenue or loss sharing, but allow for the deduction of a highly variable “profit margin” for Ricova International Inc.

In short, the Inspector General has concluded that this average minimum amount of \$20/tonne was unduly deducted from the selling price reported by Ricova Services Inc. to Ville de Montréal in view of sharing sales revenues or losses. As will be shown in the next section, this was done without Ville de Montréal’s knowledge, since to date, the latter never had all the documentation from Ricova International Inc. analyzed below.

4. By-law on contract management

Pursuant to subsection 573.3.1.2 of the Cities and Towns Act, Ville de Montréal adopted a by-law on contract management [Règlement sur la gestion contractuelle] (18-038) (hereinafter the “RGC”). Section 3 of the RGC provides that this by-law is deemed to be an integral part of all contracts entered into by Ville de Montréal, including all subcontracts directly or indirectly related to them. Under Section 35 of the RGC, this by-law applies to any tendering process and any contract, including those under way at the time of its adoption.

The RGC therefore applies to the Lachine and St-Michel contracts.

4.1 Violations of section 14 of the by-law on contract management

Section 14 of the RGC namely prohibits the commission of fraudulent acts or any other act that may affect the integrity of the performance of any Ville de Montréal contract or subcontract:

[TRANSLATION] “14. No one may, directly or indirectly, when preparing or submitting a bid, or as part of a mutual agreement contract or the performance of any Ville de Montréal contract, engage in or attempt to engage in fraud, fraudulent tactics or take part in or attempt to take part in any other act that may affect the integrity of the tendering process or selection of the co-contracting party by mutual agreement, or the performance of any contract.”

Under the law, fraudulent acts are a type of fraud in the form of [TRANSLATION] “trickery, clever or crude stratagems for the purpose of deception,” without necessarily being criminal offences.¹¹

Four (4) criteria must be met to prove a fraudulent act, namely that there was an error concerning a co-contractor, its decisive nature, the intent to deceive the other co-contractor, and the fact that the fraud originated from the latter or was known by him.¹²

Based on the above observations, the Inspector General believes that the investigation revealed that Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. and Ricova International Inc. are committing fraudulent acts by systematically deducting the average minimum amount of \$20/tonne prior to the selling price reported by Ricova Services Inc. to Ville de Montréal for the purpose of sharing sales revenues or losses.

First of all, Dominic Colubriale and the entities he controls were misleading Ville de Montréal by deducting this average minimum amount of \$20/tonne and depriving the City of said amount in the calculation of the sharing of revenues or losses from the sale of recyclables. While the fraudulent act is over in the case of the St-Michel contract, since the revenue/loss sharing invoices were already submitted and paid, this is an attempt in the case of the Lachine contract, because although the clause is not yet in force, Ricova Services Inc. has submitted the relevant invoice to Ville de Montréal and indicated its willingness, in a letter dated November 17, 2020, that the provisional acceptance, and therefore the coming into force of the sharing obligation, be retroactive to August 1, 2020.

This is obviously a determining factor to the extent that it deprives Ville de Montréal from considerable sums of money. Without establishing a definitive quantum, since this is not the role of the Office of Inspector General, an analysis of the documentation for March 2021 alone estimates the total to be approximately \$99,600 under the St-Michel contract and \$60,500 for the Lachine contract.

The intention to mislead can be seen in the statements made by Dominic Colubriale and set out in section 3.3.3.1. While bearing in mind the possibility of an apparent conflict of interest since the same company was now operating the sorting centres and purchasing the recyclables from them, Dominic Colubriale chose to reduce, rather than eliminate, the amount that Ricova International Inc. would keep, setting at a minimum average of \$20/tonne the amount that would allow it to maintain a “consistent” and “fair” profit. The determination of this single amount came after his initial decision to deduct two separate prices, \$20 and \$30/tonne, depending on the type of recyclable material involved. However, Dominic Colubriale himself pointed out that this was too complicated and that he told his employees that they had to make sure that by the end of the month the amount would be about \$ 20/tonne.

It should be added that neither the invoices for the sale of recyclables by Ricova International Inc. or the other supporting documentation were sent by Ricova Services Inc. to Ville de Montréal for the purpose of sharing revenues or losses from the sale of recyclables. The formula used to calculate the selling price reported by Ricova Services Inc. to Ville de Montréal does not appear on any of the invoices submitted by Ricova Services Inc. to Ville de Montréal. Thus, the average minimum amount of \$20/tonne that is retained by Ricova

¹¹ BAUDOIN, Jean-Louis, Pierre-Gabriel JOBIN and Nathalie VÉZINA, *Les obligations*, 7th Ed., Éditions Yvon Blais, Cowansville, 2013, par. 229.

¹² *Id.*, par. 223 and foll.; KARIM, Vincent, *Les obligations*, Vol. 1, 4th Ed., Wilson & Lafleur, Montreal, 2015, para. 1106.

International Inc. as a gross profit or marketing costs is not being reported to Ville de Montréal.

Lastly, the fraud originates from Dominic Colubriale, who controls all the Ricova entities and is actively involved in the sales of Ricova International Inc. and in reviewing the invoices issued by Ricova Services Inc. to Ville de Montréal, including those for the sharing of revenues or losses.

4.2 Recommendation regarding the period of ineligibility

As a violation of section 14 RGC was noted in this report and brought to Ville de Montréal's attention, the latter shall therefore determine the appropriate penalty and the period of ineligibility for public contracts, as the case may be, in accordance with sections 24 and following of the RGC.

Under section 57.1.8 of the *Charter of Ville de Montréal*, the Inspector General's legislative mandate includes the power to recommend to City Council any measure aimed at preventing any breach of integrity in the awarding of contracts by Ville de Montréal or their performance, as well as any measures aimed at promoting compliance with Ville de Montréal's legal provisions and requirements with respect to the awarding of contracts or contract performance.

Since the declaration of ineligibility has the direct effect of preventing future breaches of integrity on the part of the offender while promoting compliance with the RGC by the other bidders, the Inspector General deems that it has the authority to recommend, based on this report, that Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. and Ricova International Inc. be declared ineligible for Ville de Montréal contracts and subcontracts for a period of five (5) years.

These recommendations are based on the Inspector General's following assessment of the non-exhaustive list of five (5) factors that must be considered in determining the penalty to be imposed under section 24.2 of the RGC:

[TRANSLATION] "24.2. Ville de Montréal shall determine the penalty to be imposed under section 24 based, namely, on the following factors:

- 1) Benefits derived from the commission of the offences;*
- 2) Degree of planning associated with the offence and period during which it was committed;*
- 3) Impact of the violation for Ville de Montréal;*
- 4) Prior offences and penalties for similar acts;*
- 5) Adopting measures to reduce the likelihood of other offences being committed."*

(i) Benefits derived from the commission of the offence

As mentioned in the previous section, the benefits derived by Dominic Colubriale and the entities he controls are monetary and substantial, namely, i.e. nearly \$99,600 for the month of March 2021 alone for the St-Michel contract and close to \$60,500 for the Lachine contract, all with the necessary contractual details mentioned above. Since this practice had been in effect since the Lachine and St-Michel contracts were taken over, it could be equivalent, for this second contract, to a total of approximately \$1,150,000 for the period under review from August 2020 to July 2021, inclusively.

(ii) Degree of planning associated with the offence and period during which it was committed

In light of Dominic Colubriale's statements, the degree of planning was significant. While bearing in mind the risk of a conflict of interest with Ville de Montréal given that the contracts were taken over, Dominic Colubriale mentioned having reduced, and not eliminated, his rate of \$50/tonne in favour of two rates of \$20-30/tonne that were differentiated based on type of recyclables, and then internally imposed a single rate of \$20/tonne, considering that it was simpler to apply. He also stated being aware that the rate could vary from one transaction to the next, but that he had instructed his employees to average everything out to \$20/tonne per month.

It should also be recalled that Mr. Colubriale controls all the Ricova entities and was personally involved in the sale of the recyclables and in reviewing the invoices issued by Ricova Services Inc. to Ville de Montréal. In addition, it should be pointed out that overall, the documentation and invoicing between Ricova International Inc. and its purchasers is not disclosed to Ville de Montréal.

As for the time when the offence was committed, it was significant, having started as soon as the Lachine and St-Michel contracts were taken over by Ricova Services Inc.

(iii) Impact of the violation for Ville de Montréal

The consequences for Ville de Montréal are the polar opposite of the benefits derived by Dominic Colubriale and the entities he controls. They are monetary, monthly recurring, and substantial given the tonnage of the recyclables sorted by the Lachine and St-Michel centres.

(iv) Prior offences and penalties for similar acts

None of the offenders in this case, whether Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. or Ricova International Inc., had been subject to previous penalties for similar acts.

(v) Adopting measures to reduce the likelihood of other offences being committed

In its response to the Notice, Ricova Services Inc. did not refer to the adoption of any such measure, arguing instead that it is the only entity performing the obligations to market and sell the recyclables, denying that Ricova International Inc. was involved in the performance of the Lachine and St-Michel contracts, and disclaiming that the average minimum amount of \$20/tonne was unduly deducted from the sale price submitted to Ville de Montréal in view of revenue or loss sharing.

Given these circumstances, there is reason to fear a high risk of recurrence.

In light of the preceding, the Inspector General believes that an ineligibility period of five (5) years would be appropriate for Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. and Ricova International inc.

5. Conclusions and recommendations

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

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

In this case, the investigation enabled the Inspector General to determine that several requirements of the Lachine and St-Michel contracts were not met:

- The involvement of Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. in the performance of the contracts, while none of these entities had an authorization to contract issued by the Autorité des marchés publics when such involvement began;
- By deducting an average minimum amount of \$20/tonne for each sale of recyclables prior to the sale amount reported by Ricova Services Inc. to Ville de Montréal for the purpose of sharing sales revenues or losses, the entities controlled by Dominic Colubriale were thus indirectly charging Ville de Montréal for the marketing fees or gross profits of Ricova International Inc., which was in breach of sections 4.2, 4.2.1 and 4.2.2 of the technical specifications of the St-Michel contract. Had it not been for the Inspector General's current intervention and given the transmission of relevant documentation from Ricova Services Inc. and its stated willingness to have the Lachine contract applied retroactively to August 1, 2020, this would also have resulted over time in a breach of clauses 6.1.12.1, 6.5.2 and following, and clauses 6.5.3 and following of the general administrative clauses, as well as clauses 5.1.4 and 5.1.5 of the technical operating specifications of the Lachine contract;
- For the reasons mentioned above, deducting such an amount results, for the Lachine and St-Michel contracts, respectively, in the attempt and commission of fraudulent acts within the meaning of the RGC. Furthermore, given the inclusion of the RGC in all Ville de Montréal contracts and subcontracts, these actions also constitute a contractual breach.

In terms of the seriousness of the first breach, the requirement to hold an authorization contract is a condition of public order¹³ [TRANSLATION] “designed to protect the public which has a vested interest in ensuring that contracts paid for with public funds are awarded to contractors with integrity.”¹⁴ As a result, the fact that Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. did not have such an authorization at the appropriate time was more than a mere formality, as was stated in Ricova Services Inc.'s response to the Notice.

Regarding the second and third breaches, they are serious both because of their fraudulent nature and the amounts involved, some of which exceeded \$1 million. In fact, the evidence

¹³ 9150-0124 *Québec inc. (Groupe Diamantex) c. Procureure générale du Québec (Ministère des Transports, de la Mobilité durable et de l'Électrification des transports)*, 2018 QCCS 5957, par. 28 and 30, upheld by the Court of Appeal, 2019 QCCA 879.

¹⁴ *Entreprises QMD inc. c. Ville de Montréal*, 2020 QCCS 3, par. 57, upheld by the Court of Appeal, 2021 QCCA 1775.

pointed to an intertwining of various entities, all controlled by the same individual, that served as integrated or separate vehicles, according to the facts and arguments alleged against them.

Whereas the recyclables market was disrupted in 2018 and recycling remained a major social issue, its implementation through the Lachine and St-Michel contracts required a strong relationship of trust with the winning bidder, all the more so because of Ville de Montréal's financial participation in the sharing of revenues or losses. However, the Inspector General believes that in acting as they did, Dominic Colubriale and the entities he controls irreparably undermined it.

To summarize, the Inspector General believes that the two conditions required by section 57.1.10 of the Charter of Ville de Montréal were met in the present case and, as a result, a rescinding of the Lachine and St-Michel contracts would be justified.

However, the proper operation of the Lachine and St-Michel sorting centres is undeniably essential to maintaining cleanliness and public health. According to the relevant provisions of the *Charter of Ville de Montréal*, a termination by the Inspector General would take effect 45 days after its submission to City Council. However, it would appear that, according to the applicable regulatory framework, the City Administration could not award new sorting contracts in such a short period of time. This could therefore result in an interruption in service.

Under these circumstances, the Inspector General has concluded that it would not be appropriate to use the termination powers under section 57.1.10 since such a decision which would not serve public interest. Nonetheless, given the breaches identified by the investigation, the Inspector General is recommending that City Council rescind the Lachine and St-Michel contracts as soon as possible

Furthermore, due to their aforementioned violation of section 14 of the by-law on contract management and in light of the new penalty provisions adopted in 2020, the Inspector General believes that an ineligibility period of five (5) years would be appropriate for Dominic Colubriale, Ricova Lachine Inc., Ricova RSC Inc., Ricova Services Inc. and Ricova International Inc.

FOR THESE REASONS,

The Inspector General

RECOMMENDS that Ville de Montréal rescind the contract under call for tenders 17-5849 originally awarded to La Compagnie de recyclage de papiers MD inc. and legally assigned to Ricova Services Inc. in July 2020.

RECOMMENDS that Ville de Montréal rescind the contract under call for tenders 19-17343 originally awarded to Rebutts Solides Canadiens inc. and legally assigned to Ricova Services Inc. in July 2020.

INFORMS Ville de Montréal of the violation by Dominic Colubriale, Ricova Services Inc., Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. of section 14 of the by-law on contract management.

RECOMMENDS that, in accordance with the provisions of the by-law on contract management, Dominic Colubriale, Ricova Services Inc., Ricova Lachine Inc., Ricova RSC Inc. and Ricova International Inc. be listed on Ville de Montréal's *Register of Ineligible Persons* for a period of five (5) years.

SENDS, pursuant to section 57.1.23 of the *Charter of Ville de Montréal*, a copy of this report to the Ville de Montréal Mayor and City Clerk, who shall forward it to the Ville de Montréal councils involved.

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

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

The Inspector General,

SIGNED ORIGINAL

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