



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 1
(2014, chapter 3)

An Act respecting the inspector general of Ville de Montréal

Introduced 22 May 2014
Passed in principle 3 June 2014
Passed 12 June 2014
Assented to 13 June 2014

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EXPLANATORY NOTES

This Act requires Ville de Montréal to appoint an inspector general by way of a resolution adopted, on the recommendation of the mayor, by a two-thirds majority vote of the council members.

The inspector general is to be appointed for a non-renewable five-year term and to perform the duties of office exclusively and on a full-time basis. The inspector general is granted a budget to cover the expenses relating to the performance of his or her duties.

The mandate of the inspector general will be to oversee contracting processes and the carrying out of contracts by the city or a legal person related to the city.

A further mandate of the inspector general will be to recommend to the council any measure aimed at preventing a breach of integrity in the making of contracts by the city or the carrying out of such contracts, and any measure designed to foster compliance with the applicable legal provisions and with the city's requirements regarding contracting or the carrying out of contracts. The inspector general will also verify the implementation of such measures. Lastly, the inspector general is to train the members of the city councils as well as all city officers and employees to recognize and prevent any breach of integrity or of the applicable rules in the making of contracts by the city or the carrying out of such contracts.

In the performance of his or her duties, the inspector general has certain powers allowing him or her to examine documents or obtain information from the city, a legal person related to the city, a person that has a contractual relationship with the city or with a legal person related to the city, or a subcontractor of the person that has such a contractual relationship.

The inspector general is granted the power to cancel any contracting process involving a contract of the city or of any legal person related to the city, or to rescind or suspend the carrying out of any contract of the city or of the legal person related to the city if the inspector general finds that any of the requirements set out in the tender documents or in a contract has not been met or that the information provided in the contracting process is false.

The city council concerned or the city council having jurisdiction over the mandate of the legal person related to the city may however reverse the decision of the inspector general.

Any person may communicate certain information to the inspector general that is relevant to the performance of the inspector general's mandate. For the purposes of that communication, such a person benefits from protections to ensure, among other things, the person's anonymity and the absence of reprisal measures.

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

Lastly, the inspector general must send the Autorité des marchés financiers any information that is relevant to its mandate under the Act respecting contracting by public bodies.

LEGISLATION AMENDED BY THIS ACT:

- Charter of Ville de Montréal (chapter C-11.4);
- Act respecting labour standards (chapter N-1.1).

Bill 1

AN ACT RESPECTING THE INSPECTOR GENERAL OF VILLE DE MONTRÉAL

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHARTER OF VILLE DE MONTRÉAL

1. The Charter of Ville de Montréal (chapter C-11.4) is amended by inserting the following after section 57.1:

“DIVISION VI.0.1

“INSPECTOR GENERAL

“§1.—*Appointment*

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

The inspector general is appointed by the regular city council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“§2.—Mandate

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

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

A further mandate of the inspector general is to train the members of the councils as well as the officers and employees to recognize and prevent any

breach of integrity or of the applicable rules in the making of contracts by the city or the carrying out of such contracts.

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

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

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

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

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

The person referred to in the first paragraph is

(1) a legal person

(a) that is part of the reporting entity defined in the city’s financial statements;

(b) of which the city or a mandatary of the city appoints more than 50% of the members of the board of directors; or

(c) of which the city or a mandatary of the city holds more than 50% of the outstanding voting shares or units;

(2) a person that has a contractual relationship with the city or with a legal person described in subparagraph 1; or

(3) a subcontractor of the person referred to in subparagraph 2 in relation to the principal contract referred to in that subparagraph.

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

“57.1.10. The inspector general may cancel any contracting process involving a contract of the city or of any legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9, or rescind or suspend the carrying out of such a contract if the inspector general

(1) finds that any of the requirements specified in a document of the call for tenders or a contract has not been met or that the information provided in the contracting process is false; and

(2) is of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.

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

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

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

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

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

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

If not reversed under section 57.1.12, a decision by the inspector general to rescind a contract takes effect on the 46th day following the day it is received

by the city clerk or the secretary of the legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 or the day it is confirmed by the city council concerned, if applicable.

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

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

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

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

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

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

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

(1) information regarding the existence of an order whose publication is deferred under the Executive Power Act (chapter E-18) or the order itself;

(2) information regarding the existence of a decision resulting from the deliberations of the Conseil exécutif or the decision itself, information regarding the existence of a decision resulting from the deliberations of one of the cabinet committees of the Conseil exécutif or the decision itself, or information regarding the existence of a decision of the Conseil du trésor or the decision itself, before the expiry of 25 years from the date of the decision;

(3) information regarding the existence of information which, if disclosed, would reveal a budget policy of the Government before it is made public by the Minister of Finance or the information itself;

(4) a legal opinion concerning the application of the law to a particular case, or the constitutionality or validity of legislative or regulatory provisions, or a preliminary or final draft of a bill or regulation;

(5) a study, if its disclosure might well affect the outcome of judicial proceedings, unless those proceedings concern parties other than the Government, the Conseil exécutif, the Conseil du trésor, the government departments, and the persons, agencies and bodies referred to or described in the second and third paragraphs of section 3 or in section 4 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1);

(6) a communication from the Conseil exécutif to one of its members, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the communication;

(7) a communication from a member of the Conseil exécutif to another member of the Conseil exécutif, before the expiry of 25 years from the date of the communication;

(8) a recommendation from the Conseil du trésor or a cabinet committee to the Conseil exécutif, before the expiry of 25 years from the date of the recommendation;

(9) a recommendation from a member of the Conseil exécutif to the Conseil exécutif, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the recommendation;

(10) a study made within the Ministère du Conseil exécutif or the secretariat of the Conseil du trésor regarding a recommendation or request made by a minister, a cabinet committee or a public body, or regarding a preliminary or final draft of a bill or regulation, before the expiry of 25 years from the date of the study;

(11) a record or report of the deliberations of the Conseil exécutif or a cabinet committee, before the expiry of 25 years from the date of the record or report;

(12) a list of titles of documents containing recommendations to the Conseil exécutif or the Conseil du trésor, before the expiry of 25 years from the date of the list;

(13) the agenda of a meeting of the Conseil exécutif, the Conseil du trésor or a cabinet committee, before the expiry of 25 years from the date of the agenda;

(14) a document from the office of a Member of the National Assembly or a document produced for that Member by the services of the Assembly, unless the Member deems it expedient to send the document himself or herself or request that it be sent;

(15) a document from the office of the President of the Assembly or of a Member of the Assembly referred to in the first paragraph of section 124.1 of the Act respecting the National Assembly (chapter A-23.1) or a minister to which section 11.5 of the Executive Power Act (chapter E-18) applies;

(16) a preliminary or final draft of a bill or regulation, other than a draft by-law of the city or of a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act, before the expiry of 10 years from the date of the draft;

(17) a study directly relating to a document referred to in subparagraph 16, other than a draft by-law of the city or of a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act, unless the draft bill has been tabled in the National Assembly or the draft regulation has been made public in accordance with the law;

(18) an opinion or recommendation issued or made less than 10 years earlier by a member of a public body or of its personnel in the discharge of his or her duties, or issued or made less than 10 years earlier, at the request of a public body, by a consultant or an adviser on a matter within its jurisdiction, unless the opinion or recommendation emanates from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act or unless it is prepared at the request of the city or the legal person;

(19) an opinion or recommendation issued or made by an agency under the jurisdiction of a public body to a public body, or issued or made by an agency under the authority of a minister to the minister, if no final decision on the subject matter of the opinion or recommendation has been made public by the authority having jurisdiction and if the opinion or recommendation does not emanate from the city or from a legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9 of this Act or has not been prepared at the request of the city or the legal person;

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

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

- (a) hamper an audit in progress;
- (b) reveal an auditing program or operation plan;
- (c) reveal a confidential source of information regarding an audit; or,
- (d) seriously impair the power of appraisal granted to the Auditor General pursuant to sections 38, 39, 40, 42, 43, 43.1 and 45 of the Auditor General Act (chapter V-5.01).

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

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

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

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

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

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

- (1) \$2,000 to \$20,000 in the case of a natural person; and
- (2) \$10,000 to \$250,000 in other cases.

For any subsequent offence, the amounts are doubled.

“57.1.16. Any person who in any way hinders or attempts to hinder the performance of the inspector general’s duties, misleads the inspector general

by concealment or misrepresentation, refuses to hand over a document or information the inspector general may demand or examine, or conceals or destroys such a document or information is guilty of an offence and is liable to a fine of \$4,000 to \$20,000.

For any subsequent offence, the amounts are doubled.

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

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

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

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

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

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

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

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

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

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

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

- (1) the duties set out in the first and third paragraphs of section 57.1.8;

(2) the verification of the implementation of the measures adopted under the second paragraph of section 57.1.8;

(3) the duties set out in section 57.1.9.

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

“§4. — *Ethics requirement*

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

“§5. — *Operating expenses*

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

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

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

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

“§6. — *Reports, notices and recommendations*

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

The inspector general may also, at any time, send the mayor and the clerk any report presenting findings or recommendations that, in the opinion of the inspector general, warrant being brought to the attention of the council. The mayor shall table the report before the council at the first regular sitting following its receipt.

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

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

“§7.—*Protections*

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

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

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

Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised nor any injunction granted against the inspector general, the employees under his or her direction or the professionals under contract acting in their official capacity.

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

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

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

ACT RESPECTING LABOUR STANDARDS

2. Section 3.1 of the Act respecting labour standards (chapter N-1.1) is amended by replacing the second paragraph by the following paragraph:

“Subparagraphs 7 and 8 of the first paragraph of section 122 and, where they relate to a recourse under those subparagraphs, the other sections of Division II of Chapter V also apply to all employees and to all employers.”

3. Section 122 of the Act is amended by adding the following subparagraph after subparagraph 7 of the first paragraph:

“(8) on the ground of a communication by an employee to the inspector general of Ville de Montréal or the employee’s cooperation in an investigation

conducted by the inspector general under Division VI.0.1 of Chapter II of the Charter of Ville de Montréal (chapter C-11.4).”

4. Section 140 of the Act is amended by replacing “subparagraph 7” in paragraph 6 by “subparagraphs 7 and 8”.

FINAL PROVISION

5. This Act comes into force on 13 June 2014.