NATIONAL ASSEMBLY

FIRST SESSION FORTIETH LEGISLATURE

Bill 73

An Act respecting the inspector general of Ville de Montréal

Introduction

Introduced by
Mr. Sylvain Gaudreault
Minister of Municipal Affairs, Regions and Land Occupancy

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EXPLANATORY NOTES

This bill 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 of the votes cast by the members of the council.

The inspector general is to be appointed for a non-renewable term of five years and 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 is 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 the city's requirements regarding contracting or the carrying out of contracts. The inspector general will also oversee the implementation of such measures. Lastly, the inspector general is to train the city's council members, 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 a contractual relationship with the city.

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 rescind or suspend the carrying out of a contract of the city or of the legal person related to the city if he or she finds that one 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.

The council or the board of directors of the legal person may reverse the decision of the inspector general.

Any person who communicates any information to the inspector general that the person considers relevant to the performance of the inspector general's mandate benefits from certain protections to ensure his or her anonymity and the absence of reprisal measures.

Lastly, if the inspector general is of the opinion that a federal law or a Québec law or a regulation made under such a law has 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.

LEGISLATION AMENDED BY THIS BILL:

– Charter of Ville de Montréal (chapter C-11.4);

– Act respecting labour standards (chapter N-1.1).

Bill 73

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

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

"**57.1.2.** A person must meet the following minimum requirements to be appointed as inspector general and remain as such:

(1) have been a member of the Barreau du Québec for at least 10 years; 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;

(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 to be appointed for a term of five years, which may not be renewed.

"**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 a person qualified to replace the inspector general, for a period of not more than 180 days;

(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 the city's requirements regarding contracting or the carrying out of contracts. In addition, the inspector general shall oversee, within the city, the implementation of such measures adopted by any council.

A further mandate of the inspector general is to train the city's council members, 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.

"**57.1.9.** In the performance of his or her duties, the inspector general is entitled to examine any book, register or document or obtain any information relevant to his or her mandate from the city, any officer or employee of the city, any member of a council or selection committee, the office of a mayor of the city or a designated councillor within the meaning of section 114.5 of the Cities

and Towns Act (chapter C-19) or any staff member of that office, or 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. He or she 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 any of the following:

(1) any 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 shall, on demand, identify himself or herself and produce for the owner or occupant or any other person on the premises visited under the second paragraph a certificate attesting his or her authority and 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 he or she:

(1) finds that one 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 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 also be sent to the secretary of the legal person.

Any decision received by the clerk under the second paragraph must, at the first council meeting following receipt of the decision, be tabled before the city council concerned or, in the case of a decision involving a contract of a legal person referred to in the first paragraph, before the council that has authority with respect to the mandate of the legal person.

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.** The decision of the inspector general to cancel a contracting process or suspend the carrying out of a contract takes effect immediately and ceases to have effect the day it is reversed under section 57.1.12.

If the carrying out of a contract is suspended under section 57.1.10, the contract is rescinded on the 91st day following the day of the decision regarding the suspension, provided the decision was not reversed under section 57.1.12.

If not reversed under section 57.1.12, the decision of 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 council concerned, if applicable.

"**57.1.12.** The council concerned of the city or the board of directors of the legal person concerned may reverse the decision of the inspector general.

The decision to reverse the cancellation of a contracting process or the rescinding of a contract must be made no later than the 45th day following the day the inspector general's decision is received by the city clerk or the secretary of the legal person.

The decision to reverse the suspension of the carrying out of a contract must be made no later than the 90th day following the day the inspector general's decision is received by the city clerk or the secretary of the legal person.

The reversal decision made by the board of directors of the legal person must be sent to the city clerk, who shall, at the first council meeting following receipt of the decision, table it before the council that has authority with respect to the mandate of the legal person.

"**57.1.13.** Any person may communicate any information to the inspector general that the person considers relevant to the performance of the inspector general's mandate.

Any person communicating such information to the inspector general may do so despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), 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. He or she may however communicate the identity of such persons to the police service of the city or the Anti-Corruption Commissioner appointed under section 5 of the Anti-Corruption Act (chapter L-6.1).

"**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.

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 false declarations, or refuses to hand over a document or

information he or she 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 helps or, by abetment, advice, consent, authorization or command, induces a person to commit an offence under section 57.1.15 or section 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 law or a Québec law or a regulation made under such a law has 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.

"§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, any person among his or her personnel to represent him or her and exercise his or her duties. Such a representative has the same powers and rights as the inspector general and is subject to the same obligations.

"§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 personal interest and his or her 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 budget of the city for operating expenses by 0.11%.

"**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 August each year, the inspector general shall transmit to the mayor, to be filed with the council at the first regular sitting following its receipt, a report presenting the results of the activities carried out under his or her mandate and making recommendations, if applicable.

The inspector general may also, at any time, transmit to the mayor any report of the findings and recommendations that, in the opinion of the inspector general, warrant being brought to the attention of the council. The mayor files the report with 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 transmit 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, neither the inspector general nor the employees under his or her direction or the professionals under contract may be compelled to give testimony relating to any information obtained in the performance of their duties or to produce any document containing such information.

Neither the inspector general nor the employees under his or her direction may be prosecuted for any act they have done or failed to do 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, on a motion, may summarily annul any proceeding instituted or decision rendered contrary to the provisions of 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 (*insert the date of assent to this Act*).