

Volume 3

Of the Report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry

Schemes, Causes, Consequences and Recommendations

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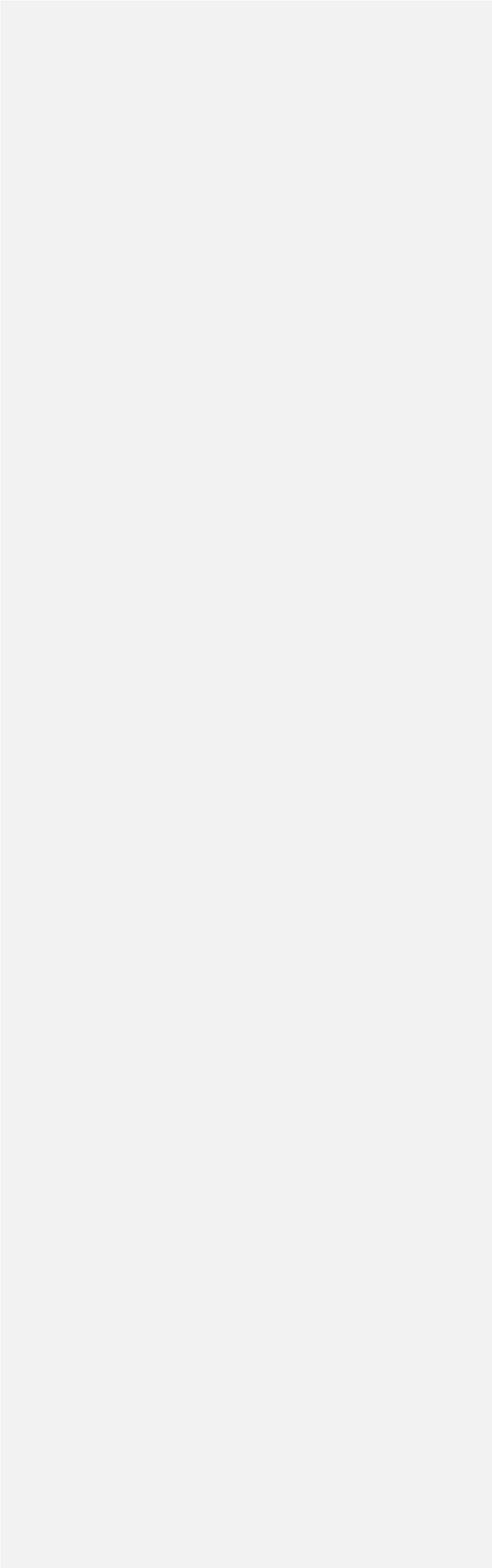
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PART 4

SCHEMES, CAUSES AND CONSEQUENCES



SCHEMES, CAUSES AND CONSEQUENCES

The Commission was mandated to examine the existence of schemes and describe those involving collusion and corruption in the awarding and management of public contracts in the construction industry, including any links to the financing of political parties. It was also asked to describe possible infiltration of the construction industry by organized crime.

Part 3 of the report sets out in detail what witnesses told the Commission about the practices in municipalities (Montréal, Laval, Québec City, Gatineau, and others), government departments and agencies (MTQ, MAMOT, MELS, Hydro-Québec, MUHC), unions and criminal groups, and with regard to the financing of provincial political parties. At the end of each block of evidence analyzed, part 3 also presents the list of schemes and infiltration activities identified by the Commission.

The purpose of this part of the report is to present generic and cross-sectional portraits of collusion and corruption schemes (including, in some cases, links to the financing of political parties) and infiltration activities presented in the previous volume. This will be the subject of the first chapter.

The second chapter seeks to identify the causes of the emergence, perpetuation and where applicable, disappearance of these phenomena, in order to guide the government in the decisions it must take to combat them.

The third chapter describes the consequences of these phenomena for Quebec's public institutions and the fundamental principles that guide them, as well as for the general public.

CHAPTER 1
THE SCHEMES

THE SCHEMES

This chapter presents generic and cross-sectional portraits of the schemes and infiltration activities that the Commission observed during its work.

It should be borne in mind that the concept of “scheme” mentioned in the Commission’s terms of reference is understood here as a clever but deceptive process used to obtain an undue advantage. In the context of the Commission’s mandate, the process refers to collusion or corruption, whether or not it is associated with political party financing, while the undue advantage relates to the awarding and management of public contracts in the construction industry.

“Infiltration” of the construction industry by organized crime may refer to criminal groups originally formed outside the industry that subsequently penetrate it, or to criminal groups that develop within the industry. In other words, for the purposes of the Commission’s mandate, any form of interference or presence of criminal groups within the construction industry may be regarded as a type of infiltration.

The Commission presents the descriptions as per the following categories: (1) schemes involving collusion and corruption; (2) links to the financing of political parties; and (3) infiltration activities by organized crime.

1.1 Systems of collusion and corruption

The concepts of collusion and corruption have some commonalities, but they describe different realities.

The Commission defines collusion as a secret agreement, explicit or tacit, between private actors (contractors, consulting engineering firms, suppliers) responding to a public call for tenders, or in some cases, an invitation to bid, with a view to reducing or eliminating competition in order to gain control over a public contract. The collusion agreement may also include public actors.

The Commission takes the view that corruption is a clandestine exchange between two actors, one seeking to obtain an undue advantage, the other being able to provide that advantage in return for compensation. Either party may initiate the exchange. The exchange itself is generally to the benefit of both parties, but to the detriment of the public interest. In the context of the Commission’s work, corruption refers more specifically to situations in which private sector actors (entrepreneurs, consulting engineering firms, suppliers) obtain benefits (contract, payment of extras, confidential information) from actors within the administrative or political apparatus. In exchange for the advantage provided to the corrupter, the “corrupted” receives consideration from the latter that can take various forms (bribes, employment, favours, gifts, etc.) Corruption can also exist between private actors, particularly between entrepreneurs and engineers.

As the cases examined by the Commission show, collusion and corruption take the form of systems in which several schemes may be at play. We can thus distinguish between “simple” and “complex” systems. Simple systems are based on either collusion or corruption, while in complex systems, collusion and corruption are interrelated and are both essential to establishing and maintaining the system.

1.1.1 Simple collusion-based systems

Collusion-based systems can involve different types of private actors. As such, the Commission observed cases of collusion between contractors, between engineering firms, between suppliers and between contractors and suppliers. In this type of system, the colluders agree to exclude competitors without having to corrupt political or administrative actors. Unbeknownst to the latter, private actors manipulate the process of awarding and managing public contracts with a view to winning a significant share of contracts and reaping unlawful gains.

Collusion-based systems are based on two main types of scheme: (a) bid-rigging and (b) a series of activities aimed at closing the market.

The first type of scheme is in some way the heart of the collusion mechanism. Through bid-rigging, colluding companies seek to eliminate competition and obtain as many contracts and as much profit as possible, while preserving the appearance of a competitive market. There are a number of variations to these schemes:

- **Rotation of winners with submission of bids of convenience.** The cartel members agree to take turns presenting the best offer. The company chosen to win the bid solicitation notifies the complicit companies of the amount above which they must bid. These complicit companies then submit bids of convenience, i.e., bids that cannot win the contract because they will not be the lowest. They may also submit bids that are not compliant with the specifications or requirements of the public contracting authority. It is obvious here that tendering processes whose award criterion is based on the lowest compliant tender produce readily foreseeable results that can be easily manipulated by a group of colluding companies.
- **Rotation of winners with abstention from bidding.** The cartel members refrain from responding to a call for tenders, leaving the way open for their previously designated accomplice.
- **Compensation.** The company chosen to win the contract compensates those that withdraw from the tendering process or submit bids of convenience by offering them subcontracts, supply contracts, or money.
- **Market sharing.** Members of the cartel share the market (by type of work, customer, or geographical area) and agree not to bid, at least competitively, in the markets assigned to other cartel partners. This is a case of “to each his market,” with competition reduced to a minimum.

To organize bid-rigging, the colluding companies must obviously have reached an agreement beforehand. The schemes relate to the communications between the members of a collusion system: secret meetings and coded messages to inform the accomplices of the threshold above which they must tender. The frequency of communications depends on the type of arrangement between the colluders. In systems based on territory sharing, communications may become less frequent once the ground rules have been established; the collusion system is perpetuated by a tacit understanding between the partners. Systems based on a distribution of market share involve more frequent exchanges, however. In the case of one-time agreements, the actor wishing to organize the bid-rigging must know the identity of the competitors interested in

bidding on a given contract. Some contracting authorities published or made available the list of companies that had requested a copy of the tender documents: the potential bid-rigger could therefore determine which competitors to contact in order to rig the tendering process (assuming that they agree to participate), thereby rendering the client vulnerable to collusion agreements.

The second type of scheme is aimed at closing the market. To prevent one or more companies outside the cartel from participating in a call to tenders, and thus jeopardizing the effectiveness of the collusion agreement, colluders must resort to schemes designed to eliminate or discourage competition. The testimony revealed that contractor cartels used a variety of schemes to discourage competitors from participating in a tender or entering a given market: intimidation (verbal or physical threats), vandalism or sabotage on the competitor's job sites (damaging machinery or vehicles), multiple complaints against the competitor to the BSDQ, the CCQ and the CSST in order to bog the company down in administrative procedures, and bidding very low to prevent the competitor from winning contracts. Other possibilities include a member of the cartel who has a commercial relationship with a competitor refusing to sell that company the materials (or lease the equipment) it needs for its bid or offering them at an exorbitant price, leaving the competitor either unable to submit a bid or unable to bid at a competitive price. Meanwhile, the cartel member sells the same product at a discount to his accomplices.

The Commission's work revealed the existence of collusion systems between contractors in the paving, civil engineering and outdoor lighting sectors. Instances of collusion were also observed between engineering firms.

1.1.2 Simple corruption-based systems

In corruption-based systems, a corrupting party and a corrupted party form an illicit pact: in exchange for an advantage that could extend as far as the granting of a contract, the "corrupted" party receives compensation from the corrupter. There is a specific distinction here between political corruption and administrative corruption. In the first, the public party involved in the corruption pact is an elected official or senior public servant. In the second, the public party is a less senior member of the public service. The testimony also revealed cases of private corruption between contractors and engineers, as well as cases where corruption between private actors is supported by corruption between one of these private actors and a public actor.

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The turnkey election scheme illustrates the phenomenon of political corruption. The scheme typically proceeds as follows: an engineering firm, in collaboration with other professional firms, finances the election campaign of a mayoral candidate in order to obtain quasi-exclusivity on municipal contracts following the election. The firm sometimes organizes election campaigns using political organizers (hence the name "turnkey" elections).

When the outgoing mayor is associated with a rival firm, an engineering firm may seek to elect another candidate who is favourable to it. Rival engineering firms sometimes agree to share the contracts of a municipality by supporting a single candidate, thereby layering collusion between engineering firms on top of political corruption. The creation of these "electoral consortia" can stifle suspicions of the existence of a corruption pact, since not all the municipality's large contracts are awarded to a single firm.

Once its candidate has been elected, the engineering firm uses a variety of schemes to ensure it obtains the desired contracts. It first provides the municipality with model tender calls, using selection criteria defined in such a way that they benefit the firm itself during the selection process. This scheme is known as “directed tendering.” The composition of selection committees can also be manipulated by adding people who are in favour of the firm that is friendly with the mayor. Hiring a complicit director general may also constitute a scheme: in this case, administrative corruption is added to political corruption. Contractors benefiting from the complicity of elected municipal officials have succeeded, in some cases, in cancelling tender processes that had been won by a competitor.

In addition to the financing and organization of their election campaigns, elected officials may receive compensation in the form of kickbacks from contracts awarded, as well as gifts and favours of various kinds (travel, invitations to sporting events, jobs for family members, restaurant meals, etc.)

One witness linked to an engineering firm reported having organized around 60 turnkey elections between 1997 and 2007, particularly in municipalities on the outskirts of Montréal. Representatives of other firms also used this scheme in several municipalities.

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Corruption can be considered “private” when it is exercised without the knowledge of political and administrative actors. In this type of corruption, a company, usually an engineering firm in the cases seen by the Commission, approves a claim for fake extras or false quantities submitted by a construction firm in exchange for a kickback on the resulting payment. Through this scheme, two private actors enrich each other at the expense of taxpayers by charging a public contracting authority for work that has not been performed or quantities of material that have not been used.

Firms can also plan this scheme of fake extras or false quantities in advance by knowingly overestimating the quantities on their statements in order to generate flexibility to invoice the client for unused materials or work not done.

The Commission uncovered numerous cases of this nature, particularly in Montréal, Laval and Montréal’s North Shore. The testimony also revealed instances where an engineering firm provided privileged information to a contractor so that it could win a tender by bidding low, but then increase its profits with claims for extras made possible by “unbalancing the statement,” where the quantities entered in the statements are simultaneously underestimated and overestimated.

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Private corruption can also be associated with corruption involving public actors. This occurs when a corruption pact between private actors also requires the corruption of a public actor, such as a public servant. Private corruption is then accompanied by administrative corruption.

As with private corruption, contractors and engineers resort to including fake extras and increasing quantities on the statement. Unlike private corruption that occurs without the knowledge of public employees poorly equipped to detect it, in these situations, private actors rely on the complicity of the public employees responsible for recommending payment of claims

presented to them. This is accomplished through the development of close ties, which are gradually cultivated through gifts and favours (travel, sporting events, restaurant meals, bottles of wine) offered by contractors and engineers to public employees in exchange for their complacency in approving claims for payment. This occurred, for example, at the Quebec Ministère des Transports.

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All of these cases therefore involve two parties that have established a corruption pact. The corrupter forges this pact in order to obtain a contract or an advantage leading to a contract or illicit gain by using directed tendering, a rigged selection committee, privileged information, or the approval of fake extras. The corrupted party, whether a public or private sector actor, provides these benefits in return for consideration in the form of cash bribes, kickbacks on contracts or extras, election financing and organization, gifts, jobs, etc.

1.1.3 Complex systems

The systems described above are based on schemes involving either collusion or corruption. The testimony also revealed that in some situations, collusion and corruption go hand in hand. Both are then part of a single system – the collusion agreement is based on a corruption pact involving elected officials and public employees at the municipal level.

These complex systems were observed in large cities. That is no coincidence, because if a group of companies decides to enter into a collusion agreement in the same territory, there must be a sufficient number of contracts to share, which is the case in large agglomerations. Large cities also have larger political and administrative machinery than small municipalities, and in particular, measures to identify collusive practices. The establishment and maintenance of cartels therefore almost always requires the complicity of public actors, whether elected representatives or public employees, to protect them from detection. The Commission's work confirmed the presence of such systems in Montréal xxxxx.

The testimony regarding the collusion and corruption systems in these cities also revealed that elected officials played a central role in their establishment.

1.2 Links with political party financing

The Commission was also mandated to inquire into possible links between the awarding and management of public contracts and the financing of political parties. The Commission's work revealed the possible existence of direct and indirect links between the payment of political contributions and the awarding of public contracts. Direct links were mainly observed in the context of municipal politics, and indirect links, in the context of provincial politics.

A direct link refers to an explicit transaction where a political contribution is paid in exchange for a specific contract. A kickback paid as a percentage of the contract amount is an example of this form of link. Situations in which direct links are observed may be associated with corrupt practices. The political contribution here represents the consideration received by the corrupted party (the political party) in exchange for the contract coveted by the corrupting party (the engineering firm or construction contractor).

An indirect link refers to a more diffuse situation, where the transaction between the actors is often implicit and gives rise to deferred compensation. In this case, the link between the

payment of political contributions and the awarding of public contracts is not immediate, as in the case of the direct link, but rather loose or delayed. A certain amount of time may elapse between payment of a contribution and the obtaining of a contract. For example, a contribution may be linked to obtaining an advantage that eventually leads to a contract. The indirect link also refers to situations where the payment of a contribution is not necessarily linked to the obtaining of a specific contract or subsidy, but to a future or indeterminate contract or subsidy. When this type of exchange is repeated over time, we arrive at a situation in which companies finance political parties with the general goal of maintaining market share.

1.2.1 *Financing municipal political parties*

The previously described political corruption schemes illustrate situations of direct links between the payment of political contributions and the awarding of public contracts. These schemes took a variety of forms in municipalities. Through the turnkey elections scheme, engineering firms financed municipal candidates and organized their elections in order to obtain a large share of public contracts in municipalities, notably on the outskirts of Montréal. Collusion and corruption systems in large cities also demonstrated a direct link between the payment of contributions and the awarding of contracts. In one case, contractors and engineering firms paid the fundraiser for the mayor's party a kickback from contracts obtained. In another, a small group of engineering firms with access to municipal contracts financed the party in power. In yet another case, elected officials received contributions in exchange for contracts they shared between engineering firms and contractors. The facts demonstrated that the political party was the instigator of corruption pacts in these three large cities: contributions to the ruling party were a *sine qua non* condition for obtaining public contracts. In smaller municipalities, engineering firms were often the instigators of the corruption pact when they employed the turnkey election scheme.

The testimony also revealed that private actors used illegal financing practices in the context of these collusion and corruption systems. Political contributions were often paid with cash that was used to reimburse straw donors. Business leaders used false invoicing schemes to obtain that cash. In some cases, they used criminal networks for false invoicing. Witnesses from both engineering firms and contractors reported paying political contributions and reimbursing straw donors with money obtained by charging the municipality for false extras.

These illegal financing schemes were often associated with exceeding authorized election expenses. Municipal political parties provided themselves with secret funds and apparently, two sets of books.

In summary, in the municipalities where these systems were observed by the Commission, financing practices at the municipal level were closely tied to the establishment and maintenance of corruption (and collusion) systems. Private actors offered elected officials political contributions in exchange for contracts. Political contributions thus constituted a central element in the corruption pact between public and private actors.

1.2.2 *Financing provincial political parties*

The testimony related to provincial political financing and the operation of government agencies such as the MTQ, MAMOT, MELS and Hydro-Québec did not demonstrate a direct link between the payment of political contributions and the awarding of public contracts or subsidies leading to public contracts. The absence of a direct link does not imply, however, that no link existed. In fact, the evidence suggests that there was indeed an indirect link between the payment of

political contributions and the awarding of public contracts or subsidies related to the obtaining of contracts during the years covered by the Commission's mandate.

Testimony revealed the general dynamics driving sectoral and community financing. On the one hand, the main parties solicited contributions from representatives of companies obtaining public contracts. On the other hand, these company representatives paid the requested contributions as part of business development strategies and expected to receive benefits in return. By the mid-2000s, major engineering firms were paying more than \$100,000 a year to the party in power. Meanwhile, contractors were paying tens of thousands of dollars per year in political contributions. Some companies circumvented the electoral law by asking their employees to make contributions, which they reimbursed through a variety of schemes (bonuses, expense accounts, salary increases). In so doing, the employees of these companies acted as straw donors. Testimony also showed that these companies simultaneously financed several political parties, among other things from fear of retaliation if an opposition party came into power. Companies also offered favours and gifts to MNAs and ministers as part of these business strategies.

Several business leaders said that the solicitation came primarily from political parties, promising notably an attentive ear in exchange for their contributions. They also claimed that parties set fundraising targets based on their share of procurement contracts. Ministerial offices also organized paid and private meetings between business people and ministers. Funding events for the ministers of Transport and Municipal Affairs were the most popular among business leaders in the construction industry. For that reason, these ministers were often solicited by their fellow MNAs and ministers, who struggled to meet the funding targets set by their party.

Political parties also subcontracted the solicitation of contributions to business leaders. Such solicitations are not illegal, but the designated person must hold a solicitation certificate, and donors may not be reimbursed for their contributions. Representatives of engineering firms sought contributions from contractors and suppliers in their business networks, who could hardly refuse such requests without compromising their business ties with these firms. Company representatives also organized fundraising activities for the offices of ministers related to their field of activity. Engineering firms invited municipal politicians to attend so they could present to the invited minister the projects for which they hoped to receive a subsidy (and which the firms hoped to carry out).

In this type of exchange, company representatives pay political contributions not to obtain a specific contract, but because they believe they can secure or preserve market share by maintaining "good relations" with public actors, who in some situations are in a position to more or less directly influence the awarding of contracts and subsidies.

The testimony revealed certain situations, recurring or one-time, where the awarding of public contracts was indirectly linked to the financing of provincial political parties:

- At the Quebec Ministère des Transports, ministerial offices awarded contracts by mutual agreement to paving companies that participated in the Minister's financing activities.
- At the Quebec Ministère des Affaires municipales, a minister used his discretion to enable an engineering firm to obtain several contracts from municipalities that had received subsidies far more generous than provided for in the normal subsidy-granting rules (and without which these projects could not have been carried out). The vice-

president of business development for this engineering firm was a close friend of the minister's chief of staff, and both these individuals organized fundraising activities for the minister.

- The office of a minister involved in the pre-selection of subsidized projects solicited contributions from a municipal councillor who was waiting for a grant for a sports infrastructure project. This same office asked the councillor to entrust management of the project to the representative of an engineering firm that organized fundraising activities for the minister.

While political corruption is obvious where there is a direct link between the payment of political contributions and the awarding of public contracts, these indirect links do suggest the appearance of political corruption.

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1.3 Infiltration activities by organized crime

The Commission has defined organized crime as “a group of three or more persons existing for a period of time and acting in concert with the aim of committing at least one crime in order to obtain direct or indirect benefit.” This definition refers first to mafia-type criminal groups (sometimes referred to as traditional organized crime), such as the Montréal mafia, and criminal biker gangs such as the Hells Angels. These groups are characterized by their use of physical violence, threats of violence, or the reputation they have earned for violence for purposes of committing crimes and controlling a territory. In a broader sense, organized crime includes white-collar crime, and covers groups that are not primarily characterized by the use of violence and control of a territory. Thus, some officials from the City of Laval were accused of gangsterism for having set up an extensive system of collusion and corruption. False-invoicing networks are another example of white-collar crime.

It should be borne in mind that for the purposes of the Commission's mandate, “infiltration” of the construction industry by organized crime may refer to criminal groups originally formed outside the industry that subsequently penetrate it, or to criminal groups that develop within the industry.

According to the testimony before the Commission, four main types of infiltration by organized crime were observed in Quebec during the years covered by the Commission's mandate: (1) infiltration of companies and industry sectors; (2) control of territories; (3) the provision of mediation and intimidation services; and (4) access to a trade union's investment capital.

1.3.1 *Infiltration of companies and industry sectors*

The mafia enters construction industry markets mainly by taking over existing companies. These takeovers may occur when companies in difficulty turn to “alternative” financing sources that are controlled by criminal groups.

Testimony revealed that a heavily indebted land decontamination company fell under the control of individuals linked to the mafia. An influential member of the Hells Angels and his sidekicks also attempted to take control of masonry companies in order to launder money from drug trafficking and provide jobs and contracts to their members and supporters. These individuals targeted a family business that needed capital to upgrade its equipment. Realizing that he was

losing control of his business, the owner attempted to reject the Hells Angels representative. He then became the victim of threats, intimidation, theft and mischief. The same individual associated with the Hells Angels infiltrated another masonry company by demanding commissions of 5% and then 10% of the value of contracts. Through his union contacts, he obtained competency cards that he subsequently sold to employees. He convinced the owner to buy a competitor's business with cash. His aim was to create a cartel in the masonry industry.

1.3.2 Control of territories

The testimony revealed two cases of criminal individuals who sought to control a sector of the construction industry in a certain territory, notably through intimidation, including acts of violence.

At the end of the 2000s, the owner of two construction companies in the Abitibi region was involved in a drug trafficking ring. He operated with the consent of the Hells Angels and used intimidation and violence to eliminate competing companies. One competitor was unable to complete a paving job at Val-d'Or because its suppliers had been threatened by the criminal contractor. The latter also burned the building and garage of a second paving company to prevent it from completing a contract.

Around 2010, the head of a criminal network based in the Eastern Townships owned a company specializing in the installation of culverts. In order to remove his competitors, he asked accomplices to burn down pipe suppliers. A company that suffered nearly \$1 million in damages saw its insurance premiums rise sharply. For several months, no competing company dared to bid on the same tenders as the criminal contractor.

1.3.3 Mediation and intimidation services

Organized crime also infiltrated the construction industry by offering certain services to companies that were participating in illicit agreements. These services mainly involved resolving disputes between members of a collusion system or maintaining collusion by intimidating outside firms seeking access to a market. The mafia played this role with Montréal contractors. Participants obviously made use of such intermediaries to avoid incriminating themselves by appealing to the police or the justice system to arbitrate disputes linked to illegal collusion.

The RCMP's Operation Colisée found that several construction contractors frequented a social club that was the headquarters of the Sicilian Rizzuto clan. The head of the sidewalk cartel made frequent cash payments there. Considered a close friend of the mafia, this individual used intimidation to remove businesses from the sidewalk market, which was limited in Montréal to a small group of entrepreneurs from Sicily. The facts also revealed that a lieutenant of the Rizzuto clan made threatening calls to an entrepreneur from Québec City to discourage him from bidding on a tender in the Montréal ceramics sector.

The Rizzuto clan also had close relationships with several contractors active in the residential construction industry. It provided mediation services between contractors involved in the project to convert a building in Old Montréal into luxury condominiums.

The mafia also had links with the head of one of the largest groups of construction companies in Quebec. Vito Rizzuto and his son Nick frequented this individual's restaurant in Laval and contacted him via intermediaries, in an apparent effort to outwit police surveillance. RCMP investigators witnessed this corporate leader hug the head of the Montréal mafia. One

contractor reported that Vito Rizzuto mediated a dispute over a collusion agreement for the Acadie roundabout contract.

1.3.4 Access to a trade union's investment capital

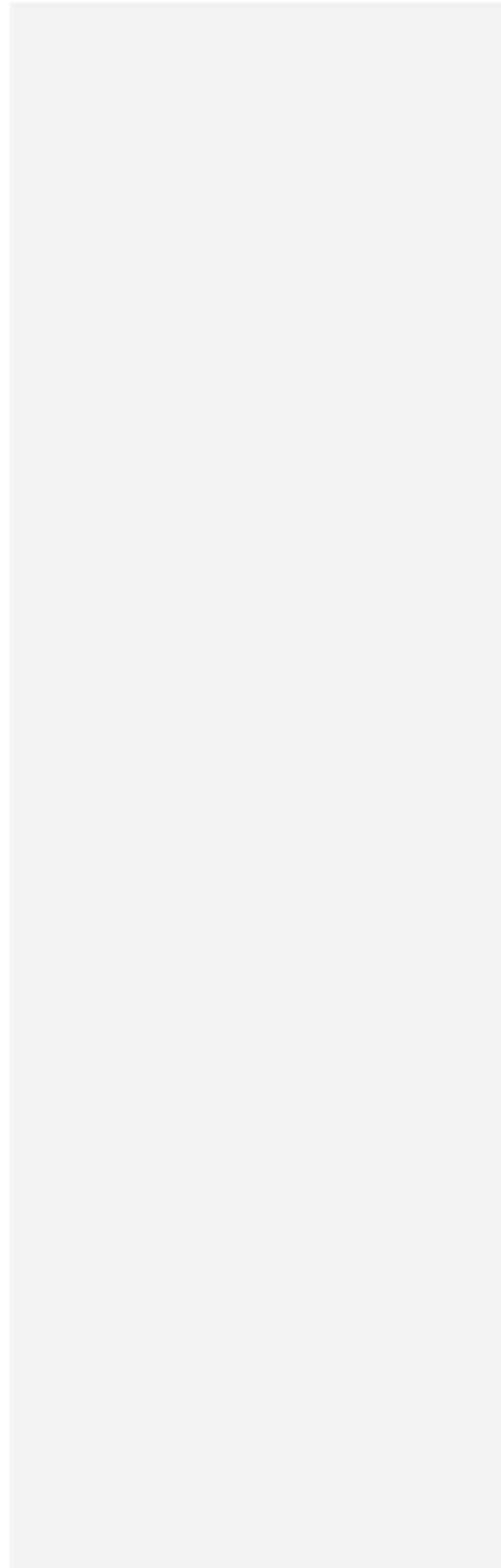
Several individuals linked to the mafia and the Hells Angels also sought to infiltrate the construction industry by obtaining access to the investment funds of the Solidarity Fund and its real estate arm (SOLIM). To do so, they established a relationship with the general manager of FTQ-Construction, whom they asked to pressure his colleagues to fund some of their projects (a land decontamination company, properties including a strip club, a hotel tableware company, a marina frequented by Hells Angels). The electricians' retirement fund run by the president of the FTQ-Construction also invested in the construction of a residential building in which all units were purchased by members of the Montréal mafia, union leaders and a major construction contractor.

The testimony revealed that a prominent Montréal mafia figure introduced himself as the "boss" of the general manager of FTQ-Construction, and that he had come up with a plan whereby he and his accomplices would take control of the union by ousting the then-president. In the November 2008 union elections, the director general of FTQ-Construction called on members of the Hells Angels to ensure that his cohorts won all the leadership positions. The goal in those elections was to gain access to the boards of directors of the Solidarity Fund and its real estate arm. However, these attempts failed in 2009 as a result of media exposure. The facts also showed that some FTQ-Construction local directors were linked to the mafia.

Conclusion

The presentation of generic and cross-sectional portraits of collusion and corruption schemes in the awarding and management of public contracts in the construction industry, of links with the financing of political parties and of infiltration activities by organized crime provides insight into the workings of the illicit practices observed by the Commission during its mandate. In order to effectively combat these practices, however, it is necessary to not only understand how they work, but to identify their causes. This will be the subject of the next chapter.

CHAPTER 2
THE CAUSES



THE CAUSES

This chapter explains the underlying causes of the emergence and maintenance of the previously described schemes. Such a diagnosis is necessary because the recommendations set out in the next section of the report must focus on the causes of these schemes in order to effectively combat them.

The Commission based the analysis that follows on the evidence it gathered, as well as on the scientific literature. The illicit practices observed also exist in other jurisdictions around the world and have been the subject of hundreds of reports and scientific publications, dealing in particular with the causes of these phenomena. These resources proved very useful to the Commission.

It should be noted at the outset that some of the root causes of these illicit practices are very difficult or even impossible to eliminate. They nevertheless warrant exposure because if not eliminated, they must at least be taken into account by public authorities when determining ways to identify, curb and prevent the phenomena that were the subject of the Commission's mandate.

1. CAUSES RELATED TO THE CONSTRUCTION INDUSTRY

1.1 A local industry

The operations of construction companies are strongly influenced by site location for infrastructure projects, and are usually local. Generally speaking, it is more profitable for a contractor to carry out local projects as this means not having to move equipment, workers, raw materials and building materials over long distances. Transportation is also an important element of the cost structure for construction companies, particularly in fields such as paving.

Companies' profit margins are heavily dependent on their ability to control costs. In some segments of the industry, profit margins decline dramatically as a function of distance traveled. This has the effect of restricting contractors' mobility.

This lack of mobility creates a natural geographical segmentation of markets, restricts competition and discourages the entry of companies from other territories. The local character of the construction industry also multiplies the opportunities for meetings between its actors, thereby facilitating the creation of collusion agreements.

The Commission provided several illustrations of the problems caused by the local nature of infrastructure works. For example, the Quebec Ministère des Transports (MTQ) was the victim of several collusion schemes in paving, because the road network for which it is responsible is particularly extensive (30,600 km), while costs tend to increase with distance from asphalt plants. Contractors benefit from a competitive advantage around their plants, and avoid bidding on contracts close to their competitors' plants. This practice leads to a division of the territory.

1.2 Characteristics of demand

The public sector is an important customer for the construction industry, particularly in the civil engineering and road works market. There are specific elements to this type of demand that are worth explaining and taking into account when making recommendations, as these are factors that can be addressed.

1.2.1 *Unstable demand*

From an economic development perspective, the construction industry has an important advantage in that it is present throughout Quebec and has a strong impact on other sectors of economic activity. Consequently, when governments have the financial means, they often prefer to accelerate public investments to counteract the harmful effects of a slowdown in the economy.

For this reason, construction and infrastructure maintenance involve significant fluctuations in demand. They may experience marked downturns for a period of time, followed by a sudden acceleration to support the economy or correct an infrastructure maintenance deficit. These changes in demand may encourage firms to work together to avoid sudden declines in revenues, ensure that business is evenly distributed throughout the year or an economic cycle, protect their profits or take advantage of an increase in demand.

The Commission observed these variations in demand during the period covered by its mandate. Beginning in 2004, the governments of Canada and Quebec developed infrastructure programs to help cities and municipalities increase their infrastructure investments in order to address maintenance deficits for water and wastewater treatment plants that had accumulated over many years. Similarly, after the collapse of the Concorde overpass in Laval on September 30, 2006, the Government of Quebec established a plan to increase investments in the renewal of transportation infrastructure. This plan allocated nearly \$15 billion for the first five years.

An abundance of relatively higher-cost projects at both the municipal and provincial levels in a context where supply has not been able to adapt to increased demand may have the effect of opening the market to competition. However, the reverse may also occur. Indeed, strong demand combined with a stable supply pushes up prices. In a competitive situation, such a context encourages some companies to lower their prices in order to obtain more contracts. To avoid a decline in prices while retaining their share of contracts, however, companies may agree to share contracts at prices higher than those that would have been generated by a competitive market.

Despite its variable and inelastic nature, demand for public infrastructure also involves cycles. These are usually taken into account by contractors, such that demand becomes predictable. For example, companies involved in paving expect a significant number of calls for tenders in the spring. The predictability of this demand is a factor that favours collusion, as does its regularity.

1.2.2 *The low elasticity of demand and the absence of substitute products*

Because of the critical importance of infrastructure to public safety and economic activity, in emergency situations such as the collapse of the Concorde overpass, public demand for

infrastructure works becomes insensitive to price change. When a public contracting authority is required to repair a bridge, the work cannot normally be postponed. Economists refer to this as a low elasticity of demand. Such a situation confers market power on sellers, i.e., the contractors offering to carry out this construction and maintenance work for the state. These emergencies also increase the state's vulnerability to corruption, as it is sometimes necessary to disregard the usual rules for awarding contracts.

Public sector demand for infrastructure work also involves many products that are subject to approval, certification, qualification or standardization. Public contracting authorities invoke these requirements in order to use materials and construction products that meet recognized quality criteria. This also reduces maintenance costs by lowering the number of technical inspections, in addition to streamlining the procurement process.

These requirements have one major disadvantage, however, in that they may restrict competition by preventing potential bidders from using substitutes. The absence of substitute products, as well as low elasticity of demand, confer a substantial advantage on cartels wishing to control certain markets.

In the context of its work, the Commission uncovered situations involving emergencies and the absence of substitute products that paved the way for corruption and collusion.

1.3 The number of companies in a market and barriers to entry

The construction industry also has unique characteristics on the supply side. The number of companies active in a market has a decisive effect on the emergence of collusion. When a large number of companies coexist, it is more difficult to create and maintain a collusion agreement. Conversely, a small number of companies facilitates the conclusion of anti-competitive agreements. As a result, markets with high barriers to entry reduce competition and present an increased risk of being affected by collusion. This is the case in the construction industry.

For various reasons, this industry tends to be a market of small entrepreneurs dominated by a limited number of large firms. The presence of a dominant elite in a given market brings increased risks of corruption and collusion.

For example, in the paving sector in several regions of Quebec, the Commission observed the presence of a significant concentration of assets belonging to a small number of large companies. This situation greatly facilitated the maintenance of collusion schemes based on territorial sharing.

A similar situation was observed in the outdoor lighting and oversized-signs markets in Montréal and Québec City. This work differs from the work normally performed by electrical contractors. It requires heavy machinery and specialized workers, specific permits, access to large performance bonds and the purchase of very expensive materials that can only be supplied by a limited number of manufacturers.

As with the requirement for certified or standardized products, these constraints limit the number of specialized contractors that can carry out this type of work, and may therefore encourage the establishment of collusion schemes. In this sense, they constitute barriers to entry into these markets, an essential condition for the perpetuation of collusion agreements.

1.4 Proximity and collaborative relationships between competitors

Business and trade associations regularly organize meetings in which competitors mingle with each other. Such meetings encourage dialogue and proximity between competitors and create opportunities to reach anti-competitive agreements. Once established, the cartel requires good relationships and cooperation among members in order to continue. Professional or business meetings also promote the stability of established cartels.

The Commission's work revealed that some regional meetings of the Association des ingénieurs-conseil du Québec served as gathering places for organizing collusion between engineering consulting firms in Gatineau and Québec City. The Commission uncovered numerous examples of collaboration among competitors with a view to maintaining a cartel. Companies involved in collusion agreements frequently provided services to each other, such as exchanging strategic information, lending equipment and machinery, etc.

Although these factors are difficult to address, knowing that companies are likely to develop close relationships in such contexts allows public contracting authorities to take them into account when they identify the risks of collusion in public contracts.

1.5 Limited technological advances

There are several areas in the construction industry where technological advances remain rather limited. Simple techniques are used that require only low-skilled entrepreneurs and labour. "This low-skilled and low-tech labour force is one of the more vulnerable points for deviant practices." Generally speaking, a sector in which technological innovation is slow or non-existent is vulnerable to collusion. In this type of market, it is unlikely that a competitor will introduce a new technology that will destabilize a collusion agreement.

This characteristic was obviously a significant factor in the long-term continuation of the sidewalk cartel in Montréal. Knowing that increased competition favours efforts at innovation in an industry, the Quebec government could make a difference here.

2. CAUSES ASSOCIATED WITH THE PUBLIC PROCUREMENT PROCESS

The public procurement process may also present vulnerabilities. According to the OECD representatives who testified before the Commission, public procurement is extremely vulnerable to corruption, and presents a fundamental risk for all G20 countries. Research by the OECD shows that 57% of transnational corruption cases in G20 countries are linked to public procurement.

Quebec has laws and regulations to govern the awarding and management of public contracts. While these have been established by the legislator and the government, their application is the responsibility of individual public contracting authorities, who enjoy significant autonomy in this area.

2.1 The significant value of public procurement

The very value of the contracts awarded is the most important factor promoting the emergence of collusion and corruption schemes in public construction contracts. Public sector invitations to tender on work related to the construction industry can be worth millions of dollars.

This makes public procurement a prime target for corruption and collusion activities: “Of all government activities, procurement is one of the most exposed to the risk of waste and corruption. Bribes from international firms in OECD countries are more common in public procurement than in public services, tax administration and the judiciary.” [Translation] The use of collusion and corruption allows companies to significantly increase their profit margins in high-value contracts.

2.2 Weaknesses in procurement strategies

For any organization that must purchase goods and services, a lack of procurement expertise brings the risk of being exposed to the harmful effects of collusion arrangements, and unintentionally helping to maintain them over a long period. The Commission observed several cases of this nature among Quebec public contracting authorities.

As part of its process of non-negotiable tariff contracts, known as “rate-setting contracts,” the MTQ sets a price for the manufacture and laying of asphalt for each plant it designates, depending on the location of the work. This geographic area is considered open to competition, but the procedure has an unexpected consequence in that it provides valuable information to the owners of these plants that they can use to tacitly conclude collusion deals to divide up territories.

When engineering firms designed plans and cost estimates for the City of Gatineau, the latter required them to also submit a lump sum for the supervision of the work. This amount was difficult for firms to assess and created considerable uncertainty. They developed collusion agreements to reduce this uncertainty.

2.3 Predictable award criteria

The predictability of award criteria is conducive to the formation of collusion agreements. Because such agreements are based on the cartel’s ability to effectively control the outcome of tenders, the use of predictable award criteria, such as lowest compliant bidder, facilitates the organization of cartels.

Contrary to general practices in the private sector, the processes for awarding public contracts are closely monitored in Quebec. Public authorities are required to comply with methods and rules provided for by law or regulation regarding the process of awarding contracts. These are known to bidders, and enable them to attempt to predict the results of calls to tender. For example, when bidders know that the contract will be awarded to the lowest compliant bidder, they may develop a collusion scheme whereby they need only agree among themselves on the prices to be quoted in order to determine the outcome of the tendering. The predictability of the awarding process facilitates corruption and collusion insofar as it ensures the partners in the corruption or collusion pact of the effectiveness of their fraudulent manoeuvres. In the private

sector, the client is not subject to the same laws or regulations that are imposed on public authorities. Companies determine their own rules, and will likely seek to negotiate with bidders if the award process yields an abnormal or unsatisfactory outcome.

Whether it be the formula for weighting professional services offers (in municipalities) or the criterion of the lowest compliant bidder for construction companies, the systematic use of predictable procurement rules facilitated the formation of cartels. The result of these rules is even more predictable when they are based on objective criteria such as price. The use of such criteria reduces uncertainty and maximizes the effectiveness of a cartel. The cartel members have only to agree in advance on their respective proposals to completely manipulate the tendering process to their advantage.

The Commission believes that over the years, the legislation, regulation and consistency of practices of several public contracting authorities facilitated the development and continuation of the collusion strategies observed. At the municipal level, the rules do allow some flexibility for authorities to apply criteria other than price in selecting their contracting parties, but municipalities rarely avail themselves of this flexibility.

Among the cases of collusion that were observed, of note are those related to public contracts in the fields of civil engineering and roadwork, as well as lighting and oversized signs. This factor is also important when the collusion takes place with the collaboration of public actors, as was the case with the City of Montréal, xxxxxx and some other municipalities. In these cases, it sufficed for public actors to provide the list of “competitors” to companies so they could coordinate a vast system of fraud and create the illusion of a competitive process.

2.4 The pressure exerted by the mode of selection

The rule of awarding the contract to the lowest compliant bidder also presents bidders with a dilemma: the higher the profit margin they aim for, the more likely their bid will be rejected in favour of a competitor willing to accept lower profits. In a competitive market, bidders will reduce their profit margin to a minimum in order to improve their chances of winning the contract. Bidders cannot always accurately estimate project costs, however. Furthermore, unforeseen events may occur as the work progresses that will reduce the company's profits. This can give rise to the phenomenon of the winner's curse: when winners misjudge the costs of carrying out their projects, they may end up with a zero or negative profit margin, thus losing money.

The pressure created by this system could encourage companies to implement a variety of schemes to reduce their losses and try to make a profit, for example by charging for extras (justified or not), reducing the quality of the work performed or corrupting a site supervisor. In the longer term, they may also be tempted to establish a system of collusion, initially to minimize their losses and then over time, to guarantee stable, and sometimes highly lucrative, profit margins.

2.5 Insufficient time for receipt of tenders

In Quebec, at least 15 days must be allocated for receipt of bids. With complex projects, this is insufficient time for companies to prepare their tenders, as was the case with the Faubourg Contrecoeur project. While complying with the regulations, corrupt public authorities can therefore impose an unreasonable deadline in order to reduce competition and benefit one company that possesses privileged information. Substantial and late alterations to a project by

way of addendum, with no adjustment to the deadline for the submission of bids, can have the same effect. This is what the Commission observed in the case of water meter procurement in Montréal, where the consortium composed of SNC-Lavalin, Gaz Métro Plus and Suez Environnement was unable to submit a bid.

2.6 Poor oversight of selection committees

Selection committees play a central role in the contracting process. It is therefore important that the conditions governing the creation of these committees, how they function, and the selection criteria they apply be regulated in order to protect the public interest. Committee members must be competent, impartial and free of any real or apparent conflict of interest. The appointment of members to selection committees must not be subject to influence from elected officials or potential bidders. In addition, the same person should not sit on selection committees too frequently.

In the context of their work, selection committee members should first evaluate the proposals individually. A neutral and independent secretary, who does not participate in the selection or discussions, should be present to ensure that the discussions run smoothly. In particular, the secretary should ensure that no member dominates the discussion or unduly influences the other members. Communications between committee members and bidders must also be strictly regulated to avoid any attempts at influence. It is also important that all documents pertaining to the selection process be retained. Indeed, a written record must be kept to allow for verifying the integrity of the process. Finally, the selection criteria evaluated by the committee must be objective and may not be chosen to favour one specific bidder over other equally eligible and acceptable bidders.

Until 2010, there was no legislative framework governing the constitution of selection committees at the municipal level. Beginning in 2010, the law required municipalities to establish a contract management policy that may include provisions to regulate conflicts of interest in the context of selection committees. There is nothing, however, to require a municipality to include such provisions. The contract management policy need only include measures to ensure that a tenderer has not attempted to contact members of the selection committee. The Commission noted that several of the schemes it observed had exploited weaknesses in the regulation of selection committees.

In Montréal, a senior municipal executive sat on a selection committee at the same time as a subordinate. The same executive was a member of 17 selection committees over a two-year period. The official agent and treasurer of the mayor's political party and a lawyer connected to that same party were both members of a selection committee for a para-municipal organization. Only one member of this committee had relevant experience to be a member.

In Boisbriand, the municipal council appointed members to selection committees created for the awarding of engineering consulting contracts. In the case of a major contract, the committee was wholly composed of members who were close to the mayor, including his election organizer. The contracts could thus be easily steered towards firms that had contributed to the mayor's political financing.

At the provincial level, until 2010, MTQ project managers could sit on the selection committees created in the context of projects they managed, even if they had developed ties to potential bidders.

2.7 Release of strategic information

Experts noted that the release of certain information by public contracting authorities could make them vulnerable to collusion schemes. While transparency is one of the principles advocated by the OECD to enhance the integrity of government procurement, the release of strategic information can encourage or perpetuate cartels. Cases reported to the Commission revealed that public contracting authorities released information that may have been used for purposes of collusion and corruption.

For example, on request, the City of Montréal and the MTQ would distribute the list of companies that had requested the specifications or tender documents for a given project. This sensitive information could then be used by a group of companies seeking to organize a collusion agreement.

Similarly, through its non-negotiable-tariff contract processes, known as “rate-setting contracts,” the MTQ involuntarily suggests a sharing of its territories for contractors wishing to engage in collusive practices. The MTQ judges the competitive situation of a regional market by comparing the tariffed prices at each of the two asphalt mix plants closest to the proposed project site. If the price difference between the two is less than 5%, there is considered to be competition, and the ministry proceeds by tender. On the other hand, if this difference is greater than 5%, the MTQ considers that there is no competition, and proposes a rate-setting contract at the plant located nearest the project.

The unexpected consequence of this method is to establish a radius of influence around each asphalt plant designated by the MTQ, allowing for contracts to be awarded based mainly on territory. Over time, entrepreneurs became aware of these territories of influence, and established a system of territorial division at the expense of the ministry.

Public contracting authorities also facilitated the creation of collusion agreements by making known the estimated cost of the work to be carried out. Thus, it was well known that the amount of the performance bond required by the City of Montréal and published in its tender documents was 10% of the estimated cost of the work. By disclosing the amount of the requested bond, the City was actually publishing the amount it expected to pay for the work. This strategic intelligence could then be used by a group of complicit companies. A similar situation occurred at the MTQ, which published the prices of its rate-setting contracts, thereby revealing to companies the maximum amount it was willing to pay for paving.

Public contracting authorities also disclosed the budget percentage they were willing to spend on contingencies or unforeseen work. At the City of Montréal, this amount generally represented 10% of the value of contracts. The Commission learned that contractors, with the complicity of site supervisors, established corrupt pacts to exploit these contingency funds by claiming for false extras. Entrepreneurs thus increased their profits in exchange for bribes to municipal officials.

The names of the members of the selection committees of public contracting authorities is another type of information that companies involved in collusion and corruption schemes may seek to exploit. In 2012, a provision was added to the *Act respecting contracting by public bodies* (LCOP) to prohibit the disclosure of the names of members of selection committees. This provision does not apply to municipalities or Crown corporations, however.

2.8 The risks of political influence

Conscious of the risks associated with influence peddling, democratic governments have depoliticized public procurement processes in order to limit the involvement of private actors in the awarding and management of contracts. The facts revealed in the context of our work show, however, that the awarding and management of public contracts in the construction sector is not completely immune to interference. There are two factors that may explain the source of the pressure on Quebec's procurement contracts.

2.8.1 *Increased financial needs of parties*

The gap between the revenues and expenditures of political parties has widened in almost all democratic regimes, as parties have grappled for some years now with a significant decline in their numbers and the associated revenues. In Quebec, political party revenues remained relatively stable between 1978 and 2008, despite a 40% increase in registered voters during that period. This coincided with a decline in political party activism over the period 1960 to 1980, as demonstrated by the marked reduction in the number of donors. Popular financing, which was the source favoured by the Quebec legislator when the 1977 reform was adopted, has therefore lost ground as a source of funding for Quebec's political parties.

This decline in the relative weight of popular financing has occurred just as election campaigns, the main expense of political parties, have become more costly. Traditional campaign activities have largely been replaced by high-cost advertising. While part of the difference is filled by popular financing, the shortfall creates an incentive to seek out sources of illicit financing.

The 2007 provincial elections brought a minority party to power in the National Assembly, and new elections were held the following year. This succession of elections led to a funding problem for political parties. Indeed, the spending limit for the 2008 election campaign was roughly the same as in 2007, but political parties had only a fraction of the usual time to raise the money they needed. One political organizer told the Commission that the usual contributors to the party for which he worked were reluctant to contribute again so quickly, and all the more so given that the party had held a leadership race in late 2005.

Another political party decided to significantly increase the fundraising targets imposed on its candidates and MNAs. An executive of an engineering firm who had previously served as a minister and long-time political organizer told the Commission that popular financing activities only provided for reaching about one quarter of that target. Representatives of consulting engineering firms and companies reported that requests for funding from this party became increasingly insistent as a result of the new fundraising targets.

A similar phenomenon was observed in Montréal at the municipal level. In December 2001, all the island's municipalities were merged, doubling the number of voters the political parties had to reach. In addition, the elections were moved up one year, which increased the urgency for the new opposition party to raise funds.

2.8.2 *Decisions with significant financial consequences*

Elected officials are responsible for making decisions that can have significant financial consequences for businesses and individuals. Transparency International notes that "even in

the least interventionist regimes, legislators and senior officials make decisions on a wide range of issues of immense importance to the corporate world.” [Translation] A government decision is therefore likely to generate more concentrated profits or costs for a corporation than for an individual. This applies in particular to companies whose activities depend on public contracts. Consequently, every political decision that could have financial implications for individuals and companies brings the risk of corruption. The more power an elected official has in relation to the awarding of contracts, the more vulnerable he or she is to political corruption.

The requirements of political parties and private actors are therefore complementary and can interact in the context of an exchange relationship. In his testimony, Professor Michael Johnston introduced the idea of an “influence market,” where the interests of political and economic elites intersect. In the presence of strong institutions and a professional public service, such as in Quebec, political contributions are more profitable and less risky for companies in search of influence than bribing public employees. According to Professor Johnston, the influence market is the syndrome of subtle and generally underestimated systemic corruption in democratic states, likely to have far more serious consequences than administrative corruption.

3. CAUSES RELATED TO THE GOVERNANCE OF INSTITUTIONS AND ORGANIZATIONS

3.1 The culture of organizations

The culture of a public or private organization refers to the set of goals, values and practices that permeate its operations. It has an important influence on the behaviour of the organization’s members, and can thus become a cause of their illicit behaviour.

Adherence to an organization’s culture is often a necessary condition for a person’s integration. When the members of an organization are fully integrated, they are likely to see the culture of the organization as the norm, even if that culture is contrary to the fundamental norms and values of society. “For these offenders, it is not that they are outside the system, but rather that the system understands nothing of their environment, the demands of their profession and the economic reality.” [Translation] Those who are not fully integrated into the culture of their organization may be aware of the illicit nature of their actions, but feel obliged to adopt the inappropriate conduct of their superiors, which is valued by the organization.

3.1.1 The involvement of senior executives of public and private institutions and organizations

The culture of an organization is largely shaped by its leaders. Therefore, if “management values the legitimate rules of the game, subordinates will comply with them. If, on the contrary, conformity does not seem to be its priority, the way is open to engage in illicit practices.” [Translation]

The Commission found that some elected officials and senior executives orchestrated schemes, were complicit in wrongful acts, or tolerated or failed to report them. It also found that senior executives of private companies that obtained contracts from municipalities or the MTQ participated in schemes involving collusion or corruption.

The heads of some consulting engineering firms and other construction companies were involved in planning and implementing schemes involving straw donors for political party

financing, unreported cash payments and turnkey elections. In the case of the two main provincial political parties, the methods used to raise funds from businesses were not the result of some initiative of the lower ranks. The fundraising director of each of the two parties coordinated a well-crafted solicitation strategy.

3.1.2 *The rhetoric of neutralization or trivialization*

Moreover, for a culture of illicit actions and wrongdoing to develop and persist within an organization, its members must adopt a “rhetoric of neutralization,” which is an explanation provided by an offender to justify, trivialize or minimize the seriousness of his or her actions. This type of rhetoric is based in particular on euphemisms or expressions aimed at presenting illicit practices in a positive light.

The Commission noted the presence of a strong rhetoric of neutralization in the Quebec construction industry.

The “survival” of the firm

Business representatives said collusion was necessary to ensure the survival of their firms.

The adoption of Bill 106 in 2002 created an upheaval in the municipal engineering consulting market in Quebec. Indeed, this law limited the possibility of awarding professional engineering contracts by mutual agreement and in numerous cases, imposed a requirement for calls for tenders. Representatives of consulting engineering firms that participated in collusion systems were very critical of this law, and some even went so far as to use it as justification for implementing these systems. They claimed that the bill caused such a significant drop in prices that Quebec engineering firms, some of them among the world’s largest, had no choice but to resort to collusion to survive.

One witness, whose paving company won more than \$100 million in contracts during the period studied by the Commission, explained that territorial sharing was the only way for “small” companies like his to avoid bankruptcy. Another contractor used the threat of bankruptcy to justify his attempt to launch a collusion system on the North Shore (Montréal).

“Respect” and “harmony” among competitors

Those involved in collusion in the paving industry denied the existence of territorial sharing, preferring to speak of “respect” among competitors. The same term was used in the fields of municipal consulting engineering, oversized signs and exterior lighting. Some involved in the field of outdoor lighting described tacit non-competition practices as a form of respect. In Laval, witnesses spoke of preserving “harmony” among competitors, or the “harmonization” of contracts, to describe collusion. One contractor in the North Shore (Montréal) used the term “non-aggression pact” between contractors in reference to collusion involving territorial sharing.

“Sectoral financing,” “community financing,” contribution to “democracy” and “good works”

Representatives of provincial political parties spoke to the Commission about “sectoral financing” or “community financing” to refer to the solicitation of political contributions from corporations. A representative of a consulting engineering firm said that his firm’s contributions to municipal political parties were a contribution to “democracy,” while another called them

“good works.”

This rhetoric of neutralization was intended to justify actions that had been taken or to mitigate the gravity of those actions. Combined with the involvement of senior executives of public and private institutions and organizations in certain schemes of collusion and corruption, this rhetoric contributed to the emergence of a culture that was conducive to the establishment and maintenance of illicit practices.

3.2 Poor management of conflicts of interest

A conflict of interest in the public sector “involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.” Public institutions that ignore or neglect the risks associated with conflicts of interest create conditions conducive to corruption.

3.2.1 *Close relationships*

The field of public contracts is particularly conducive to the emergence of conflicts of interest, apparent or real. The performance of public contracts requires close collaboration between public actors (public employees, senior officials and elected officials) and private actors (contractors, professional firms and consultants). This collaboration promotes the development of close relationships, which can lead to courtesy relationships that are sustained through advantages or gifts. Over time, these relationships have the potential to generate conflicts of interest, which in turn, leave the procurement process vulnerable to corruption.

The Commission found that some of the cases of corruption it uncovered were partly due to weaknesses in managing conflicts of interest. Public institutions tolerated or condoned the development and maintenance of close relationships between their members and private actors, in particular by allowing private companies to offer advantages or gifts to public officials. These close relationships can legitimately be maintained between private agents who do business. But public servants manage public money, and therefore by allowing these close relationships to develop in the public sector, institutions helped place their employees in a conflict of interest, which in some cases led to corruption.

In Montréal, several municipal employees and senior executives developed close ties with representatives of private companies doing business with the City. Meals and social activities with the contractors they were supposed to monitor were part of daily life. Some municipal employees considered the contractors who corrupted them to be their true employers. They strove to provide them with “five-star service” and proposed ways for them to claim more “false extras.” The City’s most senior official was a close friend of a major construction contractor operating mainly in Montréal, who invited him on several trips. The chair of the executive committee, meanwhile, had a close relationship with the head of that same company, as well as with the head of the engineering firm that was the City’s main service provider in the field of engineering. These companies benefited from their close relationship with the City’s senior executives to obtain privileged information, among other things. These close relationships were instrumental in the emergence and maintenance of the system of corruption and collusion in Montréal.

The private company practice of offering gifts was also well established at all levels of the MTQ, from the site supervisor to the territorial directors all the way to the assistant deputy minister. In 2002, the government adopted the *Regulation respecting ethics and discipline in the public service*, which prohibits public servants from accepting “gifts, tokens of hospitality or benefits other than customary benefits of modest value.” One witness claims to have continued benefiting from this practice, although it has decreased significantly since 2002.

3.2.2 *Transition from the public to the private sector*

The Commission observed situations where elected officials or public employees left their employment to enter the private sector. Executives and territorial managers from the MTQ accepted jobs in engineering firms. A former minister became senior vice-president of business development at an engineering firm. Shortly after leaving the City of Montréal, a chairman of the executive committee landed a job as a director in an engineering firm that had previously obtained City contracts.

According to the OECD, the frequency of these situations can be explained by “new public management practices [whereby] several countries have encouraged movement of personnel between the public sector and the private sector.” This mobility may lead to conflicts of interest, however, which increase the risk of corruption. Public employees might be tempted to use their position to benefit a private actor for the purposes of obtaining personal benefits in a future job.

The Commission did not demonstrate that members of the public sector who transferred to private firms favoured those firms while they were still elected officials or public employees in order to obtain a position. However, moving from the public to the private sector can generate conflicts of interest. In the absence of a satisfactory framework, these conflicts create fertile ground for corruption.

3.2.3 *Combining positions and length of service*

Combining positions may also place a public actor in a situation of conflict of interest, and it increases the risk of corruption by making the incumbent an attractive target for corrupters. The risks may be even higher when a person occupies several positions over a long period.

Representatives of employer and trade union organizations combined positions in their own organizations and in oversight bodies, such as the Commission de la construction du Québec (CCQ) and the Commission de la santé et de la sécurité du travail (CSST), for a very long time. The simultaneous effect of combining functions and holding a position for a long time can have perverse consequences. These include, first and foremost, the risk of undue influence in decision making and the relaxation of applicable rules and processes, particularly with regard to managing conflicts of interest and the abuse of power. Moreover, people who combine multiple positions over a long period may become the target of corruption attempts.

3.3 *Lack of transparency*

The OECD considers transparency to be one of the main principles that must be followed in order to strengthen integrity in public procurement, and notably to combat collusion and corruption. Transparency refers to the dissemination of information about public institutions that can be used to evaluate them. It is not an end in itself, but rather a means for citizens to monitor the exercise of power by public institutions. As stated by the City of Laval in its submission to

the Commission, “transparency is also an essential condition for respecting democracy, since too much control of information can lead to concealment and manipulation and the use of public power for improper purposes.” [Translation]

Transparency requires access to information regarding the processes for awarding and managing public contracts in the construction industry. But it also presupposes that the information available can be understood and used by citizens to determine whether the government is acting legitimately.

Lack of transparency facilitated the emergence and maintenance of the schemes that the Commission uncovered. In some cases, as in Laval, the city charter favoured the concentration of information on the executive committee, which was controlled by the mayor. In addition to being virtually inaccessible to citizens, this information was poorly circulated within the municipal administration, where employees were unaware of the decisions and actions of other branches of the administration. The same type of phenomenon occurred in the City of Montréal.

3.4 The absence or loss of internal expertise

In order to carry out a project, a public contracting authority must have access to the necessary skills in procurement, project management, cost estimation and civil engineering. In the absence of internal expertise, public contracting authorities rely on external consultants to plan, carry out and monitor the work to be performed. Outsourcing certain tasks to external firms does not pose a problem when it addresses specific expertise requirements or responds to a temporary increase in the volume of work. However, a lack of in-house expertise prevents public contracting authorities from fully appreciating the solutions proposed by their suppliers and evaluating the work performed. Once they have lost too much internal expertise, they become completely dependent on external firms.

Several witnesses testified to a significant loss of expertise throughout the provincial and municipal public service. In the 1990s and 2000s, the MTQ experienced a reduction in expertise as a result of a succession of reforms and decentralization measures, staff attrition and increased outsourcing. This situation left the department dependent on engineering firms, as the latter assumed increasing responsibilities. Several reports stressed that the MTQ did not have the human and financial resources required to ensure adequate cross-checking of cost estimates and payment claims. Engineering firms also participated in planning certain projects, a situation that opens the door to an overestimation of requirements and consequently, the scope and cost of infrastructure. Delegation to engineering firms of strategic functions, such as work planning, estimate preparation and cross-checking of payment claims, is a potential source of abuse insofar as private actors may be inclined to serve their own interests at the expense of the public interest. Some of the savings anticipated by reducing the size of the public service therefore had the opposite effect because as the MTQ reduced its resources, it became the target of collusive activities that inflated the cost of public works. While the department significantly increased its investments after the collapse of the Concorde overpass in 2006, the consequences from the loss of expertise have increased tenfold.

Testimony also revealed that beginning in the 1990s, the role of the City of Montréal public service was reduced. An official involved in a corruption scheme explained that when he joined the public works department, auditors closely monitored contracts, requisitions and reports submitted by project managers. These auditors reviewed payment claims to ensure that they were compliant and justified. The witness found that by the middle of the decade, the auditors

had begun to disappear one after the other. Knowing that they were no longer there to supervise his work, the corrupt official was free to tamper with his reports, with the complicity of contractors and engineering firms involved in a scheme to increase quantities.

There were other workforce reductions that weakened the public works department. For example, the number of project engineers dropped from 9 to 3, and the number of technical staff responsible for monitoring construction sites declined from 25 to only 1, and then rose to 6 or 7. Many of these people work in the boroughs rather than in the central service. These technical agents are responsible for checking the quantities of materials used on construction sites. As a result, collusion and corruption schemes developed in Montréal as the City reduced the number of employees assigned to control and auditing functions.

The Commission's work also highlighted the lack of expertise in civil engineering in the City of Laval and in most small municipalities in Quebec. If this problem is not corrected, the dependence of these municipal jurisdictions on the services of engineering firms will only continue.

This loss of expertise also resulted in shortcomings in the supervision of construction sites and in the ability of public contracting authorities to estimate the work.

3.4.1 Inadequate monitoring of work

Proper supervision of work performance is necessary for public contracting authorities to ensure that the work complies with what was requested. The nature of construction projects is such that it is not always possible to evaluate the compliance and quality of work after completion. Once a construction project is finished, many components are concealed under other materials. "For example, the structural steel is covered with concrete, the brick is covered with plaster, the engineering components are housed in boxes, and the roof has a covering layer." [Translation] The quality and the conformity of the work performed therefore rely on certification by the site supervisor. Because the quality of the work and the amount of materials can only be certified before covering materials are applied, this situation is susceptible to false billing and bribing of site supervisors.

Inadequate supervision may also lead to the approval of unjustified additions or extras. The testimony of one MTQ official who participated in illicit practices while he was a site supervisor illustrates the vulnerability of this position to corruption. The engineer responsible for supervising the work, whether employed by the department or an engineering firm, can significantly influence the progress of the work. This person's collaboration can allow a contractor to amass considerable profits, while the refusal to collaborate can lead to heavy losses. Construction supervisors are therefore a prime target for unscrupulous actors who want to maximize their profits from a project. The loss of MTQ monitoring expertise affected its ability to adequately monitor work.

The false extras scheme in Montréal would not have been possible had there been adequate site supervision. The administrative decision to entrust the supervision of construction sites and the approval of additional expenditures to a limited number of officials had the effect of reducing the level of control of these expenditures and increasing the vulnerability of site supervisors to corruption.

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3.4.2 *The inability to estimate the cost of work*

The ability to arrive at an accurate estimate of the cost of the work is crucial for a public contracting authority. A proper estimate enables the organization to ensure that it pays a fair price for the work it wants done and to detect any abnormal cost overruns, which may be signs of corruption or collusion.

During the period studied by the Commission, the City of Montréal did not have the capacity to accurately estimate the cost of its construction projects. Starting in the early 2000s, estimates were produced using software that calculated the cost of the work based on the price previously paid for similar work. However, the period on which the software calculations were based was marked by collusion and price gouging. Not only did this method fail to achieve accurate estimates, it even served to perpetuate the cartels' pre-existing inflated profits. The higher costs generated by collusion were incorporated into the software and echoed in subsequent years.

3.5 The discretionary power of public contracting authorities

In order to obtain the best products at the best price for the public sector and to foil corruption and collusion schemes, public contracting authorities must have some flexibility in the performance of their duties. They must be able to adopt original procurement strategies suited to the context in which they operate. The potential consequences of overly predictable award criteria were explained above.

It is therefore appropriate, and even desirable, that laws allow some flexibility for public contracting authorities to exercise judgment and make the best decisions in the public interest. Furthermore, administrative discretion is inevitable in many public sector occupations.

That said, the existence of a high level of discretion is also one of the elements of governance failure most frequently cited as creating an atmosphere conducive to illicit activities in the awarding and management of public construction contracts. For example, the Commission found that the rules governing the MUHC contracting process conferred significant discretionary powers on the public actors involved. In fact, the MUHC and the government had complete discretion to accept a non-compliant proposal that offered the best value to the public sector if no proposals deemed compliant were received, or to refuse any change in the membership of a consortium. One of the MUHC executives charged in this file had discretion to accept or refuse derogations proposed by the consortia, which may explain the approval of a derogation as farfetched as the aboveground construction of an underground parking garage. Finally, MUHC executives had the power to alter the composition of the various committees and subcommittees and fill them with members of their choice. The Commission found that these powers were used at various times by MUHC executives to favour a particular consortium.

Laval's city charter conferred considerable discretion on the members of the executive committee headed by the mayor. The risks associated with the existence of discretion in the awarding and management of public contracts increase when that power is exercised in the absence of transparency and accountability in decision making. It is therefore important that a high level of discretionary power be accompanied by adequate oversight, which may be achieved through transparency, accountability or reporting, or through the actions of a monitoring or inspection agency.

3.6 Obstacles to whistleblowing

Collusion and corruption involve acts that are committed secretly between consenting persons. It is therefore difficult to detect them unless they are reported. Members of an organization are often in the best position to become whistleblowers and to provide monitoring and inspection agencies with the information they need to initiate an investigation.

The Commission acknowledges the fundamental role played by whistleblowers in the achievement of its mandate. The work accomplished also revealed that there are several difficulties associated with whistleblowing, and that few people report malfeasance, which partly explains the magnitude and duration of the schemes that were uncovered.

3.6.1 *The risk of reprisals*

Some whistleblowers told the Commission that they had been retaliated against for reporting the malfeasance they witnessed.

For example, the Commission found that there had been reprisals against officials who interfered with corrupt and collusive acts in Montréal. One official in charge of a reform intended to centralize the procurement process – potentially disrupting corruption and collusion systems – had to choose between reassignment and retirement. Another executive was forced to resign because he had opposed certain machinations that were contrary to the interests of the City. The Commission generally found that the organizational culture at the City of Montréal was one that promoted a fear of reprisals or of being “shelved” and respect for the chain of command, at the same time discouraging whistleblowing. The testimony further suggests that a senior MTQ official was transferred to another department when he aroused the ire of a supplier after refusing to approve claims for payment that may have been part of an overbilling scheme. It is not clear from the facts whether there is a causal relationship between the two events, but it is obvious that the senior public service does not have the necessary mechanisms to denounce possible schemes where, for example, a political office is seeking to favour a company that has provided it with financing.

There was also a fear of reprisals in the private sector. In the context of a contract with the MTQ, two employees of engineering firms responsible for overseeing a major project witnessed misappropriations related to corruption that involved their superior. The first of the two confronted his superior, who directly threatened him with reprisals. That stopped him. The second employee reported the situation to her firm’s management and indicated that she had filed a complaint with the Ordre des ingénieurs du Québec (OIQ). Management made it clear that she had to retract her complaint and get back in line, and warned her about her professional prospects. One of the executives she confided in subsequently made negative comments about her when she sought employment elsewhere.

International experience and foreign literature confirm that when they are not adequately protected, whistleblowers are often subjected to reprisals (loss of employment, professional stagnation, demotion, harassment, threats, prosecution, etc.) The more serious the allegations, the more vulnerable the whistleblowers to reprisals. The reporting of malfeasance is rarely appreciated, and whistleblowers are often poorly perceived by their peers.

3.6.2 *Flaws in the whistleblower process and the whistleblower protection regime*

The Commission found that the system in Quebec during the years in which the schemes involving corruption, collusion and political financing were in place did not encourage their reporting. Specifically, prior to the adoption of the 2011 *Anti-Corruption Act*, there was no simple process for reporting corruption or collusion to a credible and clearly identified authority. Several agencies received and handled reports from the public, but whistleblowers had to ensure that their complaints were lodged with the right organization, each of which could deal only with matters under its own mandate. There was no formal mechanism for sharing reports between agencies.

These deficiencies were observed particularly in the case of the MUHC. An employee who was a member of an evaluation subcommittee was subjected to an attempt at improper influence on the part of her supervisor, but did not report it. She subsequently realized that the work done by the subcommittees had not been considered in the final decision, and she raised this fact with her superiors at two levels. She did not know who else she could turn to in order to report the situation. On another occasion, the representative of the losing bidder received a request to withdraw, which was all the more surprising since among other things, the request was accompanied by a large bonus drawn from the hospital foundation fund. This individual was subsequently subjected to an intimidation attempt by the representative of his competitor. He reported this fact to the CEO of the agency responsible for the contract awarding process, but to no avail. The existence of an official reporting channel might have enabled these two individuals to report what they had witnessed so that it could be taken into account in assessing the fairness of the contract awarding process, and so that appropriate action could be taken.

Similarly, an MTQ official who received information from an informant (who wished to remain anonymous), alerted MTQ authorities in 2002 about the collusion system in Laval. The Deputy Minister of the MTQ relayed this information to the Minister of Public Security and the Director of the *Sûreté du Québec*. The ensuing investigation ended up in a series of failures, however, notably due to the lack of witnesses willing to corroborate the whistleblower's information.

During the period covered by the Commission's mandate, the regime in Quebec and Canada to protect whistleblowers from retaliation was also very ill-suited to the reality of white-collar crime. The *Civil Code of Québec* provides that a person may free himself from liability for injury caused to another as a result of the disclosure of a trade secret where such disclosure is justified on grounds of general interest, including public health and safety. This only protects whistleblowers against civil suits, and not against other retaliatory measures. They are therefore not immune to loss of employment, demotion, transfer or forced departure.

Since 2004, the *Criminal Code* protects employees who provide information to a "person whose duties include the enforcement of federal or provincial law." This provision protects reports made to an oversight body, but not internally or to the media.

Canadian case law at the time did not encourage whistleblowing by employees either. Employees have a duty of loyalty to their employer, and are therefore required to exhaust all internal remedies before publicly criticizing the employer. This means that they must notify their superiors of malfeasance while respecting the internal hierarchy, which can be problematic when the superiors are themselves involved in these acts. The Supreme Court has recognized that employees who report malfeasance internally should be protected from reprisals. Nevertheless, employees' duty of loyalty is very restrictive, and does not leave them much

flexibility when it comes to reporting malfeasance.

For example, the director of an FTQ-Construction union local was misunderstood by his superiors when he reported the mismanagement of the union's general manager and his connections with individuals linked to organized crime. The whistleblower's disclosures were perceived as attacks on the union, and after being subjected to multiple grievances, he was expelled from the union.

In addition to illustrating the negligence of some executives faced with reports from whistleblowers, these situations demonstrate that whistleblowers had no investigative or monitoring service they could turn to in the workplace that would be responsible for acting on the information they provided.

3.7 Causes related to the characteristics of the municipal environment

3.7.1 The autonomy and vulnerability of some municipal clients

It should be noted that in Quebec, the legislator and the government establish the legislation and regulations governing the awarding and management of public contracts, but public contracting authorities have autonomy in terms of their application. This is also the case for municipalities, which all enjoy such autonomy regardless of their size.

Procurement processes are complex, however, and generate risks and problems that are difficult to detect without expertise and resources. The Commission found that some small municipalities do not have the expertise to adequately assess their needs, accurately estimate the cost of their construction projects, and spot the signs of collusion in their market. These clients are therefore particularly vulnerable to corruption and collusion schemes.

3.7.2 The role of elected municipal officials in awarding contracts

In municipalities, public contracts are awarded by resolution of the municipal council, or of the executive committee if the council has delegated that power to it. Elected officials are therefore involved in the process of awarding contracts. In small municipalities, this makes elected officials particularly vulnerable to pressure from private companies, which poses a risk to the integrity of the public contracting process. In large municipalities, notably Montréal, the Commission found that the role of elected officials in the awarding of contracts allowed them to manipulate the process to favour certain businesses. XXXX

3.7.3 Lack of competition and political alternation

The absence of political competition over a long period reduces oversight of the ruling party. Governments dominated by one political party are monitored less, whether by oversight agencies, political competitors or the public.

In Quebec, there was political competition at the provincial level. This was not the case in a great many municipalities, however. Indeed, about half of the candidates in the municipal elections of 2005 and 2009 ran unopposed. Although this phenomenon is more common in municipalities with fewer than 10,000 people, large cities are not immune to it. This lack of competition and political alternation was observed in Laval, where the incumbent mayor during the period covered by the Commission's mandate led the city for 23 years. His party controlled

the municipal council without opposition from 2001 to 2013. He thus had a political monopoly during this period. Some studies also tend to show that the holding of power by the same elected representatives over a long period increases the risk that there will be collusion, often accompanied by corruption.

3.7.4 The lack of regulation of NPOs

The rules governing the awarding and management of contracts by a municipality include ensuring the participation of as many companies as possible in a given project. These rules are the first safeguards against collusion and corruption. It is possible, however, for a municipality to circumvent these rules by entrusting the management of a contracting process to a non-profit organization (NPO). The rules governing such bodies are much less restrictive than those applicable to municipalities and their agencies. In the case of the Faubourg Contrecoeur project, for example, a para-municipal company was transformed into an NPO specifically to escape the restrictive rules to which it would normally have been subjected.

3.7.5 Elements specific to Montréal and Laval

There were significant shortcomings in the City of Montréal's control mechanisms during the period covered by the Commission's mandate. From 2001 to 2004, the management and human resources branches were authorized to conduct investigations and internal audits, but only Montréal's auditor general exercised independent control over the City's activities. His mandate, however, did not include uncovering corruption, collusion or fraud.

The City established an internal auditor in 2004, succeeded by the comptroller general in 2010. The comptroller general is not independent, however, despite the recommendations of a report to that effect in 2013.

Between April 1996 and April 2009, at least six internal reports identified significant anomalies in the awarding and management of construction contracts. In most cases, these reports were not followed up on, due in particular to deficiencies in document management and the transmission of information to decision-making bodies. In addition, two directors general either did not act on evidence of corruption and collusion, or appeared to condone such wrongdoing.

The City's mayor, Gérald Tremblay, did not adequately exercise his role of control and supervision of the municipal administration, preferring to rely on the chairman of the executive council.

During the period covered by the Commission's mandate, the control mechanisms specific to the City of Laval were limited to almost non-existent. Only the City's chief auditor exercised a monitoring and oversight role. His job was not to detect fraud, corruption or collusion, however, and there was no monitoring or reporting mechanism. No agency or department was in a position to conduct internal investigations at the City.

4. THE CAUSES OF THE INFILTRATION OF THE CONSTRUCTION INDUSTRY BY ORGANIZED CRIME

The construction industry is internationally recognized as a target of choice for organized crime, and this was certainly the case in Quebec during the period covered by the Commission's

mandate. The two main criminal organizations active in Quebec – the mafia and criminal bikers – have been shaken by police investigations in recent years, but they have not been eradicated.

4.1 The motivations of organized crime

Several authors have analyzed organized crime from the perspective of an illicit enterprise whose motivations are similar to those of legitimate companies: the lure of gain and the desire to accumulate power. These motivations explain in part what drives organized crime to infiltrate the construction industry. Certain characteristics of organized crime show that there are other motivations at work, however.

Organized crime engages in illegal activities, such as the sale of narcotics, which generate profits – usually in the form of cash – that are not reported to the tax authorities. This type of income is often referred to as “dirty money.” It is difficult for criminals to spend their dirty money without attracting the attention of law enforcement and tax authorities. They therefore need ways to “launder” or legitimize this money. Some authors argue that the presence of organized criminal groups in the construction industry is largely due to the need to launder their dirty money. Criminologist Carlo Morselli told the Commission that “[s]evere controls on money-laundering in financial institutions (e.g., banks and credit unions) pushed organized crime to infiltrate legitimate business sectors,” and that “[t]he construction industry, with its few controls, was an ideal alternative.”

Territorial control is an essential element in the success of mafia-type organized crime. The desire to exercise greater control over a territory and its economic activities may therefore be one of the motivations of organized crime to infiltrate the construction industry.

Some organized criminal groups seek to develop relationships with legitimate actors in society, including politicians and businessmen, in order to better entrench their power. Infiltrating an industry can strengthen the relationship between organized crime and legitimate actors, and as such, is one of the motivations for organized criminal groups to infiltrate the construction industry.

4.2 Infiltration incentives: the characteristics of the industry

Several hypotheses have been put forward to explain the vulnerability of the construction industry to organized crime. The Commission’s hearings revealed the weaknesses exploited by some bidders to manipulate the public contract awarding process.

Carlo Morselli and his colleagues pointed out that it was predictable that members of organized crime would also take advantage of these opportunities.

4.2.1 *The size of the industry*

The size of the industry makes it an attractive target. In 2013, approximately \$48 billion was spent in Quebec on public and private construction contracts. Public contracts valued at more than \$7 billion are awarded annually through competitive bidding. This does not include smaller contracts awarded by mutual agreement. According to Mike Amato, an officer with the York Regional Police Criminal Intelligence Service, criminal organizations have clearly understood the potential for enrichment represented by public contracts.

4.2.2 *The presence of unskilled labour and the low level of technology in the industry*

Some types of construction work do not require a skilled workforce or the use of advanced technologies, and this facilitates penetration by organized crime. The Commission observed that the influence of persons linked to organized crime is more evident in low-skill industries such as sidewalk construction (Montréal), paving (Abitibi) and the installation of culverts (Eastern Townships), than in sectors requiring more in-depth knowledge, such as engineering. According to a police census conducted in 2010, 75% of Hells Angels members owned companies in industries that did not require advanced expertise, including construction.

4.2.3 *Difficulty of controlling and monitoring*

Given the nature of the industry, it may be difficult for public authorities to identify the presence of organized crime. The Régie du bâtiment du Québec (RBQ) is a key player in this respect, since the licences it administers are “the gateway to the legal economy in the construction industry” [Translation] and a bulwark against the infiltration of organized crime. In 2013, there were more than 40,000 holders of licences issued by the RBQ. The *Building Act* authorizes the RBQ to refuse to issue a licence, or to suspend or cancel a licence, if it finds that the licensee is lending his name to another person. Detecting the presence of front men among tens of thousands of licensees is not an easy task, however. This offence does not carry personal penalties for the individuals who act as front men, or for those who benefit from the scheme. Huguette Labelle and Paul Lalonde, representatives of Transparency International Canada, noted that it is often difficult to identify the actual owners of businesses, whether they are in Canada or elsewhere. Organized crime takes advantage of this situation, and companies may fall under its control without the knowledge of authorities. For example, the environment department analyst responsible for the file of a company specializing in the rehabilitation of contaminated lands was unaware of the existence of an operating agreement between that company and another one owned by individuals close to the mafia.

4.2.4 *The use of cash, the recycling of proceeds of crime and the presence of undeclared work in the industry*

Construction projects are characterized by a complex contract chain and a large number of transactions. “All these monetary transactions pave the way for the payment of fictitious employees, invoices for supplies that have never been received, and exorbitant prices for supplies and materials.” [Translation]

For similar reasons, the construction industry represents an opportunity for organized crime to create tax avoidance schemes. The structure of the industry easily lends itself to this practice. There are some 50,000 construction sites every year in Quebec. Most are active more than one day, and they are generally spread across the entire province. Although CCQ inspectors conduct 35,000 visits annually, it is impossible for them to monitor sites on an ongoing basis. Undeclared work persists on many projects, despite the CCQ’s attempts to end the practice. In 2008, the tax losses in Quebec’s construction sector amounted to \$1.5 billion, almost half of all tax losses (\$3.5 billion) evaluated by Revenu Québec for that year. Employers paying some of their workers under the table can bid lower than their competitors, which increases the chances of winning contracts. Diane Lemieux, CEO of the CCQ, explained that this practice favours organized crime.

The presence of undeclared and cash work also facilitates the laundering of money or the recycling of the proceeds of crime. According to Public Safety Canada, “large construction projects can also benefit organized crime in other ways. Many organized crime members do not have legitimate employment and therefore use these projects to create fictitious jobs for income tax purposes. These jobs can also be used to conceal their criminal activities.” [Translation] The Commission hearings demonstrated that contractors linked to organized crime had access to significant amounts of cash. One of them, who served more than 10 years for cocaine trafficking, invested over \$2.2 million in a decontamination business. Recordings of his conversations reveal that he was in a position to inject another \$2 million to \$3 million. His associate, also linked to organized crime, had similar financial means. Another criminal, a member of the Hells Angels, invested cash in a masonry company, which allowed him to legitimize the profits he earned from drug trafficking. Unbeknownst to the CCQ, the company was using this money to pay for undeclared workers.

Finally, “large construction sites can also be a thriving market for the illicit goods and services of organized crime, such as illegal drugs, gambling, loan sharking and stolen property.” [Translation]

4.2.5 *The opportunity to provide financing services*

Construction firms that sometimes have difficulty borrowing money from traditional financial institutions may be tempted to obtain the funds they need more quickly by contacting members of organized crime. The latter often have access to parallel networks, private lenders or non-bank financial institutions. In addition, they can afford to grant or guarantee riskier loans, since they have ways to ensure repayment beyond what is provided for by law. They are therefore able to offer entrepreneurs financing services, which can be an attractive factor in the industry. An example of this phenomenon was presented during the Commission’s hearings with regard to a project to convert a derelict warehouse in Old Montréal into a luxury residential building. After filing a proposal under the *Bankruptcy and Insolvency Act* and an application under the *Companies’ Creditors Arrangement Act*, the contractor and the developer received help from the Rizzuto clan. The mafia godfather used his network of contacts to find new sources of funding. Members of his family made excellent profits in return.

The Commission notes furthermore the problem of delays in the payment of contractors’ invoices by public contracting authorities. Payment terms can average four months. This creates a lack of liquidity for contractors who, with insufficient financial resources, may be tempted to resort to non-traditional sources of financing.

Finally, some sectors of the construction industry, such as masonry, include a great many small companies. These companies often do not have permanent premises, their situation is precarious and they have little financial room to manoeuvre. They are generally more susceptible to infiltration by organized crime as they have limited assets or security to offer, which considerably impedes their ability to obtain financing. Organized crime can use them to launder money, or simply target them for extortion and intimidation. The Commission found that two small masonry companies were infiltrated by a member of a mafia-type criminal organization. This individual had little trouble gaining access using threats and gang insignia.

4.3 *An economic sector permeable to violence*

4.3.1 *Vulnerability to vandalism, violence and intimidation*

Throughout the Commission's hearings, witnesses reported cases of vandalism, theft, arson, bombings, intimidation, threats and physical assaults. When workers leave construction sites at the end of the day, equipment and materials are often left on the premises, which are sometimes located in sparsely populated areas where they are subject to minimal surveillance. All of this makes them vulnerable to vandalism. Permanent facilities, such as offices or warehouses, may also be targeted, as occurred in the case of culvert pipe suppliers in the Eastern Townships that the head of a criminal network tried to force into bankruptcy.

The Commission observed that in Val-d'Or, a paving contractor, who was also a highly placed criminal in a narcotics ring, succeeded in restricting competition in the business through violence and intimidation. A member of organized crime who was associated with a decontamination company demanded that a competitor close his business. In the Eastern Townships, a couple of culvert entrepreneurs who were associated with an organized criminal network used arson to force a competitor into bankruptcy.

Public agencies and their representatives may also be susceptible to violence. The criminal reputation of a contractor in Val-d'Or enabled him to obtain more favourable treatment from a CCQ investigator. A ceramic contractor from Québec City was also intimidated by an individual belonging to organized crime when he wanted to bid for a project in Montréal. Similarly, an official from the City of Montréal was threatened by a contractor with ties to organized crime who told him that "people who prevent us from eating are eliminated." [Translation]

These acts of violence can be effective, at least in the short term. According to one witness, paving prices in Val-d'Or were 30% higher than in a neighbouring town, mainly due to the control of a criminal contractor.

4.3.2 *The possibility of offering services related to the use of violence*

Although violence is far from widespread in the construction industry, it is nevertheless more common than in other economic sectors. One witness told a Commission investigator that many construction sites are tough places where there is a lot of hardball played. Because violence attracts violence, this characteristic of the industry makes it all the more appealing to organized crime. Criminal organizations are well placed to offer services involving the use of violence.

4.3.3 *Companies' susceptibility to racketeering*

The construction industry is particularly susceptible to racketeering, which is a form of systemic extortion. Organized criminal groups create a need for the "protection" services they offer by using or threatening violence against contractors who refuse to pay. The mafia often acts as a private protection service, using violence to punish anyone who attacks the interests of its clients, in exchange for money or favours. This is the very basis of the *pizzo* system, which is often associated with the Italian mafia. Racketeering can offer organized criminal groups both pecuniary and non-pecuniary advantages, such as influence or control of the territory. In Montréal, contractors paid a 2.5% *pizzo* on contracts obtained from the City to a mafia-type criminal organization.

4.3.4 *The possibility of providing services related to arbitration and the enforcement of illicit agreements*

Criminal organizations can also provide services related to arbitration and the enforcement of illicit agreements. A contractor participating in a collusion scheme obviously can't go to court to complain about another cartel member trying to obtain more than the agreed-upon number of contracts. In such situations, a criminal organization can play the role of arbitrator, or private police force. Cartels do not necessarily need an external coercive service, but it can be a facilitator. By meeting the demand for this type of service, criminal organizations can reinforce their presence in certain sectors of the industry.

The mere presence of a criminal organization in an industry sector may suffice to remove "undesirables," i.e., contractors who are not part of the cartel. According to Tenti, "the mafia reputation deriving from the capacity to impose its own rules through violence is per se enough to drive competitors away." Benoît Dupont, Director of the International Centre for Comparative Criminology at the Université de Montréal, told the Commission that organized crime "generally intervenes when coercive measures (credible threats and attacks on physical integrity) are required against those who refuse to respect the informal rules in force among the various participants in the corruption scheme. It is not uncommon for organized crime to exploit this position in an attempt to infiltrate the construction sector, because of the significant profits that can be made there, the money-laundering opportunities it opens up, and the low risk of being arrested or convicted." [Translation]

Organized crime operates according to the "parasite principle." Vito Rizzuto, godfather of the Montréal mafia, offered his services as mediator with the view of benefitting himself. He had a certain aura about him, which enabled him to ensure that everyone followed his directions. As investigator Éric Vecchio described it, "Mr. Rizzuto sells his credibility to make deals, sells the possibility of finding a resolution to the dispute." On learning of the likelihood of a \$115-million suit against property developers, Rizzuto spontaneously inquired of his contacts whether he shouldn't offer his services as arbitrator in the dispute. Furthermore, "this is tangible proof ... that organized crime takes the biggest cut when there is a dispute, and not when things are going well. Organized crime infiltrates situations that are litigious." [Translation]

4.4 *The infiltration of trade unions and the search for capital*

Organized crime targets not only construction companies, for the reasons we have just seen, but also construction unions. In many countries, the presence of organized crime is linked to the control of trade unions. In Quebec, the history of construction unions has often been marked by episodes of violence, sometimes associated with the presence of organized crime. The Cliche Commission, which was established in the early 1970s after the destruction of the LG-2 dam site in James Bay, confirmed that some local unions in James Bay had been infiltrated by criminals. In New York City, the links between organized crime and violence in construction unions have been clearly established.

In Quebec, it was more the investment funds managed by union leaders that attracted individuals linked to criminal organizations. These individuals sought capital to finance certain business ventures, and through a close collaborator, developed relationships with an influential leader of the largest construction union. Expert Harry Arthurs summed up what motivated them: "The first of these [problems] is that union pension funds and benefit funds may conceivably be used to finance projects in which either organized crime has an interest or there is some

irregularity in connection with bid-rigging or some other improper activity. And unions are stakeholders, unions are investors through these funds in such projects.”

5. WEAKNESSES IN MONITORING AND SUPERVISION

Numerous commissions of inquiry with a mandate similar to ours have cited the absence of adequate controls as one of the causes of the emergence and maintenance of collusion and corruption throughout the world. The Commission heard from several ministries and public agencies with a view to better understanding how the illicit acts associated with the Commission’s mandate could have persisted so long without attracting their attention.

Testifying before the Commission, expert Yves Comtois stated, “I think that our system failed in its task of detecting and punishing bid-rigging, but it seems to me that it also proved highly ineffective in preventing these illegal activities before they happened.” [Translation] The Commission shares this opinion, not only with regard to collusion, but to all the phenomena covered by its mandate. The ineffectual measures put forward by these agencies created a climate of impunity, which the Commission observed throughout its work. A significant number of witnesses – contractors, engineers, civil servants – echoed this sentiment.

Overall, the Commission notes a pronounced weakness on the part of agencies to protect the integrity of public contracts, exclude undesirable elements from the market, comply with the laws governing the construction industry and prosecute offenders. These results are explained in particular by an inadequate allocation of resources (SQ, CB, CMQ, OIQ), weaknesses in the recruitment and training of employees to combat corruption and collusion (SQ, ARQ), a restrictive interpretation of laws (DGEQ), ineffective governance (CMQ, CCQ, DGEQ), inadequate detection tools (CB SCT, MTQ, OPQ), underutilization of investigative and auditing powers (SQ, CB, RBQ, CCQ, DGEQ) and a certain institutional laxity (MTQ, MAMOT, CMQ, SCT).

The weakness in the control and auditing of the phenomena observed by the Commission is also explained by the fragmented roles of numerous oversight agencies, coupled with a lack of adequate mechanisms for communication and coordination. The construction industry is characterized by the interaction of multiple actors: companies, professional firms and public officials. Each is subject to its own rules and laws, as well as to criminal and penal laws of more general application. The role of monitoring and supervising the various actors in the industry is thus split between several agencies. Criminologist Benoît Dupont identified 26 organizations that are directly or indirectly mandated to combat corruption and collusion in Quebec. These agencies worked independently of each other, with little communication among themselves, partly because existing laws did not allow them to exchange information easily. All this significantly complicated the synchronization of their activities. In addition, the Commission observed that collaboration between federal and provincial jurisdictions was flawed.

Generally speaking, the phenomena related to the Commission’s mandate all fell under the jurisdiction of oversight and monitoring bodies. However, the Commission identified a gap in this monitoring network involving the oversight of elected officials. Indeed, prior to the creation of the position of Ethics Commissioner for the National Assembly (CED) and the 2010 enactment of the *Municipal Ethics and Good Conduct Act*, no organization was specifically tasked with investigating ethical breaches on the part of provincial and municipal elected officials, verifying

whether they had a conflict of interest or raising awareness of these issues. In other words, there was no ethical framework for elected officials.

What follows is the Commission's analysis of the causes of the action or inaction of supervisory and control bodies whose missions relate to activities within the Commission's mandate.

5.1 Competition Bureau of Canada

The Competition Bureau of Canada (CB) is a federal agency responsible for ensuring compliance with the *Competition Act*. It carries out prevention and awareness activities and conducts investigations into criminal offences related to collusion in the public and private sectors. The information presented here relates to its activities in Quebec.

Between 1996 and 2014, the CB opened 29 investigations related to public construction contracts in Quebec. In the fall of 2014, about one third of those investigations were still ongoing. Between 2000 and 2006, no charges were laid in connection with the construction industry in Quebec, according to Yves Comtois. The latter stated that the CB suffers from a significant lack of resources. Approximately 400 people work in its headquarters and three regional offices. Less than one fifth of those, or about 80 people, are assigned to the Criminal Affairs Branch, which deals with cartels. Of these, a dozen employees investigate cartels in Quebec.

In a 2008 evaluation report on the CB's activities, Industry Canada found that "it is not possible to determine the size of the bid-rigging problem in Canada" in the absence of sufficient data. In his testimony, the representative for the CB stated that data analysis was not central to the agency's activities. It is as if the CB relies on contracting authorities to inform it of the existence of problem cases. According to Yves Comtois, contracting authorities have neither the time, the means nor the competence to detect such cases.

5.2 Sûreté du Québec

The Sûreté du Québec (SQ) is the principal police force responsible for investigating corruption in Quebec. From 1996 to 2008, it conducted only six investigations related to the construction industry. This can be explained by a number of factors: limited allocation of resources, a reactive investigative approach and the low level of importance accorded to economic crime investigations within the police service.

For years, i.e., prior to the launch of Opération Marteau (operation hammer) in 2009, corruption was not a priority within the police service, with investigative resources being mainly allocated to the fight against traditional organized crime. Between 1994 and 2002, a war between criminal biker gangs raged in Quebec, and the SQ devoted considerable resources to it until 2009, when Operation SharQc was concluded.

During this period, the SQ economic crime investigation service (SECE) was responsible for investigating corruption. The SECE had 36 police officers, of whom only 7 were assigned to investigate corruption. In addition, SECE staff were often loaned out to other teams. In fact, from 2004 to 2006, 12 of the unit's 36 police officers were seconded to conduct investigations outside the SECE. The SECE had a reactive investigative approach, in that it investigated mainly in response to complaints.

The SECE rarely used exceptional investigative tools like wiretaps to investigate corruption. Such tools were mainly reserved for the fight against criminal biker gangs.

According to witnesses, investigations into economic crimes were not the most popular among police officers. There was a high turnover rate at the SECE, and it generally recruited investigators at the beginning of their career. Economic crime investigator positions were seen as a gateway to criminal investigations, and police officers typically only stayed three or four years before joining other squads to fight crimes against the person, organized crime and property crime.

5.3 Ordre des ingénieurs du Québec

The Commission's work demonstrated the central role played by engineers in carrying out several schemes involving collusion, corruption and the illicit financing of political parties between 1996 and 2010. These engineers worked in the field of civil engineering and were all members of the Ordre des ingénieurs du Québec (OIQ). Like any professional order, the OIQ has a mandate to protect the public. The Commission demonstrated that the OIQ devoted scant effort to the prevention and detection of the practices uncovered by the Commission.

In concrete terms, the OIQ was slow to grasp the seriousness of the problems affecting the profession. Prior to 2011, there were only marginal investigations by the OIQ syndic into collusion, corruption and political contributions. From 1996 to 2010, the syndic received and handled a small number of investigation requests on these subjects. In contrast, the syndic received 197 such requests in 2011, 153 in 2012, 95 in 2013 and 223 in 2014. As of August 31, 2014, most investigation files related to complaints on these subjects involved events that took place before 2010.

In addition, the syndic has limited resources to fulfill his mandate. This is explained in large part by the low OIQ membership dues. The \$310 per member required by the OIQ in 2012–2013 was among the lowest of the 45 professional orders in Quebec. By comparison, lawyers paid annual dues of \$1,625, while doctors paid \$1,220. In December 2013, the Office des professions du Québec (OPQ) warned the OIQ about its low membership dues. In 2013 and 2014, however, OIQ members refused the increase in usual dues requested by the board of directors, even though the OIQ explained that it was to be used exclusively for activities involving protection of the public. The President of the OPQ stated that he was not aware of any other similar cases.

Moreover, the OIQ's syndic only has jurisdiction over individual professionals. He cannot intervene with a firm even if that firm's top executives are encouraging professionals to engage in illicit practices. Engineers often practise their profession in corporations or partnerships, and the company in which they work can significantly influence their behaviour. Quebec is the only jurisdiction in Canada that does not allow a professional order to impose disciplinary penalties on a company providing professional engineering services.

This lack of oversight is problematic, as the Commission observed that professional engineering firms or their managers participated in or encouraged participation in illicit activities.

5.4 Office des professions du Québec

The Office des professions du Québec (OPQ) is the watchdog of the Quebec professional system. It ensures that professional orders fulfill their mission of protecting the public. It has an obligation to verify, in co-operation with these orders, whether they have established mechanisms to protect the public, and whether those mechanisms function properly.

While the OIQ did fail to adequately protect the public against acts of corruption and collusion committed by some of its members, it was also up to the OPQ to ensure that the OIQ, like other professional orders, developed the necessary mechanisms to guarantee the protection of the public. It does not perform any standardized reporting in this regard, however.

The OPQ acknowledged before the Commission that it had not found any anomalies in the OIQ before 2012 or 2013, nor indeed in any other professional order related to the construction industry. It also admitted that without the Commission's work, it might not have become aware of the extent of the problems at the OIQ.

The first OPQ intervention with the OIQ took place late in 2013. In 2014, the OPQ set up a special coaching program for the OIQ.

5.5 Commission municipale du Québec

The Commission municipale du Québec (CMQ) has significant investigative power at the municipal level. It can initiate investigations, on its own or at the request of the Minister of Municipal Affairs, into the financial administration of municipalities. At the request of the government, it may also investigate any aspect of the administration of municipalities. However, from 1988 to 2014, the CMQ did not self initiate a single investigation into the financial administration of a municipality. The example of the CMQ's inaction in the case of the City of Laval is emblematic of the organization's failures. The CMQ has also been criticized on several occasions for its lack of initiative.

The CMQ's inaction does not appear to be caused by a lack of financial information on municipalities, but rather by its interpretation of the matters on which it can investigate on its own. Frequent changes at the head of the CMQ could also have contributed to its inertia. Since 1996, there has been a succession of presidents at the head of the CMQ. For example, there were five different presidents, including interim presidents, between 2011 and 2014.

5.6 Ministère des Affaires municipales et de l'Occupation du territoire

The Ministère des Affaires Municipales et de l'Occupation du territoire (MAMOT) is mandated to supervise the proper management of public funds in municipalities. In light of the facts ascertained by the Commission, this mandate was not adequately fulfilled in the cities of Laval and Montréal and in other municipalities. Prior to 2010, the department's audit and investigation powers could only be exercised at the request of the minister. However, the minister never asked the department to investigate the conduct of a municipal official or employee. He could also ask the CMQ to investigate the financial administration of a municipality, but did not do so.

Result: MAMOT did not intervene in Laval before 2011.

A former Montréal procurement director said he had a discussion with a MAMOT representative and with assistant deputy ministers over the years prior to his departure in 2006. He claimed that the department suggested that it was a problem for the City. Nothing resulted from these discussions. In 1995, MAMOT commissioned a report, known as the “rapport Martin,” which among other things addressed repeated allegations in the media that the City of Laval awarded contracts without tenders to favour “party friends.” The report noted that the administration had sometimes placed itself in a situation where there was an appearance of favouritism in the awarding of contracts, mainly for services. There were no consequences to this report.

5.7 Ministère des Transports du Québec

The Ministère des Transports du Québec (MTQ) has a role to play in protecting the integrity of its own contractual activities. From 1996–1997 to 2010–2011, the MTQ investigative service conducted 1,231 investigations. Of those, fewer than six involved possible collusion or corruption in the awarding and management of construction contracts. Two of these investigations involved potentially collusive activities. In both cases, the MTQ investigator concluded that there was no collusion, whereas the Commission established the opposite. In the second case, the Commission’s work also demonstrated the presence of corruption. Moreover, the Commission’s work showed that during the period covered by its mandate, the MTQ was affected by significant collusive practices in the paving industry. MTQ has never initiated investigations on this front, however. This is partly due to the fact that the department’s investigative service had neither the resources nor the expertise to conduct such investigations.

The MTQ also neglected to follow up on numerous internal audit reports, as well as reports from the Auditor General of Quebec (VGQ) and private consultants, which exposed recurring problems with the department’s expertise, its ability to produce accurate estimates, its contract monitoring processes and its management of amendments. In particular, the VGQ noted that “on a number of occasions and having regard to the risks involved, the contracts examined were inadequately managed from the standpoint of the rules and procedures and sound management practices.” [Translation] The VGQ also noted that the MTQ does not undertake any market analysis activity, does little to address potentially problematic situations in the market, and does not cooperate in a structured manner with the SQ or the CB.

5.8 Secretariat of the Conseil du trésor

The Secretariat of the Conseil du trésor (SCT) plays a central role in protecting the integrity of government contracts, as well as supporting public organizations in their contractual activities. Since 2011, the Chair of the Conseil du trésor has had the power to “determine if the awarding of contracts by a body within the meaning of this Act [the *Act respecting contracting by public bodies*] and its enforcement of the management policies relating to those contracts are consistent with the rules prescribed under this Act.”

During the period covered by the Commission’s mandate, however, the SCT did not have specific authority to oversee the contractual activity of organizations. The Auditor General of Quebec (VGQ) stressed in 1999–2000 that:

The Secretariat has little information for evaluating the effectiveness of the services purchasing methods and the achievement of government policy objectives. The only information it holds is information that departments and agencies communicate to it,

mainly the number of contracts, their value and the category to which they relate.
[Translation]

Alerted to the problem, a few years later, in a document entitled *Les risques et les contrôles dans la gestion contractuelle* (risks and controls in contract management), the SCT exposed significant shortcomings in the monitoring of contract performance, noting that the information in files regarding follow-up and observations on the progress of work and problems encountered was often either inadequate or non-existent. The document also pointed out that the methods used by departments and agencies to oversee procurement processes were generally limited to looking at regulatory compliance, which is insufficient to detect corruption and collusion.

In spite of this, no measures were implemented prior to 2009 to prevent collusion and corruption, mainly due to a lack of interest on the part of the government. It was not until the publication of the 2011 toolkit to protect the integrity of public contracts that the SCT acted to prevent corruption and collusion in the contracts of departments and agencies.

The Commission is of the opinion that the controls put in place by the SCT for contracting and management processes were insufficient.

5.9 Chief Electoral Officer for Quebec

The Chief Electoral Officer for Quebec (DGEQ) is responsible for the administration of elections and overseeing the application of the rules governing the financing of political parties. The DGEQ verifies the compliance of parties' financial reports, investigates any anomalies that are detected, analyzes complaints and tips, and initiates legal proceedings when there is a suspected breach of financing rules.

In light of the evidence presented in part 3 of this report pertaining to a number of schemes related to the financing of municipal and provincial political parties, it appears that the DGEQ did not adequately fulfill his role as investigator and prosecutor prior to 2010. It was not until 2012 that the DGEQ began to set up an investigative service with permanent staff.

Several people who participated in illegal political financing schemes admitted that they were not worried about the DGEQ. For example, the former official agent of the PRO party in Laval indicated that the first serious inspection of the party by the DCEQ was conducted in 2010. He said there were inspections in response to specific complaints, but these never uncovered any offences. An organizer of many turnkey elections stated that "we were not monitored. So we did it, and at the time, the DGE didn't have a lot of staff, or The DGE never did a very good job in that area."

Since the adoption of the *Act to govern the financing of political parties*, the DGEQ has focused more on his role as an educator at the expense of his role in monitoring political financing. At a symposium held in 2003, he stated that he preferred to engage in information and promotion activities with political parties rather than playing a coercive role. However, several events before 2009 demonstrate that the DGEQ had been aware of allegations regarding straw donor schemes to finance political parties since at least the end of the 1990s.

Despite all these events, the DGEQ did not take sufficient measures to counter this practice.

5.10 Agence du revenu du Québec

Several of the schemes uncovered by the Commission could not have been implemented without recourse to tax evasion and billing scams. The information gathered demonstrates that Revenu Québec (Ministère du Revenu prior to 2011) contributed little to the fight against corruption, collusion, illegal financing of political parties and the infiltration of organized crime. This may be explained in part by a restrictive approach to investigations, the failure to share information, and poor recruitment of investigators.

Until 2011, Revenu Québec focused primarily on recovering monies owed to the state – essentially unpaid taxes – including in the context of its investigations. The Revenu Québec representative conceded that the recovery targets imposed on investigators were so high that there were more tax assessments than criminal investigations. Until a review of practices in 2011, recourse to criminal prosecution was not advocated when the fraudster had the capacity to pay. In 1997, therefore, Revenu Québec was aware of the existence of a scheme through which companies made contributions to political parties in violation of electoral laws. However, it viewed the straw donor scheme as a tax problem rather than an infringement of electoral law. In 2007, the Court of Appeal allowed these illegal contributions to be deducted as business expenses, based notably on the principle that “the legality of the activities to which an expenditure or income relates is not relevant for purposes of the tax treatment of such expenditure or income.” [Translation] As a result of this ruling, in 2008 the Quebec Minister of Revenue recommended that the statute be amended to no longer allow a contribution made for political purposes to a party to be deductible in computing the taxpayer’s income from a business or property. As of August 2015, this amendment had still not been made to the Act, although the federal *Income Tax Act* had been so amended several years earlier.

Prior to 2012, there was no sharing of information between the DGEQ and the Canada Revenue Agency. The sharing of tax information pertaining to illicit political financing is the result of an initiative undertaken by the DGEQ with Revenu Québec nine years earlier.

Until 2012, the organization’s investigators were “financial management officers” who had received training in business administration, taxation or accounting. This training did not prepare them to recognize and confront the problems highlighted by the Commission.

5.11 Régie du bâtiment du Québec

The Régie du bâtiment du Québec (RBQ) is responsible for ensuring compliance with the *Building Act* and related regulations. The organization ensures that construction contractors have the necessary skills by granting, suspending, restricting and withdrawing licences. It is a key player in the control and supervision of the construction industry because the licences it administers are the gateway to the legal economy in the construction industry and a bulwark against the infiltration of this industry by organized crime.

In light of the evidence presented in part 3 of this report, it appears that the RBQ did not play this role of bulwark. None of the contractors who were directly or indirectly involved with organized crime, and who were discussed in the context of the Commission’s work, were ever summoned to a hearing before the RBQ or had their licence cancelled or suspended due to their unsavoury conduct.

The RBQ may rely on the notion of “public trust” for a certain element of control, and refuse, cancel or suspend contractors’ licences. However, this concept was more closely associated with requirements for the quality of work and building safety. The agency’s administrative investigations were mainly concerned with the cessation of activities and bankruptcy.

According to the RBQ representative, the organization played more of a supporting role in helping contractors apply for a licence. The objective was therefore to regularize situations in order to allow building contractors to obtain a licence, rather than to clamp down.

5.12 Commission de la construction du Québec

The Commission de la construction du Québec (CCQ) is both an industry service organization (benefit administration, labour management, etc.) and an industry compliance organization (ensuring compliance with collective agreements, fighting undeclared work, collaborating in efforts to prevent and combat corruption and tax evasion).

While the fight against organized crime is not part of the CCQ’s mandate, the organization is nevertheless well placed to detect signs of its infiltration during on-site inspections, when auditing company books, and when investigating complaints of intimidation. The CCQ can also collaborate in police investigations involving such infiltration. Its contribution to the fight against organized crime was modest, however. There are a number of likely reasons for this.

On the one hand, the general context in the industry was one where everyone just wanted peace. The difficult economic climate of the 1980s and 1990s led regulatory bodies such as the CCQ and the RBQ to play a supportive role rather than one of repression and oversight.

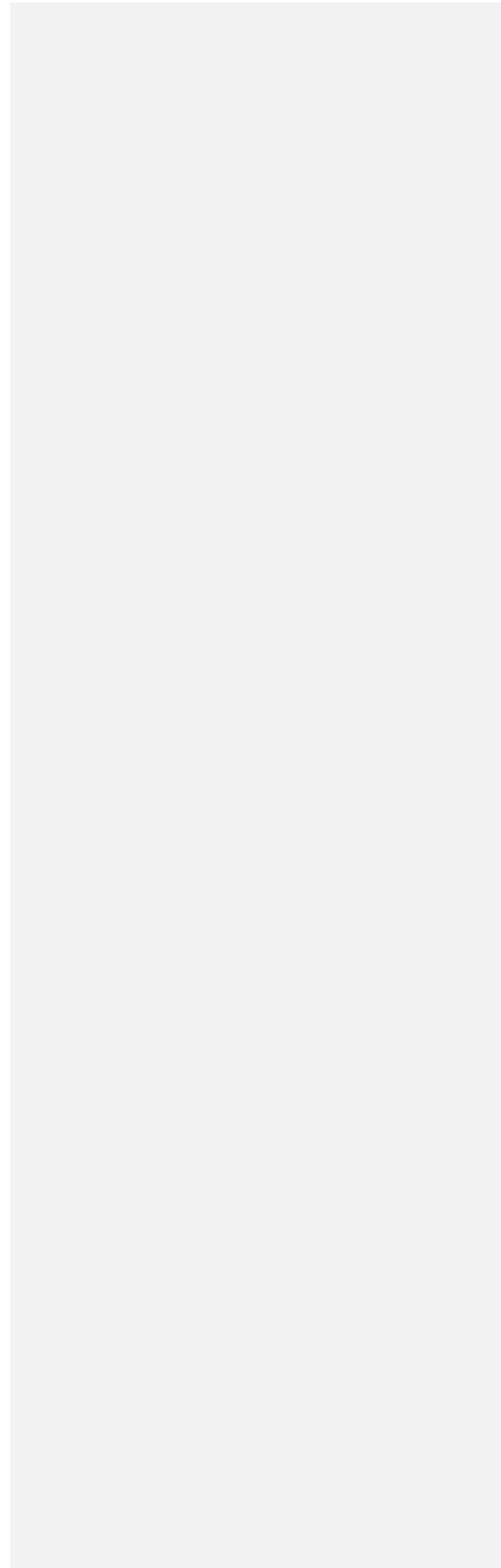
On the other hand, the internal management of the organization experienced a number of failures. These included some representatives of accredited associations and certain members of the board of directors interfering in the day-to-day management of the organization, particularly with regard to inspections, investigations and the issuing of competency cards.

The inspection and complaint process was also manipulated. It did not always serve the public interest, as it was frequently exploited by representatives of trade unions and employers, as well as by contractors: 68% of the complaints received were unfounded. Testimony before the Commission indicated that contractors sometimes asked trade union representatives to have the number of inspections on their job sites reduced or to facilitate the issuing of competency cards. According to one witness, inspections were infrequent during the period when his company was controlled by organized crime. A member of the CCQ board of directors from 1998 to 2009 had links with certain individuals known to be connected to organized crime. This type of relationship may have led to a selective relaxation of CCQ inspections.

Conclusion

The analysis of the possible causes for the phenomena observed by the Commission during its work shows the complexity of the factors that must be considered in attempting to remedy the situation. The Commission has endeavoured to propose recommendations that should address the root of the problems. These recommendations are enumerated in the final section of this report. Before presenting them, however, it is important to look at the consequences of these phenomena. That is the purpose of the next chapter.

CHAPTER 3
THE CONSEQUENCES



THE CONSEQUENCES

The collusion and corruption schemes and the organized crime infiltration activities that the Commission uncovered are not without consequences. The misuse of public procurement processes in the construction industry, the manipulation of the rules governing the financing of political parties and the infiltration of the industry by organized crime have generated economic costs for society as a whole. They have also undermined its democratic foundations, the rule of law and confidence in public institutions.

1.1 The economic costs

1.1.1 *The costs of collusion*

The economic costs of collusion are difficult to establish, but they are real. In the context of public procurement, using the tendering process to ensure that there is competition between engineering firms, contractors and suppliers allows the government to purchase goods and services at the best possible price. Collusion in the awarding of public construction contracts therefore generally results in an increase in the cost of the work, at the expense of public contracting authorities and taxpayers.

The length of time collusion arrangements exist and the secrecy surrounding them make it difficult to obtain reliable data to establish their precise cost. This results in significant differences in the calculations prepared by experts. These calculations do, however, provide a general idea of the economic consequences of collusion. Professor John M. Connor prepared a list of cartels operating in the North American construction industry and assessed the average additional cost generated by the presence of a cartel at between 15% and 20% of the value of a contract. In the well-documented case of construction cartels in the Netherlands, experts estimated the rates of incremental costs at between 9% and 43%, depending on the methods used. Witnesses who appeared before the Commission spoke of additional costs of 22% to 26%, and of 30% to 35% in the case of contracts awarded by the City of Montréal.

In addition to inflating the price of public contracts, collusion leads to dead losses, which means that goods and services are not bought or produced because the market is not operating optimally. According to Professor Connor, cartel activity caused losses of 12% to 31% of the value of the markets concerned.

Apart from the fact that it pushes prices downwards, competition produces significant positive effects, which do not accrue to public contracting authorities that are victims of collusion. Under the pressure of competition, firms have a powerful incentive to reduce their production costs and become more efficient. Several comparative studies in the United States, Europe and Japan demonstrate the correlation between intensity of competition and productivity gains. It is generally observed that markets where a small number of firms account for a high proportion of business volume generate lower productivity gains than do highly competitive markets.

Competition also stimulates and promotes innovation. A dynamic competitive environment will encourage firms to improve their production methods, invest in research and develop new, more efficient products. Companies also benefit from the innovations of their competitors and the introduction of new techniques. Several studies show that the entry of foreign firms into a market leads to a technology transfer to local firms.

1.1.2 *The costs of corruption*

The direct economic costs of corruption vary depending on the purpose of the agreement between the corrupting party and the corrupted party. In one case, the corrupter is essentially seeking to obtain a contract, and it is not certain that the contract would have been carried out at a lower cost in the absence of corruption. It is possible, however, that the cost of corruption is included in the costs for the company to carry out the contract. In a second case, the corrupter obtains from the “corrupted” a contract with an artificially increased price, or undue advantages linked to the realization of the contract, such as the payment of false extras to use up the full amount reserved for contingencies. The direct costs here correspond to the difference between the sums paid by the public contracting authority to the corrupting party and the actual cost of carrying out the contract. In both cases, corruption acts as a hidden tax paid by taxpayers on public construction contracts.

Corruption also creates indirect costs that can be very high. Awarding a contract in exchange for a benefit (such as a bribe or a political contribution) rather than through procedures that encourage competition, deprives the public sector of the benefits of that competition. First, the corrupt firm or company does not have any incentive to do good work or to improve the quality or efficiency of its practices, notably by integrating new technologies. On the contrary, in a public market ruled by corruption, companies compete not by offering the client the best product at the best price, but by offering better benefits to the public officials who are in a position to influence the process of awarding and managing contracts. The same disincentive effect occurs for suppliers of goods or services excluded by the corrupt client when they know that contracts are awarded regardless of the quality and cost of the goods and services. This phenomenon is likely to affect the quality and in some cases, the safety, of built infrastructure, leading to additional public expenditure.

1.1.3 *The costs of infiltration by organized crime*

Although the profits from organized crime are carefully concealed, the United Nations Office on Drugs and Crime estimates that almost 3.6% of global GDP comes from illicit sources. Most of this money is laundered each year. The repercussions from this illegal flow of money into the legal economy are devastating in the long run. Companies infiltrated by organized crime are often converted into empty shells, depriving society of the benefits associated with their activities as they are transformed into sterile investments used only for money-laundering purposes. The presence of organized crime in certain economic sectors also discourages investors due to the long-term decline in expected returns. The widespread perception of a mafia protection tax (*pizzo*) reduces entrepreneurial income and leads to reduced economic growth. The *pizzo* also encourages victims to avoid their tax obligations in order to compensate for lost income, which results in a reduction in government revenues. The presence of organized crime in a region can have major consequences for its economy: a 2014 study concluded that the mafia presence in southern Italy had reduced per capita GDP by 16% since the 1970s.

Knowing that the phenomena identified by the Commission have engendered economic costs allows us to compare the costs of public policies with their potential benefits.

The consequences of the schemes described by the Commission are not measured solely in terms of economic costs, however.

1.2 An attack against democracy

Democracy is a regime in which the people are sovereign. The people generally exercise their sovereignty over the state through representatives elected by universal suffrage. This means that by virtue of the principle of democratic equality, each person has an intrinsic value that allows him or her to express a vote equal in weight to that of all others (the principle of “one person, one vote”).

Democracy is therefore not just about elections. It obviously involves the processes associated with the choice of representatives for the population. Even more fundamentally, however, it refers to a vision of the freedom, equality and autonomy of the members of a society. Through their representatives, the people alone make decisions for themselves. Once elected, representatives must act in the public interest (the general interest, the common good). The programs and policies developed by elected officials must be implemented without favouring private interests, which is what occurs when elected officials pressure the public service to do so, or when the public service itself favours such interests.

Since the power they exercise actually belongs to the population, elected representatives are in a sense fiduciaries. They must be accountable to the people.

1.2.1 *Diverting public interest purposes*

Elected officials, senior officials or members of the public service who decide to award contracts, overestimate or underestimate their value, or unlawfully increase the amounts they generate during the management phase (for example, the payment of false extras) in return for a consideration provided by a private actor (for example, a political contribution from an engineering firm, a bribe from a contractor), place the specific interests of private actors, as well as their own partisan or personal interests, above the public interest. Procurement decisions taken in the public interest should be founded on the search for the best product at the best price. Public corruption therefore serves to misuse processes designed with a public interest objective in order to benefit those who provide a particular advantage to elected officials or public employees. In the context of public procurement, this misuse almost invariably results in the misappropriation of funds.

Private corruption has the same effect, with the difference that the misuse of the public process for private purposes occurs without the assistance of public officials.

While corruption may be initiated by a public official or a private party and is in all cases an illegal act, the participation of a public official in such a pact has particularly serious consequences for the integrity of democratic institutions. The public official, whether elected or an employee, participates in the institutional role of fiduciary. Elected officials obtain their positions because citizens have confidence in them, as they have confidence in the public service that supports them. By distorting the purpose of their activities to satisfy private interests and their own benefit, they undermine the legitimacy they need to earn the trust of the population. In a country like Canada, this process is often subtle and difficult to detect, but we must avoid underestimating the devastating consequences that corruption can have on the public good when it is allowed to flourish. It is in this sense that corruption undermines the foundations of democracy.

1.2.2 *Circumventing the principle of democratic equality*

When the currency in a corruption pact is a political contribution, the diversion of public interest purposes is compounded by a violation of democratic equality. By granting individuals the exclusive right to contribute to political parties and by fixing a ceiling on contributions and authorized election expenses, Quebec aims to maintain equality among voting citizens and reduce the risk of undue influence by corporations on the electoral results and the game of democracy. The Commission's hearings revealed that contributions that were used in exchange for obtaining contracts at the municipal level were not only higher than what was permitted under Quebec law, but came from corporations using straw donors. The hearings also revealed that corporations used the straw donor scheme to make contributions at the provincial level. Political financing from corporations gives private actors a stronger voice with decision makers, who are likely to lend greater weight to their interests. Such conduct undermines the principle of "one person, one vote."

1.3 A threat to the rule of law

According to the principle of the rule of law, no one is above the law: all individuals are subject to it, including those exercising political power. This principle also aims to protect individuals from the arbitrariness of public authorities, in that the state cannot coerce an individual in the absence of statutory authority to do so.

To uphold the rule of law, a society must have institutions to ensure its respect. Independent courts, acting on the basis of fair and transparent processes, play a leading role in this regard. Maintaining the rule of law is a shared responsibility, however. It depends not only on the judiciary but also on legitimate governmental institutions in all areas of the state's power. When citizens recognize the legitimacy of governmental institutions and their processes, they recognize the obligation to respect the decisions of those institutions (laws, court judgments, decisions of administrative bodies).

The degree of confidence that individuals have in the rules that govern a society and the extent to which those rules are respected are indicators of respect for the rule of law. The issue here is not to identify those who violate the law, but rather to reflect in a comprehensive manner on the impact of the events that have occurred on our perception of the rule of law.

The Commission has identified certain sectors in which public and private parties acted with impunity in disregarding the rules applicable to the awarding and management of public contracts for many years. It also noted disturbing cases of infiltration of the construction industry by organized crime, which resulted in violent actions based on threats and intimidation. The principle of the rule of law is threatened when there is systemic violation of the law. This is also the case where the state does not deploy sufficient or effective means to ensure compliance. The phenomena observed by the Commission are of concern in this respect.

1.4 Eroded confidence in public institutions

The schemes that the Commission uncovered and that took place in certain provincial and municipal government sectors may undermine confidence in public institutions. Moreover, disillusionment on the part of the population provokes political disengagement, thereby setting off a vicious cycle. Citizens are less interested in public affairs and in those who manage them. The latter are subjected to less oversight and accountability. Public actors are less accountable,

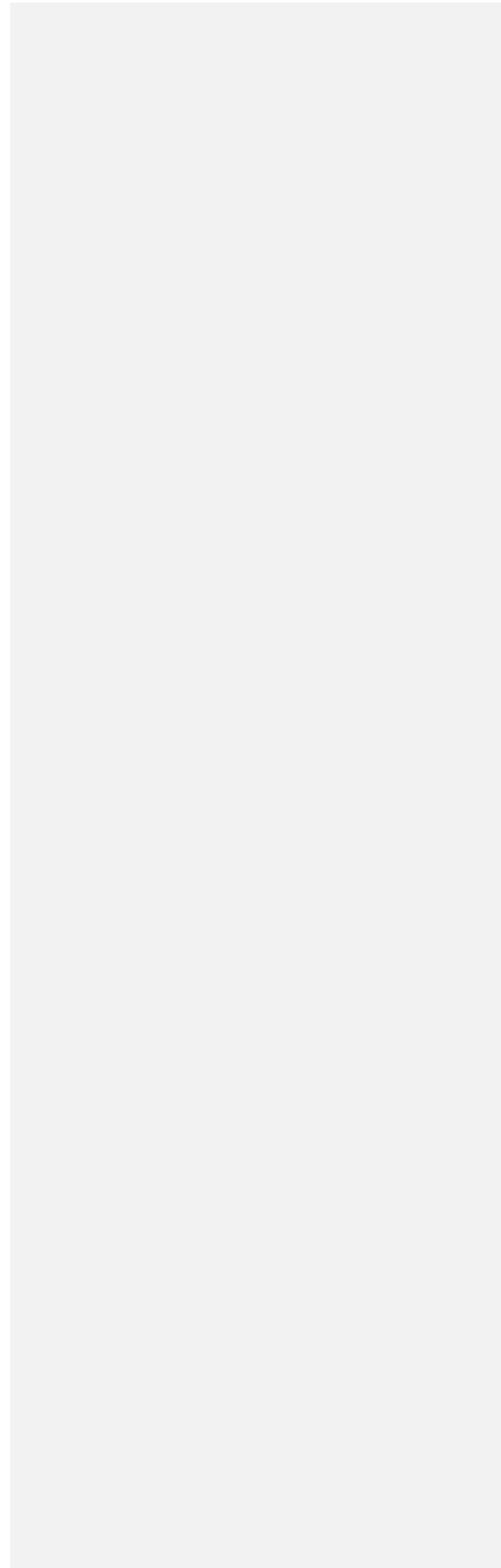
citizens have less information on which to reflect and make public choices. This weakens the obligation to foster democratic debates and support a culture of legality. It is therefore essential to restore the confidence that has been eroded.

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The problems that have been brought to light are troubling. Identifying them, exposing their causes, and measuring their consequences, however, enables us to formulate recommendations that may help to resolve them. That is the purpose of the final section of this report.

PART 5

THE COMMISSION'S RECOMMENDATIONS



The Commission's Recommendations

In this report, the Commission has presented a detailed account of the facts that were introduced at the hearings. This description of the facts enabled the Commission to paint a picture of the schemes observed during its work, and to identify the reasons these processes developed, persisted, or where applicable, disappeared.

On the basis of the description of the problematic phenomena and the most plausible hypotheses of what caused them, the Commission can now address the third and final element of its mandate: "to examine possible solutions and ... make recommendations regarding measures to identify, curb and prevent collusion and corruption in the awarding and management of public contracts in the construction industry and infiltration by organized crime." The facts also led the Commission to examine more closely the processes surrounding the granting of subsidies.

In order to ensure the widest possible range of perspectives, the Commission examined suggestions from interlocutors of diverse backgrounds: experts, interest groups, associations, international organizations, public institutions directly affected by the issues raised in its mandate, and members of the public. It also identified and compiled a considerable amount of information of an academic or governmental nature, or derived from public or private institutions devoted to the advancement of knowledge in the subjects covered by its mandate. Particular attention was also paid to public debates and input from citizens and observers.

At the end of all this, two key parameters were taken into consideration in preparing the recommendations.

Under the first, the recommendations formulated by the Commission must be able to re-establish links with the fundamental principles presented earlier in this report, namely, free competition, democracy and the rule of law.

Under the second, these recommendations must be configured and coordinated in such a way as to correct the causes of the phenomena observed by the Commission, or to limit their effects if it is impossible to completely eradicate them. Foreign experience and expert opinions constitute valuable references on this front. A careful review of them enabled the Commission to identify eight action strategies to prioritize in the preparation of its recommendations. They are presented in Chapter 1.

The recommendations themselves are presented in Chapter 2.

CHAPTER 1
THE ACTION STRATEGIES

THE ACTION STRATEGIES

Whatever the problem to be resolved, certain strategies can make the difference between the success or failure of a set of recommendations. The fight against corruption and collusion related to the awarding and management of public contracts in the construction industry, and the infiltration of this industry by organized crime, are no exception. The Commission has chosen to use these strategies as the basis for its recommendations. The text below provides a description of these strategies and offers a better understanding of their scope.

1.1 Adapt interventions

Given the vast number of stakeholders and the motivations and interdependence underlying collusion, and even more so corruption, an effective regulatory system must adopt multiple approaches, ranging from persuasion to coercion. In other words, it is impossible to curb such complex phenomena by simply prosecuting offenders in court. It would be better to apply a series of progressively coercive measures. Following this logic, the state must have a variety of intervention tools and use them based on the degree of severity required, taking into account the attitudes of the actors concerned.

From an operational point of view, this means designing measures in the form of a pyramid: beginning with awareness-raising and education, then warnings, fines and prosecution, and finally, applying highly coercive measures intended to take the offenders out of circulation. By proceeding in this manner, the state ensures that resources are maximized (it reserves the most radical measures for the most recalcitrant offenders) and avoids the demobilization or disengagement of stakeholders who demonstrate a willingness to comply with standards.

This strategy requires a clear understanding of the context in which the measures are applied. It also requires maintaining channels of communication between the state and stakeholders. This allows the state to measure stakeholders' level of commitment to solutions, and to demonstrate its willingness to respond even more severely to resistance. These progressive approaches, geared towards coaching, pooling of knowledge and the wise use of the coercive power of the state, are consistent with lessons learned from foreign experiences and experts. The Commission has therefore chosen to make them the cornerstone of its recommendations. To fully realize this concept, the Commission also listened to the proposals put forward by the various stakeholders involved in the awarding and management of public contracts. Several of these proposals were accepted, having been considered relevant and consistent with the principles advocated.

1.2 Act in a systematic and coordinated manner

The infiltration schemes and activities described by the Commission were designed and implemented by individuals. Punishing or excluding them will not serve as a lasting solution to the problems that have been identified, however. The schemes and activities were established because there were systemic flaws that these individuals managed to manipulate. It is therefore essential to identify the systemic dysfunctions rather than the individuals within an institution who are corrupt or are breaking the law. Similarly, it is pointless to address problems with one-off solutions that will not affect the very practices of the institutions. The problems that were observed are far too complex to be resolved through a broad series of control measures imposed on individuals. It would be preferable to focus on structural reforms that will change practices and confront the culture of the organizations that have allowed such problems to

emerge.

The measures proposed in the recommendations should also provide for concerted action on the part of the institutions concerned. Failure to act in a concerted manner is likely to create conditions that are conducive to the emergence of illicit behaviour. The roles and responsibilities of each stakeholder must therefore be well defined and fit within a logical and coordinated system of action, avoiding the silo mentality. In formulating its recommendations, the Commission therefore relied on a structural and institutional approach, supported by a mosaic of measures to ensure cohesion and synchronization of actions.

1.3 Focus on improving the quality of state intervention

The recommendations should not seek to directly eliminate existing structures or reduce state intervention, but rather to improve their quality. Firstly, the Commission has focused on increasing efficiency by proposing a reorganization of certain functions and avoiding unnecessary additions to processes and regulations. In so doing, the Commission has sought to avoid the potentially harmful effects of implementing overly intrusive or restrictive control mechanisms, particularly on the pursuit of economic activities. Secondly, the Commission has sought to minimize the risk of arbitrariness by proposing measures that will ensure better control of the exercise of public power.

1.4 Intervene upstream

When a problem of collusion or corruption is uncovered, a number of measures are taken to address it. The same applies when the normative framework surrounding the financing of political parties is not respected, or when organized crime seeks to infiltrate the legal economy with a view to laundering money. Due to the considerable resources available to cartels or criminal organizations, however, an exclusively repressive approach will not be sufficient to eliminate the problems. It is also important to monitor the observed phenomena, notably in order to prevent the emergence of new ways of circumventing the rules. This entails implementing measures that provide for taking action upstream, thereby preventing problems from occurring. The Commission believes in this type of intervention and has made it the focus of many of its recommendations.

1.5 Depoliticize the process of awarding public contracts

It is hard to look at the awarding and management of public contracts without being confronted by the issues of public service independence and politicization of processes. How can public contracts be protected from partisan considerations or from influence arising from the tailoring of professional reports?

Best practices require first of all clarifying the distinction between the roles of elected officials and those of the public service. As such, the broad guidelines should be left to the representatives of the political class, while operationalization must be the responsibility of the agents of the state. Similarly, it is important to place some distance between state employees and current or potential suppliers of goods and services. Through the information brought to its attention, the Commission saw the unfortunate consequences when these principles are ignored. This awareness is reflected in some of the proposed measures, which seek to establish a healthy distance between different categories of actors and to reaffirm their respective roles.

1.6 Transparency must be useful

Transparency is the basis for the functioning of any democratic society, particularly because elected representatives must be accountable to the public. The information needed to understand the mechanisms and the decisions taken with regard to the awarding and management of public contracts must therefore be made available to the public. It is not enough to simply share the information, however. The public must also be able to interpret it, or even combine it, in order to fully grasp its import. The timing of disclosure can also make a difference. In this sense, transparency is not a panacea. Rather, it must be practised intelligently, when it best serves the public good. The Commission has considered this nuanced interpretation of the principle of transparency in its recommendations.

1.7 Include citizens

Collusion and corruption involve acts that are committed secretly between consenting persons. For the most part, they are based on complex and extremely well-crafted systems. It is therefore difficult to detect and address them without the assistance of “whistle blowers.” This requires citizens to serve as lookouts, whether it be at the municipal or the provincial level, in the context of their professional activities or through simple citizen engagement. It became clear during the hearings that “whistleblowers” are key in the fight against corruption and collusion, as well as in preventing the infiltration of the legal economy by organized crime. Many people may consider reporting malfeasance to be risky, however. The measures proposed by the Commission therefore focus in particular on protecting “whistleblowers,” as well as providing citizens with access to information. This reinforces the idea that citizens themselves are agents of change.

1.8 Strengthen stakeholder integrity

The strength of a regulatory system rests with the credibility of the people who are required to implement it. How can a system be seen as legitimate if those who run it do not inspire confidence? And most importantly, why comply? In terms of the awarding and management of public contracts, elected officials and government employees are among the first involved. Along with the legality of their actions and their impartiality, their integrity is absolutely essential for a viable regulatory system. Valuing behaviour by public system actors that conforms to ethical standards is therefore a central element in the fight against collusion and corruption. To achieve this, the recommendations cannot be limited to the adoption of codes of ethics: they must promote the acquisition of knowledge and encourage consideration of the conduct that is expected of agents who exercise public authority. The Commission was very sensitive to this aspect.

CHAPTER 2

THE RECOMMENDATIONS

THE RECOMMENDATIONS

The Commission's recommendations are formulated along five lines:

- Review the framework for the awarding and management of public contracts
- Improve prevention and detection activities and strengthen sanctions
- Protect political party financing from influence
- Promote citizen participation
- Renew confidence in elected officials and public servants

The general framework for these lines is established in the introduction to each section, and followed by the list of recommendations. Each recommendation derives from specific findings, drawn from the evidence presented in the hearings or from the scientific literature. The findings are described before the recommendation itself. It goes without saying that the degree of intervention of the proposed recommendations varies, as some are structural in nature and others support the proposed overall reconfiguration.

In accordance with the Commission's mandate, the proposed recommendations relate primarily to the construction sector. Some could, however, apply to other sectors of economic activity.

1. REVIEW THE FRAMEWORK FOR THE AWARDING AND MANAGEMENT OF PUBLIC CONTRACTS

This first block of recommendations focuses on the framework for the awarding and management of public contracts. It proposes a renewed mode of operation that is geared toward improving state intervention, the incremental regulation of interventions and the depoliticization of processes.

Recommendation 1

Create a public procurement authority for Quebec

The problems identified by the Commission with respect to the awarding and management of public contracts in the construction industry revealed numerous vulnerabilities and weaknesses in the system that could favour the emergence of schemes involving collusion and corruption. These weaknesses include:

- the autonomy allowed public contracting authorities in applying the methods and rules for awarding contracts provided for by statute and regulation;
- the lack of sufficient internal expertise with some public contracting authorities, or even a team of professionals able to evaluate the work required and the tenders received in response to a call for tenders;
- the possibility for elected officials, particularly at the municipal level, to influence the awarding of a public contract, which is likely to create favouritism; and
- the absence of genuine market analyses to identify signs of malfeasance.

Coupled with the uniqueness and often complex nature of public construction projects and the urgency with which they must sometimes be carried out, most public contracting authorities cannot ensure the integrity of public contracts in the construction industry on their own. Individual contracting authorities have limited resources when it comes to applying and enforcing the standards set by the government, and thereby helping to maintain efficient public markets.

Like many of the experts consulted, the Commission is of the view that the creation of a provincial framework for public procurement is the appropriate response for ensuring process integrity. It therefore proposes to reconfigure the public procurement sector in Quebec by centralizing analytical and monitoring expertise within a public procurement authority (PPA) that would support public contracting authorities in fulfilling their contractual responsibilities.

This independent body would bring together in one place existing government analysis and monitoring resources, including those found in the Secretariat of the Conseil du trésor, the Ministère des Transports (MTQ) and the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT). In other words, creating this body would not require any additional expenditures because it would involve pooling analytical, monitoring and auditing resources that are currently scattered across government. It is not a question of establishing a large new organization, but rather of centralizing expertise with a view to increasing its effectiveness by giving it certain powers of intervention. This concentration of resources, combined with

intervention power based solely on objective considerations and devoid of political considerations, would have the advantage of:

- constituting a centre of expertise in the analysis and verification of public procurement that could support all public contracting authorities;
- ensuring, in conjunction with the Unité permanente anticorruption (UPAC), a continuation of the investigative and analytical activities intended by the establishment of the Commission;
- ensuring permanent monitoring of the processes for awarding and managing public contracts, thereby reducing the attractiveness of collusion and corruption schemes.

Moreover, in creating the PPA, the legislator would be sending a strong message about the importance it attaches to the awarding and proper management of public contracts, and an unequivocal warning to non-compliant parties in the public and private sectors. This would help put an end to the climate of impunity in which flourished the illicit practices uncovered by media and police investigations and the Commission. To eliminate any suspicion, there should be a high-level security investigation of any person joining the PPA.

The Commissioners therefore recommend that the government:

Create a provincial public procurement authority mandated to:

- monitor public contracts to identify malfeasance;
- support public contracting authorities in managing contracts;
- intervene with public contracting authorities when necessary.

The PPA will require certain powers in order to fulfill its mandate. The statements that follow clarify those powers.

Preventing malfeasance and monitoring public procurement

As part of its work, the Commission has demonstrated that most small public contracting authorities do not and never will have the expertise to adequately assess their needs, accurately estimate the cost of their construction projects and detect signs of collusion in their market. It would also be inefficient and costly for these clients to acquire expertise in estimating or analysis because with rare exceptions, the sums and the number of contracts awarded are not large enough to justify the savings that could be generated. On the other hand, a PPA that brought together analysts, auditors and estimators would allow detailed knowledge of public procurement to develop at the provincial level, for everyone's benefit.

To achieve this mandate, however, the PPA would require access to timely and quality information on bidders and winning contractors, solicitation methods, the rules for awarding and executing projects, selection committees, the professionals involved in projects, the subcontractors retained by contractors, etc.

The PPA should also have some control over the tools used for compiling relevant data for its analyses, including the electronic tendering system (SEAO). In order to increase the scope of its actions, the PPA should also ensure that the data collected are analyzed and made available to oversight and monitoring bodies, including UPAC and the Competition Bureau of Canada, particularly when the data appear to indicate the presence of collusive markets, misappropriation, or any other market anomaly.

More broadly, the PPA should be able to make any recommendations it deems necessary, for example with respect to the information provided in tender documents. The lessons learned from analyses should be communicated to all public contracting authorities in order to increase their expertise in awarding and managing public contracts over time. Similarly, as the organization responsible for receiving complaints, the PPA should publish an annual report describing the trends and characteristics of complaints pertaining to contract management at the municipal and provincial levels.

The Commissioners therefore recommend that the government:

Recommendation 1.1

- train a team of analysts within the PPA to be responsible for monitoring and analyzing all public contracts in Quebec and identifying indicators of malfeasance, as well as the existence of markets where the small number of suppliers creates the potential for a cartel;
- give the PPA enforcement power over public contracting authorities similar to that accorded the Chair of the Conseil du trésor under the *Act respecting contracting by public bodies*, in order to obtain the information it requires in a timely manner;
- transfer to the PPA responsibility for establishing, in conjunction with the Secretariat of the Conseil du trésor, the operating rules for the electronic tendering system (SEAO);
- provide the PPA with the power to make recommendations to public contracting authorities and to monitor implementation of those recommendations;
- give the PPA, in partnership with public contracting authorities and other relevant bodies, responsibility for developing, disseminating and coordinating courseware for public contracting authorities on the awarding and management of public contracts, and for ensuring that new courseware is developed and disseminated as necessary;
- give the PPA responsibility for the annual publication of a report on the trends and characteristics of complaints regarding contract management at the municipal and provincial levels.

Support and intervene incrementally

The key element of the mandate of the PPA, which is responsible for the integrity of government procurement, would be its role in monitoring and coaching public contracting authorities. Many will only require support and information in order to effectively manage their contracting activities. In other cases, where for a variety of reasons the organization has difficulty gaining

full control of its operations, more stringent measures should be considered. In other words, the PPA should be able to intervene incrementally with contracting authorities whose procurement processes are flawed or when the public market in which they award contracts shows evidence of malfeasance.

First, the PPA should have the power to appoint a member to the selection committee for every call for tenders. As crucial elements of the tendering process, focusing mainly on professional services, selection committees, and more specifically their composition, were indeed the cause of many problems in the years covered by the Commission's mandate. Not only did the evidence demonstrate that they do not always have the expertise to make informed decisions, but the fact that members are appointed by the contracting authority itself restricts their scope for decision making. From the standpoint of prevention, it would therefore be appropriate to ensure that one member of each selection committee is chosen by the PPA based on that person's expertise and the project objectives, and not by the contracting authority.

Similarly, with respect to specialized contractors, the Commission is of the view that the PPA should be able to impose operating rules on the Bureau des soumissions déposées du Québec (BSDQ – bidders' bureau) and conduct ongoing monitoring of interactions between the various stakeholders. A number of cases of collusion were found in these sectors, and without suggesting that they are more common there than elsewhere, the Commission considers it essential that they be identified and addressed. One of the first steps would be to allow the PPA to act as an observer member on the organization's board of directors.

On another level, where warranted by the magnitude of the project, the PPA should also have the power to require the presence of inspectors to ensure the integrity of the contracting process and thus, the project itself. These inspectors would act as agents for the PPA, although they should be paid by the public contracting authority involved. According to several experts heard by the Commission, the use of such inspectors in New York City proved profitable.

Along the same lines, the PPA should be able to act quickly when a potential or actual bidder believes that a tender process is flawed because it is being directed to one or more specific suppliers or the rules are not being respected. At present, the powers to act in response to a complaint are vague and their application depends on political power. It would therefore be desirable to entrust the PPA with responsibility for receiving complaints against bidders or public contracting authorities or with regard to the process for awarding and tendering a public contract. The PPA's intervention would have the advantage of being based on a purely administrative analysis. It could lead to the continuation of the tendering or award process or to its temporary suspension in order to allow the public contracting authority to review its process.

Finally, in cases where a public contracting authority proves unable to properly manage its contracting processes, the PPA should have the power to withdraw contract management from that body and assign it to another public institution, for example to a central city in the case of a borough, or to a regional authority for a small municipality. In the event of force majeure, it could also take charge itself. In both cases, the public contracting authority would remain responsible for the work covered by the contract.

This measure should be temporary and would be maintained only until the public contracting authority demonstrates that it has the ability and expertise to re-assume its role in this area. At that point, the PPA could impose terms and conditions on the contracting authority, such as revising its contractual processes or managing the risks associated with them. This takeover could also be partial or total. For example, a municipality might continue to award paving

contracts, while the awarding of contracts associated with its proposed filtration plant would be managed by the PPA or entrusted to another public contracting authority.

In the Commission's view, while this measure may appear drastic, it is necessary. Some public contracting authorities simply do not have the expertise to award complex contracts in the construction industry. In certain cases, contracts were awarded by individuals whose integrity has been called into question. This would also allow for severing the excessively close relationships between public and private actors, which have been recognized as a likely cause of problems observed by the Commission. The PPA would be guided by purely administrative logic, which makes it better placed to intervene than a minister, particularly when elected representatives with significant political clout are involved.

The Commissioners therefore recommend that the government:

Recommendation 1.2

Grant the PPA:

- the power to impose rules on the Bureau des soumissions déposées du Québec (BSDQ) and to act as an observer member of the board of directors;
- the power to appoint an independent member of its choice to every selection committee;
- the power to require a public contracting authority to hire independent inspectors as agents of the PPA to ensure the absence of collusion and corruption;
- responsibility for receiving complaints against bidders and public contracting authorities and with regard to the tendering and awarding processes for a public contract;
- the power to temporarily suspend a bidding process or the awarding of a contract before the work has begun when the PPA has reason to believe that the integrity of the process is threatened;
- the authority to assign responsibility for a public contracting authority's contracting process to another public institution;
- the power to take over a public contracting authority's contracting process itself.

In the medium term, the powers and responsibilities given to the PPA would be the benchmark in public procurement. Furthermore, although no weaknesses have been detected in the management of the existing process by the Autorité des marchés financiers, the Commission is of the opinion that the PPA should be responsible for issuing authorizations to business enterprises wishing to enter into public contracts or subcontracts. This would provide for centralizing public procurement-related matters in one organization and making the best use of the expertise that has been developed.

The Commissioners therefore recommend that the government:

Recommendation 1.3

Grant the PPA, at the appropriate time, the power that currently resides with the Autorité des marchés financiers to provide authorization to business enterprises wishing to enter into public contracts and subcontracts.

Recommendation 2

Use tendering rules adapted to the nature of the work

In Quebec, the tendering rules used to award public contracts in the construction sector differ by type of contract and the nature of the public contracting authority involved.

For professional services contracts, government departments and agencies base their choice solely on the bid offering the best quality. This is established by assigning a mark for each criterion being considered. The submission with the highest score wins the contract. At the municipal level, the client looks at the quality and price of each tender separately. The process begins with the evaluation of the quality, after which the price envelope is opened. The winning bid is the one offering the best value for money. Known as the adjusted price, this result is determined by a formula that calculates a precise weighting between these two criteria.

In the case of a construction contract, the rules are the same at both the provincial and municipal levels, with only price being considered. Each bidder proposes a flat price or unit prices and the winning bid is the one with the lowest total price.

These methods were the subject of many comments from witnesses before the Commission. Engineers working with cities and municipalities were particularly critical of the fact that the formula used to establish the adjusted price in the municipal sector places too much emphasis on price, at the expense of the quality criteria. These engineers believe that the firms selected are almost always those that have submitted the lowest price, even if they only achieve the minimum quality threshold. This facilitated collusion agreements between firms on calls for tenders for professional services at the municipal level.

The Commission also found that with respect to construction contracts, the use of a single criterion, in this case the lowest price, has significant disadvantages. The information gathered showed that this greatly facilitates collusion agreements between bidders, since interested contractors only have to agree on this distinctive criterion in order to share contracts. The use of this single criterion in complex construction projects also has the effect of preventing public contracting authorities from including quality criteria in their calls for tenders, and potential bidders from asserting them.

The process of selecting a company to design, monitor and carry out complex public construction projects should make use of relevant quality criteria. Overlaying a new surface on existing pavement to make it last longer does not necessarily require the same degree of expertise as constructing a bridge, an interchange or a water filtration plant. Currently, however, these projects are awarded based on the same rule, that of the lowest price.

The purpose of an invitation to tender is to enable the public contracting authority to obtain the best value for money given the nature of the work involved. The Commission is therefore of the

view that the current tendering rules do not meet this objective, in addition to facilitating collusion arrangements for certain categories of calls to tender. They must be reviewed in order to enable the public contracting authority, in cooperation with and supervised by the PPA, to select the tendering rules best suited to the characteristics of the construction projects requiring tenders.

There are a number of advantages to such freedom of choice.

First, it would significantly reduce predictability regarding the winning bidder. As stated earlier, this element was the basis for several collusion agreements in the construction industry whereby prospective bidders agreed among themselves to share contracts, projects or territories. With a price-quality weighting that varies from tender to tender, however, companies would not have the same guarantee of obtaining the contract. As a result, letting one competitor win a tender without any certainty that the second competitor will win the tender it wants reduces the possibility of a collusion agreement.

Adopting tendering rules based on a more varied weighting of quality and price criteria would also have the advantage of encouraging public contracting authorities and potential bidders to be more concerned about the quality of the infrastructure for which they are responsible, whether it be the design, supervision or construction. At present, the almost exclusive use of the “lowest compliant bidder” formula in construction contracts encourages companies to reduce costs as much as possible, often at the expense of quality and innovation.

Moreover, the freedom granted to public contracting authorities comes with a responsibility – that of explaining to their constituents the reasons for their choice of tendering rules. This new context would help to increase the importance of procurement functions in organizations and encourage the development of in-house expertise in this area.

The Commissioners therefore recommend that the government:

Standardize laws and regulations to allow all public contracting authorities to decide, in cooperation with the Public Procurement Authority and under its supervision, the appropriate weighting of price and quality criteria in the public procurement process for a contract in the construction industry.

Recommendation 3

De-politicize the approval of road-network maintenance and improvement projects at the Ministère des Transports du Québec

Road infrastructure projects are the subject of five-year programming by the Ministère des Transports du Québec (MTQ). This programming is revised annually, and is structured around four pillars: preservation of pavement; preservation of structures; improvement of the road network; and development of the road network.

At the operational level, the department’s territorial divisions establish initial programming, with projects classified by order of priority. When the Secretariat of the Conseil du trésor informs the MTQ of the budget available, the latter prepares a new budgetary breakdown by territorial division and asks the divisions to adjust the programming accordingly. After validation, notably

by the territories branch and the programming coordination analysis service, the programming proposal is presented to the Minister of Transport. The proposal indicates the electoral district of each project.

The Commission's work showed that during this operation, elected representatives, motivated by considerations other than technical, could ask that certain preservation and improvement projects be moved ahead, at the expense of other proposed work. Once the modified program has been approved by the Minister of Transport, it becomes final.

Because they may be linked to other public policy considerations, such as economic development or access to certain remote areas, decisions to proceed with the development of the road network are appropriately taken by ministers. It is neither necessary nor desirable, however, to give ministers the power to approve programming related to the preservation of pavement and structures or improvements to the road network. Such approval could be influenced, or appear to be influenced, by political motivations.

From the Commission's perspective, it is preferable to establish a clear distance between these three areas of activity and elected representatives. Under the principle of ministerial and governmental accountability, however, the Conseil du trésor and the Minister of Transport must retain the power to approve budgets, while allowing an administrative authority to approve programming.

The Commissioners therefore recommend that the government:

Establish a committee of independent experts to approve Ministère des transports du Québec programming for projects involving preservation of pavement and structures and improvements to the road network, based on a budget established by the Conseil du trésor and the Minister of Transport.

Recommendations 4 and 5 – Foster competition

The Commission's work demonstrated that the more potential competitors involved in a tendering process, the more difficult it is to organize collusion agreements among them. Consequently, it is necessary to rethink the administrative practices that limit competition in certain public contracts.

Recommendation 4

Increase competition in the paving sector by facilitating the use of mobile asphalt plants

Witnesses revealed to the Commission the existence of collusive practices in the paving sector. Among other things, this collusion is based on territory sharing among contractors, based on the location of asphalt mixing plants. In 2013, there were 185 plants in Quebec producing asphalt. Of these, nearly 40 were mobile plants that could be installed close to construction sites. The use of mobile plants, particularly in the regions, contributes to healthy competition. According to a study carried out in 2014 for the Ministère des Transports du Québec (MTQ), the use of mobile plants is common in other markets comparable to that of Quebec. However, in Quebec, mobile power plants do not move around much.

To be allowed to operate a mobile plant, its owner must obtain a certificate of authorization from the Ministère de Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC). The process for issuing certificates of authorization for mobile plants is governed by a statute and three regulations, and can be quite lengthy. If the applicant has submitted all the required information, the average processing time for the department is approximately 50 days. However, due to the increasing discrepancy between the content of the applications filed and departmental requirements, the average time to obtain a certificate of authorization is actually about 200 days.

Contracting authorities normally announce in the spring the work that has been programmed for the coming months. The details are provided in calls for tenders, which usually only give contractors three weeks to submit their bids. The work must begin shortly after the contract is awarded. In the case of paving work in regions where there is little competition in the asphalt business, these short operational deadlines and long delays to obtain environmental authorizations hamper the development of competition based on mobile plants.

In June 2015, the MDDELCC submitted to public consultation a guidance document on modernizing the environmental authorization regime. One of the suggested directions involves simplifying authorizations and analytical processes. Any improvement in processing times for applications for certificates of authorization for mobile asphalt plants, without neglecting protection of the environment, would contribute to healthy competition in the paving sector.

Certain constraints imposed by the MTQ also inhibit the use of mobile asphalt plants and their positive competitive impact. For example, when a contractor installs a mobile asphalt plant in a region, the plant is not immediately eligible for calls for tenders from the MTQ in that region.

To be eligible, the mobile plant must first qualify under the annual designation call, which is usually only open for one month, in April. If the contractor is not ready to apply for designation at that time, it must wait until the following year. As such, the arrival of a mobile plant in a region will not necessarily increase the number of competitors eligible for MTQ tenders in that region.

Indeed, by failing to consider mobile plants awaiting designation, the MTQ may conclude that there is no competition and award a non-negotiable tariff contract (rate-setting contract) of up to \$1 million to the only designated plant in the area, even if a mobile plant awaiting designation is located closer to the work. Witnesses explained that the MTQ generally obtains better prices through a public call for tenders than from a rate-setting contract. A report produced for the MTQ by PricewaterhouseCoopers in 2014 came to the same conclusion.

Moreover, even when a new plant is duly designated by the MTQ, the departmental directives are ambiguous as to when it may be considered a "competitive" plant for purposes of determining how to award any new paving contract of less than \$1 million. Under certain provisions of the directives, a designated mobile plant should be considered a competitor when it has demonstrated the production of 500 tonnes of asphalt since its establishment. However, a requirement in another provision of the directives suggests that the 500 tonnes must have been produced the previous year on the same site. This requirement is an obstacle to competition, delaying the competitive impact of a new plant in the region by one year.

The Commissioners therefore recommend that the government:

Reduce the time required to obtain certificates of authorization for the installation of mobile asphalt plants and for their designation to tender in order to promote competition in the paving sector.

Recommendation 5

Increase competition for approved, certified, or standardized materials and products

In Quebec, many products used in infrastructure work are subject to approval, certification, qualification or standardization. The *Cahier des charges et devis généraux* (CCDG), which is a guide for drafting the documents required for MTQ public calls for tenders, contains numerous references to existing standards and approvals for certain products. These include aggregates; asphalt mixes; normal-density concrete; round or surface-mounted molded lighting; geotextiles; paints and paint systems for steel structures. Some municipalities also adopt their own product and facility standards. Several of them use the standards of the Bureau de normalization du Québec (BNQ).

Public contracting authorities employ these requirements in order to use materials and construction products that meet recognized quality criteria. These requirements also cut maintenance costs by reducing the number of technical inspections, and streamline the procurement process.

This approach does have its downside, however. Some evidence placed before the Commission suggests the presence of collusion schemes based on products approved or standardized by the MTQ or the BNQ. This is particularly the case with the collusion schemes described in the field of exterior lighting and oversized signs, and the negotiations surrounding the supplying of pipes to the City of Montréal.

In both cases, tenders were based on approved and standardized products, for which there are very few suppliers in Quebec. The evidence showed that such a market promotes the development of close relationships between manufacturers or wholesalers and certain contractors who install these products. Suppliers maintain a system of prices and rebates favouring certain installers, who have divided up the main regions of Quebec. This system limits competition from new installation companies, and contributes to maintaining higher prices for the work involved.

The Commission recognizes the advantages of defining quality criteria for materials and products used in construction where this is economically justified and the standards result from an objective and open process. Care must be taken to ensure, however, that specification designers do not introduce requirements based on their self-interested preference for a specific product or supplier.

The Commissioners therefore recommend that the government:

Encourage public contracting authorities to recognize similar products approved by other jurisdictions where relevant and to analyze requirements that limit the number of potential competitors in their procurement processes.

Recommendation 6

Strengthen contracting rules for para-municipal corporations and non-profit organizations

Government agencies and municipalities establish non-profit organizations (NPOs) to carry out and manage artistic, social and sporting activities or single projects, such as anniversary celebrations. They also subsidize construction projects that are planned and managed by NPOs or para-municipal corporations they do not control. The amounts involved can sometimes reach the tens of millions of dollars.

The *Act respecting contracting by public bodies* (LCOP) is silent as to the rules governing the awarding of contracts by NPOs controlled by a government agency or educational, health or social services institution. When an NPO receives a government grant for construction work of \$100,000 or more, the *Regulation respecting the promise and awarding of grants* requires it to make a public call for tenders to select the contractor with which it will do business. This requirement, however, only covers some of the issues involved with contract management.

For example, since most NPOs are not subject to the LCOP, they are not required to refer to the Register of enterprises ineligible for public contracts (RENA), nor to the Register of enterprises holding an authorization to enter into a contract or subcontract of more than \$1 million (REA). Thus, NPOs may enter into contracts with companies that are deemed unreliable for construction work paid for with public subsidies.

In the municipal field, the legal framework for contractual matters is mainly set out in the *Cities and Towns Act* (LCV) and the *Municipal Code*. It is based on the same principles as the LCOP, and requires municipalities to use RENA and REA. It does not, however, define the contractual rules applicable to para-municipal corporations and NPOs that are controlled or subsidized by a municipality.

Only the *Act respecting public transit authorities*, which establishes transit authorities in the nine largest urban agglomerations in Quebec, contains general provisions on contractual matters similar to those of the *Cities and Towns Act*. The charters of the cities of Montréal and Québec provide that those cities' contractual regimes apply to para-municipal corporations, but they are silent as to the application of RENA and REA.

In 2010, the report of the Group-conseil sur l'octroi des contrats municipaux (advisory group on the awarding of municipal contracts) found that the current situation gives rise to uncertainties, with significant legal consequences. In its submission to the Commission, UPAC raised concerns about the creation and use of NPOs by public bodies in order to do indirectly what cannot be done directly in contractual matters. UPAC believes that NPOs are an interesting tool that, under the control of crooked individuals, can allow the squandering of public funds through fraud and tax evasion.

Significantly, the scope of the recent *Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts* extends to NPOs and para-municipal corporations.

In the Commission's view, it would be preferable to consider these organizations not only when it comes to compensating for past abuses, but also to prevent such situations by properly

regulating their contractual practices.

The Commissioners therefore recommend that the government:

Subject all para-municipal corporations and NPOs controlled or subsidized by a public body or municipality to the same contractual obligations as the organizations with which they are associated.

Recommendation 7

Review the time limit on receiving submissions

The regulations under the statutes governing the awarding and management of public contracts at both the provincial and municipal levels set a minimum time limit of 15 days between the issuing of a public call for tenders and the deadline for receipt of tenders. The Agreement on Internal Trade, which binds Canadian governments to provide equal access to public contracts for all Canadian businesses, simply states that “[e]ach Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement.”

In the case of a contract from a government department or agency, including the education, health and social services networks, the regulations stipulate that the public contracting authority may amend tender documents after publication. It must, however, notify the service providers concerned by means of an addendum. If the amendment affects the price of the contract, the addendum must be sent at least seven days before the tender closing time. If it is not, the closing time must be extended. The possibility of an addendum to a call for tenders is not mentioned in the municipal laws.

A number of issues were raised during the Commission hearings regarding the time allowed for submissions. The case of Faubourg Contrecoeur is an example. The evidence demonstrated that the time limit of 15 days was insufficient given the scope of the project. As a result, several companies did not have time to prepare their bids, thus removing competition while favouring an entrepreneur with privileged information.

Conversely, some representatives of the Ministère des Transports du Québec (MTQ) stated that the 15-day period is too long when at the end of the summer season, unspent budgets must be quickly reallocated to fall paving, which must be carried out before the freeze. In such cases, given the relative simplicity of each project, a time limit for receiving bids of less than 15 days would probably not restrict the number of bidders and would be preferable to rate-setting contracts.

Although the current 15-day time limit seems to be adapted to most public tendering processes, it would be more appropriate to offer greater flexibility to the contracting authority, under the supervision of the PPA, based on the complexity and urgency of the work to be performed.

The Commissioners therefore recommend that the government:

Adopt rules enabling a public contracting authority to establish the reasonable time for the receipt of bids, depending on the financial significance and the complexity of the project being tendered.

2. IMPROVE PREVENTION AND DETECTION ACTIVITIES AND STRENGTHEN SANCTIONS

This second block of recommendations responds to the need to act upstream, before problems occur or reach endemic proportions. It focuses on preventing collusion, corruption and infiltration by organized crime, as well as on the measures to help detect them. It includes the required action in terms of sanctions.

Recommendation 8

Provide better support and protection to whistleblowers

Collusion and corruption involve acts that are committed secretly and are therefore difficult to detect unless they are reported. This applies in Quebec and elsewhere. People working within an organization are often best placed to become “whistleblowers” and to provide monitoring and oversight agencies with the information they need to initiate an investigation.

Unfortunately, most people do not report the malfeasance they have witnessed, mainly because they fear retaliation from the guilty individuals or the organizations whose inappropriate conduct they are reporting. International experience tends to show that when they are not adequately protected, whistleblowers may be subjected to reprisals: harassment, threats, professional stagnation, demotion, loss of employment, prosecution, etc.

Because of this reality, however, more and more governments around the world are acting to facilitate the reporting of malfeasance, including by enacting legislation. In Quebec, the *Anti-Corruption Act* (LCLCC) provides a process for disclosing wrongdoing in contractual matters to UPAC.

This law ensures anonymity for the whistleblower. It authorizes the latter to communicate confidential information to UPAC despite certain duties of confidentiality and loyalty that may be binding on that person. Reprisals are also prohibited and are subject to severe penalties. Under the LCLCC, any decision adversely affecting the employment or working conditions of the whistleblower is presumed to be a reprisal.

Furthermore, the *Act respecting labour standards* confirms that protection against employment-related reprisals applies to any private or public sector employee in Quebec who makes a disclosure to UPAC regarding a public contract. The Commission des normes du travail and the Commission des relations du travail may claim from the employer, or order the employer to pay, compensation for damages resulting from reprisals against a whistleblower.

This legal framework promotes the reporting of wrongdoing and provides a certain level of protection for whistleblowers. An analysis of the standards proposed by credible international organizations, as well as testimony at the hearings, demonstrated, however, that it has certain limitations.

The most important of these is the scope of the legislation. The LCLCC is a sectoral-type law, which applies only to public procurement. Such laws have the advantage of being relatively simple to design, since they are aimed at a fairly well-defined sector. They tend to accumulate, however, since each sector generates a specific law, and this is likely to create a complex legal framework that is difficult to understand and may ultimately discourage people from availing

themselves of it.

Also, because they define wrongdoing in the specific context of the sector concerned, these laws leave the whistleblowers unprotected when they report a problem of a more general nature. For example, the LCLCC does not provide protection for whistleblowers who report wrongdoing directly to a supervisor, co-worker or head of a government institution other than UPAC.

In contrast, general laws are broader in scope, and the resulting regulations apply to both the public and private sectors. Also, “the facts that can be reported are not limited to a single area such as corruption, but apply to a wide range of conduct: violation of any law, codified ethical standard, administrative rule or guideline enacted for the mobilization and management of factors of production, or even deviation from the recommended best practices.” [Translation]

In order to promote greater citizen participation in improving contractual practices related to public infrastructure, the financing of political parties linked to these practices, and the infiltration of the construction industry by organized crime, the Commission is of the opinion that a general whistleblower protection system is required. This would not only ensure the protection of all whistleblowers, but also provide them with necessary assistance and support, particularly financial. Despite the remedies available to them, whistleblowers may have to incur considerable costs to enforce their rights, particularly when dealing with large organizations that have significant financial resources and the capacity to engage in a long-term legal battle.

The Commissioners therefore recommend that the government:

Improve the whistleblower protection system to ensure:

- anonymity for all whistleblowers, regardless of the agency to which they report;
- assistance to whistleblowers in their efforts;
- financial support, when required.

Recommendation 9

Enhance immunity for repentant witnesses

It is often difficult to obtain the necessary evidence in criminal cases involving corruption and collusion (*Criminal Code* and *Competition Act*). Documentary analysis provides clues, but it is difficult to investigate a major case without initial disclosure and the cooperation of one or more participants in the offence. Such cooperation is often obtained in exchange for some form of immunity or a reduction in charges. Immunity and leniency programs are therefore essential.

In Quebec, there are two organizations active in this area: the Competition Bureau of Canada (CB) and the Director of Criminal and Penal Prosecutions (DPCP).

The Competition Bureau immunity and leniency programs

The CB Immunity Program was developed in the early 2000s. To benefit from it, a business organization or individual must have participated in the offence with at least one accomplice, but must not have coerced others to be party to the illegal activity. It applies to the first party that discloses the offence, provided that the CB is not already in possession of evidence or has not already referred the matter to the Public Prosecution Service of Canada (PPSC). The party receiving immunity is not required to plead guilty because that party will not be prosecuted. In the case of a business organization, immunity also covers related persons: its employees, officers, directors and shareholders.

The Leniency Program applies when immunity has already been granted to another party. When the first leniency applicant is a business organization, it must plead guilty. Related persons will not usually be prosecuted if they cooperate. From 1996 to 2014, 123 applications for immunity and leniency related to the construction sector in Quebec were submitted to the Bureau, most of them after 2009.

DPCP management of cooperating witnesses

The DPCP may also grant immunity from the statutes it enforces, including the *Criminal Code*. Such action is a matter of public interest, however, and is assessed on the basis of several factors, including the gravity of the offence to be proved, the credibility of the witness, the need for the testimony to obtain a conviction and the possible benefits to society. The DPCP does not generally grant full immunity. Rather, it requires the cooperating witness to plead guilty to lesser charges in return for a guarantee that the evidence provided will not be used against the witness.

The situation is somewhat different with regard to corruption and collusion given that some important legal consequences of these criminal offences do not fall under the authority of the DPCP, including tax, disciplinary and administrative matters, as well as possible civil suits.

The Attorney General of Quebec and the DPCP may order a stay of any proceedings in view of imposing a penal sanction for an offence under an Act, except proceedings brought before a disciplinary body.

Professionals acting as cooperating witnesses therefore find themselves in a unique situation. In admitting to having committed acts detrimental to the honour or dignity of their profession, they may open themselves up to sanctions from their professional order. In order to obtain the cooperation of such persons in a criminal investigation, it would therefore be helpful to be able to grant them immunity from professional sanctions, for example where their misconduct does not relate to the quality of their professional acts. The syndic of a professional order may decide not to lodge a complaint with the disciplinary board with respect to a member of the order who acts as a cooperating witness, but that decision can be submitted to the review committee at the request of a complainant. In addition, any person may file a private complaint against a professional, even if the syndic of the order has refused to do so.

To these legal and professional consequences are added tax consequences for the cooperating witness who obtained certain sums of money in the course of the acts of which he or she is accused. Although the cooperating witness must turn over illegally obtained income to the Attorney General of Quebec in order to be given immunity or a reduction in charges, the response from Revenu Québec is usually an assessment on the unlawful income the individual

confesses to have earned.

In addition, an individual or company that is the subject of an investigation in Quebec may simultaneously be given immunity by the PPSC on the basis of a recommendation from the CB. It is therefore important to maintain effective communications between these different entities.

In this context, and because of jurisdictional conflicts, some key witnesses may refuse to cooperate, which increases the investigative burden and is likely to produce poorer results at higher costs.

The use of cooperating witnesses is critical for investigating and prosecuting corruption and collusion. To overcome the difficulties caused by the large number of potential stakeholders and the interests of each in the preliminary discussions with a potential cooperating witness, it is important to assign the necessary decision-making powers to the DPCP so that it can conduct these discussions and resolve any impasses, in the best interests of justice and society.

The Commissioners therefore recommend that the government:

Give the Director of Criminal and Penal Prosecutions the power to accord certain benefits to cooperating witnesses, in the public interest and after consultation with the authorities concerned; in particular, to order a stay of any disciplinary proceeding, civil proceeding undertaken by a public authority, or Quebec tax claim, and to maintain communications with the federal agencies involved.

RECOMMENDATIONS 10-14 – BETTER PREVENT AND COMBAT INFILTRATION OF THE CONSTRUCTION INDUSTRY BY ORGANIZED CRIME

The Commission's work brought to light how close some construction companies are to criminal organizations involved in drug trafficking, in particular. This industry becomes even more attractive to criminals when companies and workers accept undeclared work and "payment in cash for the hours worked on construction sites makes it possible for criminal organizations to launder the proceeds of their illegal activities, among other things." [Translation]

The *Building Act* contains certain provisions intended to protect the construction industry from infiltration by criminal organizations. In particular, it establishes conditions related to integrity that must be met by individuals and businesses in order to obtain and maintain a construction contractor's licence, and even more stringent conditions to retain the right to enter into a contract with a public body. Some flaws, however, need to be addressed.

Recommendation 10

Expand the offences that can result in refusal, restriction or cancellation of a licence by the Régie du bâtiment du Québec

At present, if the officers of a business with a construction contractor's licence have been convicted in the last five years of a tax offence, an indictable offence connected with their activities in the construction industry or for gangsterism, their licence is cancelled by the Régie du bâtiment du Québec (RBQ). If they are in the process of applying for a licence, it will simply be denied.

On the other hand, if they have been convicted in the last five years of trafficking, producing or importing drugs, collusion or certain types of fraud or have been sentenced to more than five years' imprisonment for laundering of proceeds of crime (money laundering and fencing), the company obtains or maintains the requested licence. All it needs to do is meet the other technical requirements of the RBQ. The licence granted will be restricted, however, and the company cannot enter into public contracts for five years. If the contractor does not respect this restriction, the RBQ cancels its licence.

The legislator has therefore seen fit to protect public contracts from the risk represented by the presence of company officers who have been recently convicted of serious crimes and whose rehabilitation has not been evaluated. The RBQ is still required to issue the contractor the requested licence, however, thereby authorizing the company to offer its services to individuals and private companies, despite the crimes for which some of its officers were convicted and the higher risk of links to a criminal organization.

The RBQ maintains a list of restricted licences on its website. As of September 2015, 98 licences were restricted. Three quarters of the restrictions were due to criminal acts related to trafficking, production and importing or exporting of drugs. The other restrictions were mainly related to fraud or tax offences.

Considering the particular vulnerability of companies involved in the construction industry to infiltration by organized crime, the Commission believes that there should be a tightening of the licensing conditions for anyone who has committed a serious criminal offence and any business operated by such individuals.

The Commissioners therefore recommend that the government:

Add to article 58(8) of the *Building Act* the offences of trafficking, producing or importing drugs, laundering the proceeds of crime and those related to collusion and corruption as grounds for non-issuance of an RBQ licence.

Recommendation 11

Tighten the rules governing the waiting period imposed by the Régie du bâtiment du Québec

When it comes to issuing or renewing licences, the *Building Act* only takes into account convictions from the last five years. Therefore, regardless of the crime committed by the officers of a construction company more than five years ago, whether or not it was related to construction activities, whether or not the officers involved are still incarcerated, the company they are involved with will receive a restricted licence. In other words, if the company was denied a licence or lost it due to a conviction for gangsterism, it will be eligible again after five years. Furthermore, the Act does not provide for any additional precautions in the event of a repeat offence by the officers involved.

This five-year period since conviction that the *Building Act* imposes on contractors is less stringent than that provided for under the *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20) for the managers and

representatives of employee or contractor associations, as well as job-site stewards. Article 26 of that Act imposes a period of five years “after the term of imprisonment fixed by the sentence” before the individual may be eligible to hold one of the abovementioned positions. If the sentence imposed is a fine or the sentence has been suspended, the disqualification continues for five years from the date of conviction.

Section 26 of Act R-20 further protects the functions of officer, representative and steward from infiltration by prohibiting anyone who has committed a crime from holding these positions. This means that it is not necessary to demonstrate that the offences committed are related to the person’s activities in the construction industry, for the entire five-year period after the sentence has been served. Furthermore, if a person has been convicted of extortion, arson or fraud, for example, this provision of Act R-20 prohibits that person from holding these positions for life, or until their criminal record is expunged (pardon).

This security measure is not unique. For example, security guards stationed at the entrance to construction sites or buildings cannot obtain a licence to practise their trade if they have been found guilty of, and not pardoned for, a criminal offence under the *Private Security Act*.

Such measures should apply to the officer of a construction company who holds a licence issued by a public body.

The Commissioners therefore recommend that the government:

Amend the *Building Act* such that:

- The five-year waiting period following loss of the contractor’s licence or loss of the right to enter into a public contract commences after the end of the term of imprisonment fixed by the sentence resulting from the conviction giving rise to the RBQ’s decision;
- A licensee convicted a second time for an indictable offence listed in the *Building Act* may not obtain a licence from the RBQ or run a business unless that individual has obtained a pardon or the criminal record has been expunged.

Recommendation 12

Expand the criminal record review of shareholders in a construction company

From the perspective of fighting infiltration by organized crime, it is important to verify whether the shareholders of a construction company have a criminal record.

The *Building Act* determines that the background check and other obligations do not apply to shareholders holding less than 20% of the voting shares of a construction company.

Quebec legislation generally uses the 10% threshold to determine whether a shareholder has a significant interest in the business and whether the checks provided for should apply to that person. The 15 laws that use this threshold include the *Act respecting contracting by public bodies*, the *Business Corporations Act* and the Acts administered by the Autorité des marchés financiers. The codes of ethics of the Caisse de dépôt et placement du Québec, Investissement Québec and Hydro-Québec, to name just a few, also use the 10% share threshold for

determining whether a person is related to a business and whether control measures are required. It is therefore worth rethinking the threshold established in the *Building Act* to trigger an examination of a shareholder's integrity.

Moreover, because it is not sufficiently explicit, the wording of one provision of the *Building Act* raises doubts as to the RBQ's authority to do a background check on all officers who indirectly hold shares in a company. As evidenced by documents submitted to the Commission, some construction companies are owned by a complex shareholding system. While this practice is permitted, it requires that monitoring agencies have all the appropriate powers to exercise their oversight mandate.

The wording of other statutes are clearer in allowing authorized regulatory bodies to request the required information on the ownership of a company, regardless of the number of levels comprising the shareholding structure. The *Building Act* itself provides for this measure when it comes to persons lending their name.

The Commissioners therefore recommend that the government:

Amend the *Building Act* to:

- Reduce from 20% to 10% the proportion of the company that a shareholder must hold in order to be considered an officer of a corporate entity and be included in the assessment of the company's integrity;
- Clarify the power of the Régie du bâtiment du Québec to examine the integrity of officers who indirectly hold shares in a company subject to the provisions of the *Building Act*.

Recommendation 13

Create penal sanctions for the use of name-lending by applicants or holders of licences from the Régie du bâtiment du Québec

The *Building Act* prescribes the conditions under which a licence may be issued to a construction contractor. Among these conditions, an individual applying for a licence must not be lending his name to another person. Similarly, none of the officers of a partnership or legal person making an application may lend their name to another person.

These provisions are intended to ensure that natural persons and partnerships and legal persons who apply for or hold a licence are the actual contractors or officers of the company, rather than other persons who do not meet the requirements of the Act. This condition is very important from the perspective of preventing infiltration of the construction industry by organized crime.

In addition, the Act provides for suspending or cancelling a licence if the holder ceases to satisfy one of the conditions required to obtain it.

The inability to obtain a licence, as well as the suspension or cancellation of a licence, constitute important consequences for an individual or company. Given the particular vulnerability of companies in the construction industry to infiltration by organized crime, however, it is important

to add to these administrative sanctions a criminal sanction applicable to the person who loaned his name, as well as the person who made use of such a person in applying for a licence, or once the licence was obtained, during its period of validity.

The Régie du bâtiment appears to interpret the provisions of its enabling legislation as empowering it to impose such criminal sanctions. The Commission believes it would be preferable to clarify the relevant provisions in order to ensure that the Régie has this power.

The Commissioners therefore recommend that the government:

Amend article 194 of the *Building Act* to specify that criminal offences include:

- any natural person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, lends his name to another person;
- any legal person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, has an officer who lends his name to another person;
- any natural or legal person who uses a "proxy" in any of the situations described above.

Recommendation 14

Extend protection against infiltration of the construction industry by organized crime to government-supported investment activities

The Commission's work uncovered attempts by individuals linked to criminal organizations to obtain funding from the Fonds de solidarité FTQ (FSFTQ).

As early as 2009, the fund became aware of these attempts and took action to combat them. In 2015, legislation was enacted to strengthen the governance of workers' funds whose shares are eligible for a tax credit. The legislative amendments ensure that a majority of the board members will be independent from the fund itself and of the union with which it is associated. They provide for the creation of a governance and ethics committee and a human resources committee for each fund, chaired by a board member who qualifies as an independent person.

In the summer of 2015, workers' funds and corporations whose shares were subject to a special tax credit had net assets of \$14 billion, of which nearly 80% were managed by the FSFTQ. Part of this amount is used in the construction sector, either through direct participation in construction companies or indirectly through support to companies in various sectors for construction of their facilities. Such resources are also attractive to criminal organizations.

In addition to these government-supported investment funds, Investissement Québec and the Caisse de dépôt et placement du Québec may also take equity positions in construction-related businesses. These entities are also exposed to the risk of being solicited by companies acting under the influence of a criminal organization.

The Commission is of the view that the process for verifying the integrity of company, which is established by the *Act respecting contracting by public bodies* and administered by the Autorité

des marchés financiers (AMF), should be a prerequisite for any active government participation in a construction company.

The Commissioners therefore recommend that the government:

Require of the following organizations that any active participation in the share capital of a construction company, beyond a certain financial threshold determined by the government, be entered into only with a company whose name is listed in the Autorité des marchés financiers Register of authorized firms:

- workers' funds and any company for which the purchase of shares entitles the shareholder to a tax credit;
- Investissement Québec;
- The Caisse de dépôt et placement du Québec.

Recommendation 15

Reduce payment time for construction contractors

During their testimony before the Commission, several contractors reported the problem of delays in having invoices paid by public contracting authorities. Generally speaking, payment on accounts receivable is due 30 days after billing date, but according to these witnesses, payment in the construction industry currently takes about three to six months.

These observations from contractors were confirmed by other witnesses working in public administration. According to Serge Pourreaux, procurement manager for the City of Montréal between 2003 and 2006, the Finance Department had determined in 2003 or 2004 that 80% of invoices were paid within a period varying from four to six months.

In her testimony, engineer and Commission investigator Jeannette Gauthier echoed this concern of contractors. Having met with 25 of them and six suppliers of materials, she indicated first of all that the average payment period was four months. She also stated that this situation, which was widespread among all clients, seemed to be worse with those from the public sector.

A study by Raymond Chabot Grant Thornton (RCGT) also confirms this information. In Canada, the average time in 2002 to collect accounts receivable in the construction industry was 11.3 days longer than in all other industrial sectors. And in 2011, this gap had increased to 20.6 days. Even more serious, within the construction industry, the sectors with the highest percentage of accounts receivable exceeding 120 days are civil engineering, roads and the institutional environment. The clients in these sectors are mainly in the public sector.

For the Commission, this situation involves three major problems. First, it confers significant power on site supervisors, since they must approve incremental payments. These professionals can speed up or slow down approval for these payments in order to intimidate or favour construction contractors, thereby contributing to private corruption schemes.

Second, such a situation contributes to limiting competition in the industry, thereby facilitating the creation and maintenance of collusion agreements. Contractors have already paid their workers, their suppliers and their subcontractors, and must financially underwrite these delays in payment. This lack of liquidity limits their numbers and growth by restricting their ability to undertake new contracts. In 2013, more than three quarters of contractors refused to respond to at least one call for tenders because they found the payment clauses to be abusive or they anticipated payment problems. In addition, late payments penalize SMEs even more since they do not always have easy access to credit. They are therefore at greater risk of experiencing financial difficulty. This is not likely to encourage them to commit to new contracts.

Third, such a situation favours infiltration of the construction industry by organized crime. An SME faced with financial difficulties arising from excessive accounts receivable may be tempted to resort to sources of non-traditional financing. In fact, that is exactly what happens. Non-traditional financing is used by a significant proportion of construction firms as a result of payment delays.

To these three important problems is added a fourth, this one for the state. This situation encourages contractors to factor this financial risk into the price of their bids. In other words, these financing costs are transferred to public contracting authorities, and therefore to taxpayers.

In order to counter all these detrimental effects for progress in the construction industry and economic development, numerous jurisdictions have begun to regulate payment periods for their suppliers. These include the United States, the European Union, the United Kingdom and the State of South Australia in Australia.

The Commissioners therefore recommend that the government:

Adopt legislative or regulatory provisions to propose a standard on the timing for the production of incremental invoices and payments in the context of a main contract and any subcontracts, in order to reduce the stranglehold that site supervisors and public contracting authorities have on companies in the construction industry, as well as the possible infiltration by organized crime.

RECOMMENDATIONS 16 AND 17 - REQUIRE THAT PUBLIC CONTRACTING AUTHORITIES REPORT CASES OF INTIMIDATION AND VIOLENCE ON CONSTRUCTION SITES

The evidence showed that in cases of intimidation, violence or work slowdown on construction sites, the contractor is often reluctant to file a complaint for violation of provisions of the *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20). This may be due to the fact that the employer does not want to see a deterioration in relations with employees or with the union, and may also fear reprisals. Furthermore, these phenomena may in some cases prove to be symptoms of infiltration of the construction industry by organized crime.

Public contracting authorities or their representatives may witness or be informed of situations of this nature on the sites for which they are responsible. If this is the case, as an agent of the state, they have a moral obligation to communicate this information to the Commission de la construction du Québec (CCQ), which will then take appropriate measures.

Requiring public contracting authorities to inform the CCQ of offences committed on sites for which they are responsible so that the offences can be sanctioned could result in fewer such situations, which would serve as an example for the entire industry. Such a measure is also to the advantage of public contracting authorities, given that they assume the direct and indirect costs generated by such offences.

The information gathered could also be included in the five-year study on developments in the Quebec construction industry that the Minister of Labour is required to produce.

The Commissioners therefore recommend that the government:

Recommendation 16

Require all public contracting authorities to report to the Commission de la construction du Québec any situations involving intimidation or violence on job sites established for their projects.

Recommendation 17

Require that the five-year study on developments in the Quebec construction industry, which is produced by the Minister of Labour, in collaboration with the Commission de la construction du Québec, include a status report on violence and intimidation on construction sites.

Recommendation 18

Combat intimidation to improve competition

Numerous witness statements before the Commission demonstrated how intimidation is used as an anti-competitive strategy to prevent a contractor, worker or supplier from entering a particular market or bidding on a project, to drive an established contractor out of a market, to derive undue economic advantage from the control of a resource or product, or to weaken a company in order to seize it and use it for laundering dirty money. Intimidation is also often associated with collusion and infiltration of the construction industry by organized crime.

Several forms of intimidation have been reported to the Commission, including a car bombing, death threats, beatings, threats of injury, flagrant surveillance and stalking, damage and fires on worksites, difficulties and abuse resulting from union control of worker placement, work slowdowns on command, pressure applied to bonding companies and inappropriate intervention from individuals known for their involvement in criminal organizations.

Intimidation practices cause contractors to avoid certain regions or fields of construction. Other contractors bow down more or less voluntarily to the dictates of the dominant firms in their market. Competition is reduced and prices increased.

Since 2005, the Commission de la construction du Québec (CCQ) has been investigating complaints related to application of the *Act respecting labour relations, vocational training and*

workforce management in the construction industry (Act R-20). This responsibility previously fell to the Minister of Labour. In terms of intimidation, this investigatory power applies primarily to intimidation that threatens the exercise of freedom of association. To better combat criminality in the construction industry, in 2009 the legislature added to Act R-20 a penal offence for anyone who uses intimidation to cause a slowdown or stoppage of activities on a job site. The CCQ's 2009 annual report states that this offence applies in particular to cases of collusion intended to harm a competitor who refuses to become involved in the scheme.

In a parliamentary committee, the Minister of Labour explained the scope of the addition:

The spirit of the bill does not just apply to workers, it also applies to the employer. And there could be intimidation between employers on job sites, there could be intimidation between an employer and a subcontractor, either the employer's subcontractor or that of another employer. So the goal is to expand on everything, include everyone on the job site, and that is so there will be no intimidation at any level. [Translation]

It is clear from the comments above that the intent is to broaden the scope of the CCQ's inquiries beyond labour-management relations to include intimidation between contractors, notably when collusion is involved. The CCQ is not a police service, but it is present on job sites and can intervene in some situations of intimidation before they degenerate and necessitate more serious intervention.

In 2011 the *Act to eliminate union placement and improve the operation of the construction industry* established a new referral mechanism to replace the practice of union placement of employees, which was often a source of intimidation in the construction industry.

In her testimony, the president of the CCQ pointed out that even if this organization does more than before to counter intimidation, it could go further. She noted that intimidation-related inquiries still focused heavily on hiring and freedom of association, and that the wording of the legislation should allow for an increased role for the CCQ. The CCQ's authority in the area of intimidation does not derive from a specific enabling power, but rather from a penal provision, and is therefore interpreted restrictively.

I am responsible for enforcing the law, but I note that there is a void in the law. There are words missing ... at least with regard to our authority, that we have somewhat broader tools. [Translation]

The relevant statutory provision, section 113.1 of the Act R-20, provides a narrow list of situations that could lead to prosecution for intimidation:

113.1. Anyone who uses intimidation or threats to cause an obstruction to or a slowdown or stoppage of activities on a job site is guilty of an offence and liable to a fine of \$1,090 to \$10,907 for each day or part of a day during which the offence continues.

Effects other than those listed in this article may result from acts of intimidation related to collusion activities or attempts to dissuade a potential bidder. Threats may be directed at the physical integrity of the contractor, his family or his personal property. It therefore appears that, despite the intention expressed in 2009, the restrictive wording of article 113.1 does not serve to sanction all cases of intimidation linked to collusion.

Commented [TB1]: Please note that the figures are not the same in the current Act.

In addition, the imposition of a fine under Act R-20 for acts of intimidation does not always result in the offender being disqualified from leading or representing an employee or employer association. This suggests that some situations of intimidation are more acceptable than others. Such disparity in treatment for the same type of behaviour diminishes the anti-intimidation message.

It should also be noted that the Régie du bâtiment du Québec can lend its support to the CCQ in the fight against intimidation, given that a provision of its enabling legislation allows it to suspend or cancel the licence of a contractor who has been convicted of an offence under Act R-20, if the serious nature or frequency of the offence justifies such a decision.

The CCQ plays an important role in the construction industry. It has been involved with certain aspects of the phenomenon of intimidation in this sector for about 10 years. Some adjustments are required to its mandate in this area, as well as to the deterrence rules in the legislation, to make them more effective.

The Commissioners therefore recommend that the government:

Amend the *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20) in order to combat intimidation in the construction industry and maintain a healthy working environment by amending article 113.1 to remove the words “to cause” and replace them with “likely to provoke”, and article 119.11 to add articles 113.1 and 119.0.3 to the list of offences that disqualify persons from leading or representing.

Recommendation 19

Limit the number of terms directors of the CSST and the CCQ can serve

The Commission de la construction du Québec (CCQ) and the Commission de la santé et de la Sécurité du travail (CSST) have the power to intervene in the construction industry in a significant way. While the CCQ oversees the application of the *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20), the CSST serves as the guardian of the *Act respecting occupational health and safety*, and may intervene on a job site at any time. The governance of these organizations is therefore of paramount importance for the construction industry.

Several employer and trade union representatives held directorships in these organizations for as many as 10 to 15 years. One of them, Jean Lavallée, served on the boards of both organizations at the same time for 12 years. In addition to the positions he held in his trade union, he was a member of SOLIM (the real estate arm of the Fonds de solidarité FTQ) and of the Fonds de solidarité FTQ. This combination of titles, coupled with a lack of rules governing the number of consecutive terms that can be served, increases the power of individuals within the organizations in which they hold decision-making positions.

The combination of these functions, together with the length of time they are held, can result in perverse effects, ranging from undue influence in decision-making – due to seniority and knowledge of the inner workings – to a loosening of the rules and processes, notably with respect to conflicts of interest, but also with regard to the vigilance and diligence required to monitor the organization’s activities. This can lead to a form of inertia, a failure to question

decisions that are taken, or management becoming too close to the organization, not to mention increased vulnerability to pressure or influence from organizations, or individuals, such as members of organized crime, seeking to affect the director's decisions. It would therefore seem appropriate to set parameters in this area.

The CCQ and CSST have different rules regarding the length and number of terms that may be served. Under Act R-20, the mandates of the independent members of the CCQ board of directors (4 out of 15 directors) are limited to two renewals, for a period of six years in total. Union representatives and employers (10 out of 15 directors) can serve an unlimited number of three-year terms. Under the *Act respecting occupational health and safety*, directors serve two-year terms that can be renewed an unlimited number of times. The CSST board of directors is composed of 15 directors, including seven union representatives (with no seat reserved for the construction sector), seven employer representatives and one chair.

The Commissioners therefore recommend that the government:

Amend the *Act respecting labour relations, vocational training and workforce management in the construction industry* and the *Act respecting occupational health and safety* to:

- limit the terms of office of all directors of the Commission de la santé et de la Sécurité du travail and the Commission de la construction du Québec to two consecutive terms, for a maximum of six years;
- prohibit any person from being simultaneously a director of the Commission de la santé et de la Sécurité du travail or the Commission de la construction du Québec and a president or chief executive officer of an employer or trade union organization.

RECOMMENDATIONS 20 AND 21

Protect sensitive information

According to experts, transparency alone does not necessarily guarantee the effectiveness and fairness of a public tender process. The sharing of certain strategic information can facilitate the coordination of cartels and foster undue pressure on key players in the tendering process. This is particularly the case for information on the membership of selection committees and the identity of parties that have requested tender documents.

In 2012, a provision was added to the *Act respecting contracting by public bodies* (LCOP) to prohibit the disclosure of the names of members of selection committees. However, this legislation did not come into force until May 2014, and does not apply to municipalities or state-owned corporations. The anonymity of the selection committee members of these organizations is therefore still not adequately protected.

There are also different practices between government and municipal agencies regarding the identity of parties requesting tender documents. For a long time, these documents were available from the public contracting authorities concerned. Those receiving a copy signed a register that was easily accessible. Today, all requests for documents are made electronically through the electronic tendering system (SEAO).

In municipalities, the law in 2010 prohibited disclosure of the identity of parties requesting tender documents. Since 2011, however, all parties receiving the documents indicate in their electronic request whether they want their name to be disclosed. This change was made on the recommendation of the Group-conseil sur l'octroi des contrats municipaux (advisory group on the awarding of municipal contracts). This group found that general contractors do not all have the same pool of specialized workers in their company. By posting on the SEAO that they have requested the tender documents for a construction project, they are informing specialized subcontractors, who will possibly make a proposal to them.

Offering parties who request the documents the option of having their identity disclosed partially satisfies the requirements of subcontractors, and offers bidders an opportunity for discretion, particularly with a view to protecting themselves against intimidation from a competitor or giving themselves a chance to break into a market with an unexpected bid. The possibility of an unexpected bidder is conducive to healthy competition. To preserve bidders' right not to be identified, municipal laws prohibit elected officials and employees from disclosing their names. Witnesses told the Commission that competitors had put pressure on them shortly after they had requested tender documents.

As for public bodies subject to the LCOP, there are no rules governing the confidentiality of those who request tender documents. Each organization decides whether or not those names will be made public. The main argument used to justify this approach is that the contracting authority is sometimes required to hold a meeting with the bidders to answer their questions. In such cases, out of fairness, each bidder must hear the same explanations, as well as all the questions and answers. However, the anonymity of parties requesting tender documents could be preserved unless and until they participate in such a meeting.

There is no justification for treating these sensitive issues differently in the municipal and provincial legal frameworks. The absence of penalties for offences is also regrettable.

The Commissioners therefore recommend that the government:

Recommendation 20

Standardize the legislative provisions applicable to public bodies in order to:

- ensure the confidentiality of the names of selection committee members;
- ensure the anonymity of bidders who choose not to have their identity disclosed;
- prohibit any elected official or public employee from disclosing the number and names of parties who request tender documents and bidders prior to the opening of tenders.

Recommendation 21

Create a penal offence to sanction any attempt by a bidder to communicate directly or indirectly with a member of a selection committee of a public contracting authority for purposes of influencing that individual's decision.

Recommendation 22

Intensify the fight against false invoicing

The Commission's work demonstrated the importance of false invoicing in the schemes that were uncovered involving corruption, illegal political financing and infiltration by organized crime. Revenu Québec has itself confirmed that this practice is widespread in the construction sector and that the agency needs better tools to address it.

The *Tax Administration Act* allows Revenu Québec to sanction tax evasion committed by a person who has filed false or deceptive tax returns. The same Act stipulates that "[n]o person may make, issue, offer to make or issue, or otherwise make available to another person an invoice, receipt or other document that does not truly correspond to the transaction." Both situations require that the transaction or fraud have been committed. In other words, even if in the course of an investigation, Revenu Québec discovers false invoices ready to be used, it must await the commission of an offence before it can intervene.

The *Criminal Code* contains provisions prohibiting the possession of a forged document with the intent to use it as if it were genuine. However, there are currently no equivalent penal provisions permitting Revenu Québec to act. Such a provision is necessary since it would enable the agency to be proactive in this regard, while easing the burden on the criminal investigation units of the Unité permanente anticorruption (UPAC).

The Commissioners therefore recommend that the government:

Amend the *Tax Administration Act* to create a penal offence for the production and possession of a false document.

Recommendation 23

Increase in-house expertise at the Ministère des Transports du Québec

The Organisation for Economic Co-operation and Development (OECD) believes that in order for public contracts to be awarded through an honest and fair process, public contracting authorities must have internal expertise in procurement.

The facts revealed in the course of the Commission's work tend to confirm this analysis, in particular with respect to the Ministère des Transports du Québec (MTQ). Just a few weeks before the Commission was established, Jacques Duchesneau, head of the anti-collusion unit, described the situation in a report submitted to the MTQ. Among other things, his report described significant cost increases and deplored the fact that MTQ engineers had become project managers confined to administrative tasks, while consulting engineering firms prepared 100% of the estimates for road infrastructure contracts in Montréal and 95% in other regions.

Consulting engineering firms can be very useful when a client's needs involve very specialized expertise or arise during a peak period. The Commission believes it is imperative, however, that balance be restored in the use of consulting engineering firms and that contracting authorities regain the necessary leeway to determine whether work should be carried out in-house or under

subcontract.

Between 2011 and 2014, the MTQ hired 625 new employees, of which two thirds were assigned to resuming internal activities. These efforts have resulted in an increase in the percentage of monitoring work (from 16% to 21%) and inspections by departmental staff (from 43% to 58%). The MTQ estimates that this internal repatriation of activities resulted in savings of \$11.2 million for 2013–2014 alone.

Although progress has been made, there is still a gap between reality and the established targets of 64% for monitoring work and 80% for inspection work. The investments announced under the 2015–2025 Québec Infrastructure Plan and the resulting projects are enough on their own to justify the need for internal expertise.

The Commissioners therefore recommend that the government:

Expedite efforts to increase the internal expertise of the Ministère des Transports du Québec in order to meet the established targets for 2017 and develop an improvement plan for subsequent years.

Recommendation 24

Review eligible costs for subsidy programs

The government offers municipalities numerous financial assistance programs to support them in building local infrastructure and developing the road network. These programs are primarily administered by the Ministère des Affaires Municipales et de l'Occupation du territoire (MAMOT) and the Ministère des Transports du Québec (MTQ). They have different objectives, ranging from the upgrading of water supply and treatment infrastructure to the construction of equipment to contribute to the economic development of a region.

The calculation of the assistance to be allocated excludes costs related to permanent municipal employees, such as engineers, who would be assigned to design and monitor subsidized infrastructure projects.

As such, MAMOT's financial assistance programs encourage municipalities to hire temporary staff for major projects or to outsource engineering activities so that these costs will be subsidized. Such a decision may be inefficient, for example when a municipality has in-house professionals who could do the work at a lower cost. The Union des municipalités du Québec stated in its memorandum that in order to maintain a sufficient level of internal expertise and better control their costs, municipalities should be able to include all work carried out internally, for example, the design of plans and specifications, or supervision.

Several witnesses argued that the lack or loss of infrastructure expertise in public organizations increases their dependence on engineering firms and their vulnerability to collusion and corruption in this field. Greater flexibility with regard to the eligibility of the cost of internal municipal resources in calculating infrastructure subsidies would also have the advantage of consolidating municipal expertise in this area. Sensitive to this reality, the recent fiscal pact between the government and the municipalities opens the door to reimbursement of these

costs. This is a promising step for combatting collusion.

The Commissioners therefore recommend that the government:

Review the criteria for subsidy programs to include in eligible expenditures the costs associated with the salaries of the municipality's professionals involved in carrying out the projects.

Recommendation 25

Enable all public contracting authorities to consolidate their internal construction expertise

During the hearings, one of the frequently mentioned solutions for preventing collusion between private sector stakeholders and better estimating the costs of construction work is to strengthen the internal expertise of public contracting authorities, notably by allowing them to perform certain work themselves, internally.

The *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20) and the *Building Act* provide this possibility for certain categories of public bodies that are owner-builders and for certain types of work.

Therefore, in addition to the maintenance and repair work that any employer may have its permanent employees perform, permanent employees of school boards, colleges and health and social services establishments can also carry out renovation and alteration work. Municipalities and their employees may perform construction work on piping, sewers, paving and sidewalks.

These exemptions do not apply equally to all public contracting authorities. For example, employees of municipalities, universities and government agencies may not perform renovations and alterations on their buildings, unlike employees of school boards, colleges, and health and social services institutions. Employees of the Ministère des Transports du Québec may not do paving work, unlike those of municipalities. Internal expertise is nevertheless an effective bulwark against collusion. The recent fiscal pact between the government and the municipalities seems to open the door to changes for municipalities, but the problem remains unresolved for universities and government agencies.

The Commissioners therefore recommend that the government:

Extend to all public contracting authorities the relevant exclusions provided for in article 19 of the *Act respecting labour relations, vocational training and workforce management in the construction industry* (Act R-20) in order to support the development of more in-house construction expertise.

Recommendation 26

Strengthen the audit function at the municipal level

In Quebec, municipalities with 100,000 or more inhabitants are required to appoint a chief auditor, who reports to the municipal council. This individual is responsible for auditing the accounts and books of the city. He or she serves one non-renewable seven-year term of office, and is appointed, and may be removed, by a two-thirds majority vote of the municipal council. The mandate of the chief auditor is defined in the *Cities and Towns Act* (LCV) and is divided into three auditing components: financial, value-for-money and compliance of operations.

The facts brought to light by the Commission demonstrated that the work of a municipal chief auditor can be used to identify weaknesses in the municipality's contract management processes, particularly where there are numerous public infrastructure projects. The case of the City of Montréal presented at the hearings is an eloquent illustration of this.

The presence of chief auditors in municipalities has proven successful. It is regrettable, however, that municipalities in Quebec with fewer than 100,000 inhabitants do not benefit from this objective and independent examination of their administration.

The Commissioners therefore recommend that the government:

Add municipalities with fewer than 100,000 inhabitants to the jurisdiction of the Auditor General of Quebec so that he can conduct audits and report to the municipal councils concerned.

RECOMMENDATIONS 27 TO 30 - IMPROVE THE MONITORING OF QUEBEC'S PROFESSIONAL SYSTEM

Information that came to light during the hearings concerning a lack of ethics among a number of professionals led the Commission to examine the monitoring of Quebec's professional system and to make recommendations on how to improve it.

Recommendation 27

Improve the financial reporting of professional orders

The Office des professions du Québec (OPQ) is the watchdog of Quebec's professional system. To enable the OPQ to fulfill its mandate, the Professional Code confers on it the power to monitor the public-protection mechanisms established by each professional order and determine whether they are sufficient and are functioning properly. To this end, the OPQ pays special attention to the amounts spent by orders on training, professional inspection and discipline. The main source of information used is the annual report produced by each order. If additional information is required, under the *Professional Code*, the Office can request any document it deems essential to its understanding. The OPQ may also "in situations in which it considers it necessary for the protection of the public, propose a course of action or measures to be taken by an order."

Three levels of intervention are set out in the Professional Code: coaching, inquiry, and ultimately, trusteeship. The OPQ is autonomous at the level of coaching and may decide on its

own to propose such a process to a professional order. If the proposed measures are not implemented and the protection of the public is compromised, the Office must issue a report to the Minister responsible for the administration of legislation respecting the professions, who may request an inquiry. If the problem persists at the conclusion of the inquiry, the government may require that the order be placed under trusteeship.

The Commission's work and the testimony during the hearings, however, highlighted the limitations of the OPQ's monitoring and control of the professional system. First, in terms of its monitoring activities, the Office confines itself to drawing an overall picture of the professional system using aggregate data, without making any comparisons between orders or identifying the orders where weaknesses have been found and the areas in which these weaknesses were observed. Furthermore, it is not possible to determine from the OPQ's annual report which orders were audited. By its own admission, the OPQ reviews the number of professional inspections carried out, but not the quality or content of the inspections. In addition, it does not have a precise scale to determine how often the professionals of an order should be inspected.

Moreover, while the OPQ is autonomous in matters of coaching and can decide on its own whether to suggest such an approach to a professional order, its president admitted before the Commission that this power is used only in exceptional cases. When problems do arise, the OPQ prefers to hold feedback meetings with the boards of directors of the orders.

The Commission's analysis indicates that OPQ's monitoring and control of the professional system is clearly inadequate. The Office should review the way it exercises its role of monitoring professional orders. This change should be implemented in two stages.

First, it is vital that the OPQ ensure that it has the necessary information to carry out its monitoring mission. The Code confers on it responsibility for setting standards for the contents of the annual reports of orders.

The elements that must be included in the annual reports of orders are well established. The presentation and organization of this information is random, however, which means that the Office does not have standardized data enabling it to adequately compare the orders as to the adequacy of the money and resources they devote to public-protection activities, such as the syndic, disciplinary committee and professional inspection.

Second, the OPQ must be able to cast a critical eye on the data obtained. There is currently no benchmark to enable it to assess whether the actions taken by professional orders are sufficient to protect the public. Furthermore, because there is no qualitative assessment of the professional inspections conducted by the orders, the Office is unable to determine whether these inspections have included an effort to detect signs of corruption and collusion. In fact, the OPQ acknowledged before the Commission that it had found no anomalies with the *Ordre des ingénieurs du Québec* prior to 2012–2013.

The Commissioners therefore recommend that the government:

Amend the *Regulation respecting the annual reports of professional orders* to impose standardized reporting of expenditures on protection of the public, including professional inspections and discipline.

Recommendation 28

Subject firms to the professional system in order to protect the public

Under Quebec's professional system, only professionals are subject to the authority of their order, and not the firms that employ them, even if the firms' principal activity is to provide professional services. The firm in which a professional works can significantly influence that person's behaviour, however. The Commission observed that some consulting engineering firms had an organizational culture that gave free rein to certain corrupt practices in political financing, as well as collusion.

Currently, a professional order may not sanction a firm, even when the actions of the firm's senior management or owners encourage professionals to engage in illicit practices. The syndic of the order can only discipline the professionals themselves.

In a brief presented to the Commission, the Ordre des ingénieurs du Québec (OIQ) stated that monitoring engineering firms would promote ethical behaviour not only among professionals, but also among their superiors, the firms' officers, and other employees who are not necessarily professionals themselves. For example, an order could intervene if an officer of the firm was soliciting contracts in an unethical manner.

Monitoring firms would also make it easier to uncover documents in the context of investigations into corruption, collusion and illegal political financing. Documents related to systems of corruption or collusion may be held by the firm rather than the individual professional. For example, an engineer who worked for a consulting engineering firm indicated that the OIQ had failed to uncover the illegal billing practices used by his firm for years to finance political parties, because they did not fall under the professional part of its activities.

Quebec currently stands alone when it come to not monitoring firms that provide professional engineering services. Almost every other Canadian province and 35 U.S. states require an authorization certificate for consulting engineering firms. There are five levels of control imposed on these firms: (1) mandatory registration; (2) issuance of licences conditional on compliance with certain rules; (3) requirement to provide certain information; (4) establishment of compliance systems (including possible audits by the professional order); and (5) imposition of sanctions.

The Office des professions du Québec is convinced that firms in all professions should be monitored. It indicated before the Commission that it wants to adopt effective monitoring tools, and announced its intention to propose legislative changes to this effect. The Commission shares the opinion that better monitoring of professional firms could ensure that professionals work in an environment conducive to the practice of their profession, whether in the engineering sector or in other professional fields related to the construction industry. The Commission also believes that this could help the syndic uncover documents in the context of inquiries into corruption, collusion and political financing.

The Commissioners therefore recommend that the government:

Amend the *Professional Code* of Quebec such that professional services firms connected to the construction sector are subject to the oversight of professional orders in their sector of activity.

Recommendation 29

Require training in ethics and professional conduct for members of professional orders

The schemes uncovered by the Commission pointed to the involvement of numerous professionals in cases of collusion or corruption. When faced with an unethical situation, a professional should not hesitate to comply with his ethical obligations above all else. In the context of their mandate to protect the public, one of the main concerns of professional orders should be to ensure the ethical conduct of the professionals they represent.

The Commission concluded, however, that professional orders do not always require applicants for the profession, or professionals subject to mandatory training, to complete a minimum number of hours of training in ethics and professional conduct.

Ethics training is obviously not a panacea, but it is a step in the right direction. Consequently, professional orders should ensure that professionals receive adequate ethics training, in both their initial training and as part of ongoing professional development.

While the evidence heard by the Commission in this regard related mainly to engineers, at a minimum, training in ethics and professional conduct should apply to all orders connected with the construction industry.

The Commissioners therefore recommend that the government:

Make it mandatory for all professional orders covered by the Commission's mandate to adopt a regulation requiring their professional members, and those wishing to become members, to receive training in ethics and professional conduct.

Recommendation 30

Improve the training of directors of professional orders

The directors of professional orders are mostly members of the professional order elected by their peers, with the exception of a few members of the public appointed by the Office des professions du Québec (OPQ). Since they are not professional administrators, there is no guarantee that they have the necessary training or knowledge to adequately perform their role. In fact, in the opinion of the OPQ, directors do not necessarily understand the order's mission to protect the public, and are not always able to make sound decisions to ensure that the order fulfills this mission. The case of the Ordre des ingénieurs du Québec is a flagrant example of this.

The directors of a professional order have a crucial role to play in the governance of the order and ultimately, in the protection of the public. They must receive adequate training to be able to properly perform this role.

The Commissioners therefore recommend that the government:

Require newly elected directors of professional orders covered by the Commission's mandate to complete training on good governance and ethics, as well as the statutes and rules to which they are subject within the scope of their duties.

Recommendation 31

Review how the Anti-Corruption Commissioner is appointed

The mandate of the Anti-Corruption Commissioner is to lead the activities of the Unité permanente anticorruption (UPAC). The Commissioner is appointed from a list of at least three persons proposed by a selection committee. The composition of the committee is not determined by legislation or regulations. The government therefore has discretion to choose the committee members.

The Commissioner's term of office "is for a fixed term that cannot exceed five years," but it is renewable.

The Act is silent on the terms and conditions for termination of the Commissioner's employment, leaving them to be addressed in the appointment order. The Commissioner may therefore be removed without notice. His contract may also be terminated without cause, at any time, with three months' notice.

The provisions for appointing and removing the Commissioner therefore do not offer guarantees of independence comparable to those provided for other public office holders of similar importance in Quebec. For example, the Director of Criminal and Penal Prosecutions (DPCP) is appointed by the government for a seven-year non-renewable term in order to avoid the risk of influence for the purpose of obtaining re-appointment. The relevant statute also establishes a precise process for selecting the DPCP and dictates the composition of the selection committee, the majority of whose members have no connection with the executive branch. In addition, the DPCP can only be dismissed or suspended without remuneration for cause, and on the recommendation of the Minister of Justice after receiving a report from the Commission de la fonction publique to that effect.

Due to the Commissioner's major role in the fight against corruption, real and apparent independence is essential when investigating or auditing politicians and related persons.

The Commissioners therefore recommend that the government:

Amend the *Anti-Corruption Act* to make the term of office and manner of appointment and removal of the Anti-Corruption Commissioner similar to those of the Director of Criminal and Penal Prosecutions.

RECOMMENDATIONS 32 AND 33

Improve the reliability of the Quebec enterprise register

The Quebec enterprise register (REQ) is the information bank in which any company authorized to do business in Quebec is registered. Established pursuant to the *Act respecting the legal*

publicity of enterprises, it is maintained by the enterprise registrar (RE), which was integrated into Revenu Québec in 2007.

The REQ contains a variety of data on companies and their shareholders and directors. These data are very useful, and sometimes crucial, for numerous oversight and monitoring bodies, including the Unité permanente anticorruption, the Régie du bâtiment and the Chief Electoral Officer, who search it in the context of licensing contractors or investigating illegal political financing or infiltration of the legitimate economy by organized crime.

Focus more on the quality of information included in the REQ

Numerous witnesses before the Commission raised doubts as to the reliability of REQ information. Its data is produced by each enterprise and the RE does little to verify them. There is also a problem with keeping them up to date: in April 2015, 200,000 companies had not produced their annual update for two years. In addition, the electronic database consultation service available to the public is inadequate for numerous oversight and monitoring agencies, which must often submit a service request to the RE.

When questioned, a representative of Revenu Québec acknowledged that there were some gaps in the REQ's information. A supplementary response submitted to the Commission by Revenu Québec in April 2015 indicated that the RE had undertaken various measures to enhance the reliability of the information contained in the register. It also mentioned that the RE may in future corroborate the information it has received from companies using that held by other Revenu Québec services. In addition, the Registrar is proposing to develop a more user-friendly query interface for the database over the next few years to serve oversight and investigative agencies.

Sanction to encourage better accountability

Revenu Québec's supplementary response also stated that the imposition of penal sanctions would be phased in as of spring 2015. This underscores the fact that the Registrar does not use the mechanisms that have been included in the Act since 1964 to obtain updates from enterprises. The fines imposed are also low, at \$400 per offence for an individual, and \$600 for a business. By way of comparison, the Régie du bâtiment's minimum fine for a false declaration in an application for a contractor's licence is \$2,689 (REQ: \$400) for an individual and \$13,445 (REQ: \$600) for a company. An RBQ licence allows for doing business in the construction sector.

Registration in the REQ is the gateway to the legitimate economy, the first condition for doing business in Quebec. The information found there is also necessary for oversight agencies in the field of construction and for those who work to curb infiltration by organized crime into the legitimate economy. The utility of this tool justifies taking all the means necessary to make it fully effective.

The Commissioners therefore recommend that the government:

Recommendation 32

Require Revenu Quebec to take the necessary measures to improve the reliability of the data in the Quebec enterprise register.

Recommendation 33

Review the penal provisions of the *Act respecting the legal publicity of enterprises* in order to include incentives to comply with legal obligations.

Recommendation 34

Encourage research on collusion and corruption and infiltration of the construction industry by organized crime

Several fields – including economics, law, sociology and political science – are now contributing to the efforts to combat collusion and corruption around the world. Unlike in Quebec, where these research subjects received little attention before the scandals hit in 2009, they are the subject of numerous studies by agencies or academic research groups abroad. This knowledge must be adapted to the specificities of Quebec institutions, its legislative framework and the construction industry in the province. This is a role that could be played by academic researchers here.

The message should be passed on to Quebec's academic community in order to advance expertise in these areas. This task could be undertaken by the Fonds de recherche du Québec – Société et culture (FRQSC), whose mandate is to promote and provide financial support for research, the dissemination of knowledge and the training of researchers in Quebec.

The FRQSC currently supports research projects in a number of areas related to the work of the Commission. None of these are attempting to look at the phenomena of collusion, corruption and infiltration of the construction industry by organized crime, however. By their nature, these phenomena are hidden or obscured, and there is little empirical data that can be used by researchers. Studying them therefore requires an interdisciplinary approach, which is precisely what the FRQSC promotes in several of its intervention objectives:

- Develop synergies between researchers from different sectors and backgrounds;
- Meet specific training needs in strategic themes for Quebec;
- Encourage cooperation around research focused on major societal issues; and
- Promote the central role of social and human sciences, arts and letters in understanding major societal issues.

The Commissioners therefore recommend that the government:

Issue a directive to the Fonds de recherche du Québec – Société et culture instructing it to encourage research initiatives that deal with the phenomena of collusion, corruption and infiltration of the construction industry by organized crime.

RECOMMENDATIONS 35 AND 36

Improve the fight against collusion through better responses from public institutions responsible for criminal prosecutions

Collusion is one form of wrongdoing that the Unité permanente anticorruption (UPAC) is responsible for preventing and addressing. Moreover, UPAC informed the Commission that its investigators are frequently exposed to cases of collusion and that it is one of the phenomena most often reported by whistleblowers.

Collusion is covered by the *Competition Act* (CA). The CA does not use the term “collusion” per se, but does contain criminal provisions prohibiting anti-competitive conspiracies and bid-rigging. The Commission’s work revealed that enforcement of these provisions by the Competition Bureau of Canada led to few prosecutions involving public construction contracts in Quebec between 1996 and 2014. According to competition law expert Yves Comtois and UPAC, this can be explained by the Bureau’s rather limited investigative capacities.

The Commission believes that action must be taken to encourage a better response from public institutions responsible for criminal prosecutions.

Another element of the explanation may be that until recently, the Director of Criminal and Penal Prosecutions (DPCP) did not pursue prosecutions founded on the criminal provisions of the *Competition Act*.

In his testimony before the Commission, the DPCP representative indicated that the DPCP believes that it does have jurisdiction to initiate proceedings under the criminal provisions of the *Competition Act*. The Commission therefore encourages the DPCP to assume its role as a prosecutor in this field.

The Commission is of the opinion that improving the prevention, detection and punishment of collusion in the awarding of public contracts in the construction industry depends not only on recognizing the role of the DPCP in initiating criminal proceedings under the *Competition Act*, but also creating criminal offences related to collusion in Quebec legislation.

The *Act respecting contracting by public bodies* (LCOP) contains provisions of a penal nature aimed at sanctioning certain offences under the Act, but none of them specifically address collusion that may occur in the course of a tendering process. Sanctioning false or misleading statements as provided for in article 27.6 of the LCOP does not expressly prevent the type of conduct uncovered by the Commission. In order to do so, all bidders should also be required to provide a solemn declaration reporting on any discussions they have had with respect to the submission, with whom and on what subject.

The objective is not so much to sanction attacks on competition (which the *Competition Act* is specifically intended to penalize), as any machinations that serve to harm the integrity of contractual relations between the government and the companies that deal with it. Such adjustments would also make it possible to further highlight the illicit nature of collusive

behaviour in connection with public construction contracts.

The Commissioners therefore recommend that the government:

Recommendation 35

Require the Director of Criminal and Penal Prosecutions to adopt and disseminate a clear policy regarding its jurisdiction to institute criminal proceedings under the *Competition Act* of Canada.

Recommendation 36

Clarify the provisions of the *Act respecting contracting by public bodies* to require all bidders to provide a statutory declaration in which they disclose any discussions they have had with respect to their bid, with whom and on what subject.

Recommendation 37

Extend the limitation period for initiating certain penal proceedings

The limitation period for a prosecution is the period after which the right to prosecute an offence under a statute is extinguished.

The *Code of Penal Procedure* sets a limitation period for all Acts of one year from the date of commission of the offence. The Code also provides, however, that the limitation period does not apply to proceedings instituted before a disciplinary body.

The one-year limitation period therefore applies by default to the *Act respecting labour relations, vocational training and manpower management in the construction industry*, the *Act respecting contracting by public bodies*, municipal bylaws (including contract sections), and the *Lobbying Transparency and Ethics Act*. The same applies to a proceeding under the *Professional Code* initiated by a professional order against a person who has ordered a member of an order to participate in acts derogatory to the dignity of the profession, such as collusion or corruption; this person may be an officer of a firm who is not a member of that order.

The *Building Act* provides for a one-year limitation period after the offence has come to the attention of the prosecutor, but within five years of the date of commission of the offence.

The *Act respecting labour relations, vocational training and manpower management in the construction industry* has a similar prescription to that of the *Building Act*, but only for the penal provision involving the destruction and falsification of pay-lists and reports. This specific time limit does not apply to other penal offences, including intimidation.

Since 2011, electoral laws have provided for a limitation period of five years from the date of the commission of the political financing offence, up from the previous two years. These Acts also establish a ten-year limitation period for offences related mainly to voting and voter corruption.

Most of the agencies that enforce these Acts, which are principally aimed at preventing collusion, corruption and illegal political financing related to public construction contracts, indicated to the Commission that the one-year limitation period is too short for their oversight activities.

For example, according to the Commissaire au lobbying du Québec, since 2007–2008, because of the limitation period of only one year, by the time investigation reports were sent to the Director of Criminal and Penal Prosecutions (DPCP), it was too late to prosecute most of the offences that had been uncovered.

The other penal offences under Act R-20 constitute another example. The Commission de la construction du Québec explained that it often receives complaints months after the fact, shortly before, or even after, the one-year limitation period provided for in the Act. It then has to drop the file due to the insufficient time to investigate and forward it to the DPCP for the laying of charges.

Investigations begin following a tip, which may only be received several months after the offence has been committed. Before finding that there has been an offence and launching a penal prosecution, investigators must meet with witnesses, gather evidence and present a comprehensive file to an attorney from the oversight agency, who must then discuss it with the prosecutor. The latter is usually the DPCP representative for the oversight agency.

Such investigations may reveal long-standing practices that require an in-depth examination that may involve a network, thus extending the time required. In such cases, the short limitation period prevents the punishment of offences in relation to public construction contracts that may have been going on for several years.

The Chief Electoral Officer recommends that the period be extended to seven years for political financing. The Quebec Bar and the City of Laval suggest a ten-year limitation period. It should be noted that Revenu Québec has an eight-year limitation period for offences related to tax evasion.

The Unité permanente anticorruption has the power to suspend the limitation period for two years in relation to an offence that is under investigation, but this only preserves the right to prosecute offences that occurred in recent months, not in previous years. In addition, the *Anti-Corruption Act* creates two penal offences related to protecting whistleblowers from reprisals. The one-year limitation period applies to this Act, thereby weakening the effect of these provisions.

Offences linked to the schemes uncovered by the Commission are often hidden and complex. Not giving investigators time to do their job reduces their effectiveness.

The Commissioners therefore recommend that the government:

Apply a limitation period on criminal proceedings of three years after the offence has come to the attention of the prosecutor, but not exceeding seven years since its commission:

- in the *Act respecting contracting by public bodies*;
- in the sections of municipal bylaws dealing with contracts;

- in election Acts relating to political financing;
- in the *Lobbying Transparency and Ethics Act*;
- in the *Act respecting labour relations, vocational training and manpower management in the construction industry*;
- in the provisions of the *Professional Code* relating to the initiation of criminal proceedings before judicial bodies;
- in the provisions of the *Anti-Corruption Act* relating to protecting whistleblowers from reprisals.

3. PROTECT POLITICAL PARTY FINANCING FROM INFLUENCE

This third block of recommendations seeks to draw a line between relations of influence in a democratic society that are legitimate, and those that are not. It also meets the requirements for depoliticizing the processes for the awarding and management of public contracts and independence of the public service by focusing more specifically on political financing.

Recommendation 38

Increase the accountability of all elected officials and candidates with regard to fundraising practices

Witnesses that appeared before the Commission maintained that organizers, fundraisers, representatives and official agents had neglected or circumvented the financing rules for political parties. The Chief Electoral Officer recalled during a hearing that in 2009 and 2010, three ministers had incorrectly indicated that companies could contribute to the financing of political parties. After an inquiry, he concluded that this had been a slip on their part.

The electoral system can only function properly, however, when those leading authorized political entities are aware of the rules, apply them and are responsible for them. The desire to win may sometimes give rise to a circumvention of the rules. Party leaders and officials, candidates, representatives and official agents are key to preventing this from happening. One way to periodically renew their commitment to enforce the applicable statutes and rules is to require them to sign a declaration to this effect.

Best practices in financial accountability impose a requirement on key executives of an organization to declare in their financial reports that they have taken the necessary steps to certify that the content of their reports is accurate and that their financial activities comply with the obligations applicable to the entity. This statement must be signed by the chief financial officer and the highest official of the organization, which reinforces the assurances given.

The statements currently requested by the Chief Electoral Officer of Quebec (DGEQ) in the financial reports of parties and candidates are minimal.

The financial reports of authorized political entities are signed by one person: the official representative or the official agent. The statement of the official representative at the provincial level relates solely to the reliability of the information contained in the report; it does not indicate whether the control measures recommended by the DGEQ to ensure that fundraising, contributions, loans, bonds and expenditures are in compliance have been applied.

At the municipal level, the official representative simply signs at the bottom of the balance sheet, with no statement preceding the signature. In addition to declaring the reliability of the information contained in the return of election expenses, the official agent must make a declaration of conformity, which only covers expenses that he or she has made or authorized. This declaration does not deal with expenses that may have been made or authorized by another person with the knowledge of the official agent.

Candidates and elected officials, who are at the centre of electoral and political activity, are not required to sign a statement with regard to the rules of financing. When suspicious financing practices are uncovered, they can always say they were not informed. A declaration signed by each candidate, elected official and party leader would help prevent this situation. The Commission is of the opinion that they must be informed of the rules of political financing and ensure that their parties' practices are compliant.

The Commissioners therefore recommend that the government:

Amend the *Elections Act* to require that:

- the annual financial report of the party or authority be signed by the party leader and the highest official of each party authority in addition to the official representative;
- the party leader, the elected representative or the candidate sign a statement in the annual financial report and in the report on election expenses stating that: (a) the representative or official agent informed him of the financing rules; (b) he reminded his colleagues of the obligation to respect these rules; (c) he has been informed of the fundraising practices of his party and is satisfied that they comply with the law; and (d) he obtained any clarification he required from the representative or the official agent on the contents of the financial report.

RECOMMENDATIONS 39 AND 40

Improve financial reporting regarding the contribution of volunteers to partisan activities

An officer of a consulting engineering firm testified that he had made irregular financial contributions to the Union Montréal municipal party during the 2005 election campaign. In particular, at the request of that party, he agreed to pay \$75,000 to a communications firm whose president said he acted "in a voluntary capacity" as a communications consultant to the mayoral candidate.

During his testimony, the "volunteer" recounted his 30 years of experience as a volunteer political communications adviser to provincial and federal party leaders. He also mentioned that his firm had rendered services that were billed to Union Montréal during the 2005 municipal election campaign. In a written statement prior to his testimony, he also admitted that his role

with Union Montréal was a factor in the consulting engineering firm paying him \$75,000.

The value of volunteer work is not counted as a political contribution. There are rules governing volunteer labour, however. Pursuant to the *Act respecting elections and referendums in municipalities*, volunteer work must always be carried out “personally, voluntarily and without consideration.” The provincial *Election Act* does not contain the same clarification, except for volunteer work performed during an election period.

The Commission observed that in an effort to prevent fraudulent compensation of volunteer work by companies, the electoral laws of the three other Canadian jurisdictions that prohibit corporate contributions – the federal government, Nova Scotia and Manitoba – do not allow self-employed individuals to provide free of charge to a political party any services for which they are normally paid, for the positions of official representative, official agent and legal counsel. The exception is Manitoba. Persons subject to this prohibition may engage in unpaid partisan work, but the work must be disclosed as a contribution in kind, which is not the case for volunteer work.

The total value of contributions from a single elector, whether in cash or in kind, may not exceed the maximum allowable annual amount, which ranges from \$1,500 to \$5,000 per party, depending on the jurisdiction. When the value of unpaid partisan work performed by a person who is subject to the prohibition on volunteer work reaches the maximum allowable contribution, the party must pay for that person’s professional services and record them as election expenses. This person may continue to volunteer for the party in any other capacity not related to his or her professional expertise.

Quebec does not require disclosure of the volunteer work performed by individuals in their field of professional expertise, nor does it impose a maximum on this type of contribution to a political party. In order to make it easier to uncover any hidden influences, the Commission is of the view that the identity of individuals performing volunteer work in their area of professional expertise should be reported in the annual financial reports of political parties as having made in-kind contributions.

The Commissioners therefore recommend that the government:

Recommendation 39

Specify in the *Election Act* that volunteer work must at all times be performed personally, voluntarily and without consideration.

Recommendation 40

Amend electoral laws to require that authorized political entities disclose in their annual financial reports and their returns of election expenses the names of individuals who have worked as volunteers in the area of expertise for which they are usually remunerated.

Recommendation 41

Require representatives and official agents to complete training related to their duties

Every political party and independent candidate must appoint an official representative and an official agent. The law entrusts important responsibilities to those who occupy these positions. The official representative is responsible for the revenues and expenses of the authorized political entity, with the exception of election expenses. He is responsible for soliciting contributions, and for loans, current expenditures and the creation of an election fund. He must produce an annual financial report. The official agent is responsible for election expenses. He must file a return of election expenses following the election.

In his testimony, the Chief Electoral Officer of Quebec (DGEQ) mentioned that the rate of participation for official representatives and official agents in the training that is provided about their role is in the order of 50%. The DGEQ feels that this rate is not acceptable given the crucial role of these individuals in the application of the law, and the fact that such people tend to move from one campaign to another. He therefore recommends mandatory training.

The Commissioners therefore recommend that the government:

Make the training on political financing rules prepared by the Chief Electoral Officer of Quebec mandatory for the official representatives and official agents of political parties and their authorities, as well as independent candidates.

RECOMMENDATIONS 42 TO 45 – COMBATting THE USE OF STRAW DONORS FOR POLITICAL FINANCING

It has repeatedly been observed that the use of straw donors is one of the schemes used by companies to contribute to political parties beyond the limits allowed by law. Action is required to prevent this situation from being repeated.

[Recommendation 42](#)

Identify the employer of political contributors

Several witnesses described how business executives in the construction and engineering sectors funded provincial and municipal political parties by asking their employees and their families to make personal contributions that the company then reimbursed. According to the Chief Electoral Officer of Quebec (DGEQ), companies from other economic sectors also engaged in this practice. The DGEQ explained that in order to detect this sectoral funding practice and conduct investigations, he needed employer names for contributors to political parties.

The law now allows Revenu Québec to provide the DGEQ with the tax information necessary to conduct verifications, examinations and inquiries.

The name of the contributor's employer that Revenu Québec provides to the DGEQ comes from the statement of income generated by the employer after the end of a fiscal year. This information is available to the DGEQ several months, or even more than a year, after the contributions were made by the employees concerned. The information for the period beginning in 2006 began to be transmitted to the DGEQ in the fall of 2012. In addition, when a person changes employers during the year, the DGEQ cannot know for which employer the individual

was working at the time of the contribution, since the tax slip does not indicate periods of employment.

Meanwhile, since June 2013, municipal contributors have indicated the name of their employer on the contribution receipt they are required to sign. A copy of new receipts is sent to the DGEQ on a quarterly basis. The employer names for contributors to provincial political parties is not collected in the same manner. However, at the time of adoption of the relevant legislative provision, which has been in effect since May 2011, parliamentarians were assured that the DGEQ could require that the contribution sheet used at the provincial level include any information the DGEQ deemed necessary. The example of the name of the contributor's employer was even mentioned in the debates on this subject.

The Commission is of the opinion that the DGEQ should require that the contribution sheet used by provincial political parties and candidates include the name of the contributor's employer at the time of the contribution, as is already the case at the municipal level. Collecting this information will help to deter the use of straw donors, and will ensure that the DGEQ has more timely access to it for purposes of verifications and inquiries.

The Commissioners therefore recommend that the government:

Require that the contribution sheet used by provincial political parties and candidates include the name of the contributor's employer at the time of contribution, as is the case at the municipal level.

Recommendation 43

Disallow tax deductions for political contribution expenses

In a 2007 judgment, the Quebec Court of Appeal held that, under the *Taxation Act*, the reimbursement by an employer of the political contributions of its employees constitutes a deductible business expense for purposes of calculating its taxable income.

This judgment overturned the lower court decision that had been based on the rule that a contribution must be paid out of personal property. In support of its position, the Court of Appeal relied, inter alia, on a principle enunciated by the Supreme Court that in the absence of a special legislative tax provision, the legality of the activities to which an expense or income relates is not relevant for purposes of the tax treatment of such expense or income.

Therefore, as long as the *Taxation Act* does not explicitly prohibit a person or corporation from deducting an expense associated with an illegal activity, that expense is deductible from the taxpayer's income if it was used for purposes of earning income.

In 2008, following the judgment of the Court of Appeal, the Quebec Minister of Revenue recommended to the Quebec Minister of Finance that the *Taxation Act* be amended to no longer allow a contribution made for political purposes to a party to be deductible in computing the taxpayer's income from a business or property. As of August 2015, the *Taxation Act* had not yet been so amended.

At the federal level, the *Income Tax Act* does not allow political contributions to be deductible for purposes of calculating income from a business or property. It is incongruous that a business receives a tax advantage for an offence committed under the electoral laws of Quebec.

The Commissioners therefore recommend that the government:

Amend the *Taxation Act* to prohibit the deduction of expenses related to the payment or reimbursement to persons, in any form whatsoever, of contributions made for political purposes in Quebec when calculating income from a business or property.

Recommendation 44

Prevent political parties from using proxies to obtain loans and guarantees

The DCEQ commented during his testimony that he believes further adjustments may be required to the political financing rules in order to complement the reform that began in 2010, particularly with respect to loans and guarantees provided for political purposes. Loans and guarantees are not considered political contributions if they are made by a financial institution or an elector.

At the provincial level, there is no limit on the loans and guarantees that an elector can provide to a party or independent candidate. An elector associated with the construction industry could therefore legally make a significant loan that creates not only a financial debt, but also a debt of gratitude on the part of the leaders of the party or the candidate concerned.

At the municipal level, the law imposes an overall limit of \$10,000. The ceiling per elector for this type of financing has not been changed since it was adopted in 1998, although the annual contribution limit was lowered from \$1,000 to \$300 in 2013. This ceiling is intended to reduce the attractiveness of political financing schemes that enable voters to circumvent the annual contribution limit by agreeing to lend large sums of money that will not have to be repaid.

Since 2011, the law provides for the same severe penalties for corporations that participate in proxy schemes, whether they involve loans, guarantees or contributions. Under the electoral statutes, a loan or guarantee must be made by an elector or a financial institution in order not to be considered a contribution.

It is an offence for an elector to act as a proxy in order to camouflage the contribution of a company in the form of a loan or guarantee. The company that provided the funds or the promise of repayment is also committing an offence, since it is attempting to do indirectly what is prohibited by law.

Contrary to the precautions that now exist with respect to contributions, the law does not require that the loan agreement or guarantee instrument include a declaration by the elector confirming that the loan or guarantee is being made out of the elector's own property, voluntarily, without compensation and for no consideration or promise and that it will not be reimbursed in any way.

Stronger measures should be established to avoid the risks associated with political financing through loans and guarantees and to ensure that these legitimate temporary financing tools are not used as part of a proxy scheme to circumvent the more stringent rules pertaining to

contributions.

The Commissioners therefore recommend that the government:

Strengthen the provisions of the electoral statutes relating to political financing through loans and guarantees by requiring a non-proxy declaration in loan and guarantee instruments in which an elector participates, fixing a ceiling at the provincial level on loans and guarantees from electors, and re-evaluating the existing ceiling at the municipal level.

Recommendation 45

Prohibit partners in a partnership from making political contributions in a municipality where they are not domiciled

Under the *Act respecting elections and referendums in municipalities* (MERA), all partners in a company incorporated as a partnership may make political contributions to municipal parties or independent candidates wherever the company is the owner of an immovable or the occupant of a business establishment.

Some large companies have dozens or even hundreds of partners in business establishments located in numerous municipalities throughout Quebec and elsewhere in Canada. Each partner in these companies who is of full age and a Canadian citizen qualifies as an elector in every municipality in Quebec where the company owns a building or has occupied a business establishment for at least 12 months. This multiplies their capacity to financially support the parties and candidates of their choosing.

In his *Rapport sur la mise en oeuvre de la réforme des lois électorales* (report on implementation of electoral law reform), the Chief Electoral Officer of Quebec (DGEQ) recommended that MERA be amended such that the right to contribute to authorized political entities be restricted to electors domiciled in the territory of the municipality, with the exception of the candidates themselves.

The Commission shares the desire of the DGEQ to limit financing to electors domiciled in the municipality. It is of the view that partnerships should not be able to make contributions to parties or independent candidates in a municipality through partners who are not domiciled in that municipality.

The Commissioners therefore recommend that the government:

Amend the *Act respecting elections and referendums in municipalities* to prohibit partners in a partnership from making political contributions in a municipality where they are not domiciled.

Recommendation 46

Prohibit the announcement of infrastructure projects, contracts or subsidies in the context of political fundraising activities

Political fundraising activities were repeatedly cited during the Commission hearings as special opportunities for engineers and entrepreneurs wishing to promote their services and position themselves in the public contracts market. It is important, however, to avoid blurring the lines between the financial contributions of the participants, particularly the officers of construction companies, and the monetary benefits that could derive from the exercise of elective office – including ministerial responsibilities and the role of mayor or municipal councillor. The story behind the awarding of the construction contract for the Boisbriand wastewater treatment plant shows that the lines are not always clear: these activities are sometimes used to communicate decisions relating to subsidy applications and thus, the awarding of contracts.

From this perspective, and considering the seriousness of the offence when a contractor contributes to an election fund in order to obtain or retain a contract, elected officials and their political staff should be prohibited from announcing infrastructure-related projects, contracts or subsidies at political fundraising events.

The Commissioners therefore recommend that the government:

Amend the codes of ethics and professional conduct applicable to elected provincial and municipal officials and their staff to prohibit the announcement of projects, contracts or grants in the context of political fundraising events.

RECOMMENDATIONS 47 TO 49 - IMPROVE THE ACCOUNTABILITY OF THE CHIEF ELECTORAL OFFICER OF QUEBEC

The Chief Electoral Officer of Quebec (DGEQ) is responsible for electoral administration. He enforces the political financing rules set out in the *Election Act*, the *Referendum Act*, the *Act respecting elections and referendums in municipalities* and the *Act respecting school elections*. In terms of political financing, the DGEQ plays the role of educator and controller. He informs electors and trains representatives of political parties to ensure that they know and respect the rules governing political financing and election expenses. He is also responsible for verifying the compliance of financial reports and contributions, investigating any anomalies that are detected, analyzing complaints and accusations, and initiating legal proceedings where it appears that the financing rules have been breached. Testimony before the Commission revealed certain problems related to the accountability of the DGEQ and the exercise of his mandate. Steps should therefore be taken to remedy the situation.

Recommendation 47

Change the composition of the advisory committee of the Chief Electoral Officer of Quebec

The *Election Act* establishes an advisory committee presided over by the Chief Electoral Officer of Quebec (DGEQ). This committee is composed of representatives of the political parties represented in the National Assembly, including at least one elected representative per party. The Minister responsible for the reform of democratic Institutions is usually appointed to the committee by his party.

The purpose of this committee is to provide advice on any question relating to the *Election Act*, except matters respecting electoral representation. Its work is confidential. The DGEQ specified during his testimony that after consulting with the advisory committee, he usually does not communicate his recommendations to the National Assembly himself. He leaves the Minister responsible for the Reform of Democratic Institutions, who is a member of this committee, the discretion to communicate to the National Assembly the results of the consensus that has emerged within the advisory committee with regard to legislative changes by including them in bills when he sees fit.

The DGEQ told the Commission that where the committee cannot reach consensus on an issue, he can communicate his concerns to the National Assembly through his annual report. He commented, however, that outside the advisory committee, there are no concrete discussions with parliamentarians about his recommendations.

This system serves to muzzle the DGEQ, and caused him to remain silent for many years about issues regarding political financing, not submitting them to the National Assembly for discussion until the government introduced tightening measures in a bill in 2010. These issues include the elimination of anonymous donations (1998, 2007), the substantial increase in fines (1998, 2007), the application of penalties for corrupt electoral practices surrounding political financing (1998), criminal responsibility of a political party and its leaders (2002, 2007) and the strengthening of control measures and anti-proxy provisions (2002, 2006, 2007).

The presence of elected representatives on the advisory committee seems to restrict the normal public communications that the DGEQ should have with the National Assembly. It may also explain the failure for over 20 years to hold the DGEQ's statutory hearings in a parliamentary committee concerning his activities. Moreover, it would be highly desirable to have persons who are independent from political parties participate in the advisory committee.

The examination of the Compendium of Election Administration in Canada, to which the DGEQ referred the Commission during his testimony, indicated that seven other Canadian jurisdictions had established an entity similar to the advisory committee. In six of them, elected officials are not members of the advisory committee.

The Commissioners therefore recommend that the government:

Change the composition of the advisory committee to the Chief Electoral Officer of Quebec (DGEQ) to exclude MNAs and add persons appointed by the DGEQ who are independent of political parties.

Recommendation 48

Increase the effectiveness of parliamentary oversight of the activities of the Chief Electoral Officer of Quebec

The Chief Electoral Officer of Quebec (DGEQ) reports directly to the National Assembly. The law provides that a parliamentary committee must hear from the DGEQ annually for purposes of parliamentary control and approval of his budgetary estimates. These meetings allow parliamentarians to publicly discuss his activities with him, including the monitoring of political

party funding.

During his testimony before the Commission, however, the DGEQ confirmed that there have been no such hearings since 1994. Although he participates in consultations on bills relating to elections, these meetings are focused on the content of the bills in question and are not opportune times to report on his activities, particularly those relating to compliance with and monitoring of the financing rules.

The absence of annual statutory meetings with the DGEQ contributed to the existence of the political financing schemes described during the hearings, including the use of proxies. The statutory meetings would have provided an opportunity to have a public discussion, at least once a year, on the allegations of illegal political financing reported in the media and the concerns that had been expressed on this subject by parliamentarians since the early 2000s. They would also likely have encouraged a faster adjustment of DGEQ investigative practices and electoral laws to better prevent and punish irregular financing practices.

The Commissioners therefore recommend that the government:

Ensure that the statutory hearing of the Chief Electoral Officer of Quebec is held before a parliamentary committee once a year in order to assess his performance with regard to compliance with the rules of political financing.

Recommendation 49

Require the production of a five-year report on application of the financing rules

There have been significant changes to the rules of political financing since 2010, and their consequences have not yet all been measured. Their application must be assessed periodically so that they can be adjusted if necessary to ensure that they remain effective and are not circumvented.

In his September 2014 report on the implementation of electoral law reform, the DGEQ recommended that he be mandated by law to provide the National Assembly with a comprehensive and public review of the application of the rules of political financing every five years. This review would include recommendations and would be examined by a parliamentary committee. The Commission also believes that this five-year review is necessary.

The Commissioners therefore recommend that the government:

Mandate the Chief Electoral Officer of Quebec to produce and publish a five-year review of the application of provincial and municipal financing rules.

4. PROMOTE CITIZEN PARTICIPATION

This fourth block of recommendations is intended to support citizen participation, particularly the watchdog role of every citizen of Quebec in combatting collusion and corruption.

Recommendation 50

Adopt a law allowing citizens to prosecute fraudsters on behalf of the government

Every year, the government concludes thousands of contracts for the procurement of goods and services. It has little information and few resources, however, to detect collusion and corruption in the awarding and management of these contracts, or to recover the money of which it has been illegally deprived. Not only are collusion and corruption difficult to detect without a tip from a whistleblower, but the government does not always have sufficient resources to act on the information it receives, given the complexity of the schemes created by certain co-contractors. There is a law in the United States, called the False Claims Act (FCA), that is aimed at addressing these two problems.

The FCA in the United States

The FCA allows a private person (relator) who has unpublished information to sue, on behalf of the government and using his own resources, a person who has committed fraud against the government, notably in a public contract. In addition to alerting the government that it has been defrauded, the relator facilitates the search for evidence, thus allowing the government to save time and money in investigating. In return for this information, the relator receives a percentage of any money obtained by the government.

The FCA has existed for more than 150 years in the United States, but was reinvigorated by amendments in 1986 in response to reports of government suppliers charging excessive prices for certain goods. The government realized at the time that the U.S. Attorney General and Department of Justice had been unable to discover the fraud of which it had been a victim in its contractual relations, or to prosecute those responsible.

By encouraging individuals to transmit information that is difficult to obtain, the FCA makes it possible to uncover complex cases of fraud that would be virtually impossible to uncover any other way. The FCA also serves to mitigate the inaction of the government which, often because of lack of resources and sometimes due to inertia or abdication, does not prioritize efforts to recover money of which it has been illegally deprived.

The typical progression of a file

An action under the FCA is conducted as follows:

- The relator, who must be represented by counsel, submits an application to a court of competent jurisdiction. The government is the plaintiff, and the co-contracting party having committed a fraudulent act, the defendant. The application must be based on new information, not on government investigations, public data or facts presented in another action.

- The relator's application and identity remain under seal for a period of 60 days, during which time the government conducts an investigation to verify the allegations. This period may be extended if necessary.
- At the end of the investigation, the government decides whether to intervene in the action or allow the relator to continue alone. In all cases, however, the remedy remains that of the government against a particular defendant.
 - If the government intervenes in the action, it may formulate its own suit or amend that of the relator. It may also institute alternate remedies leading to civil penalties. In such case, it may ask the court to withdraw the original application, even if the relator opposes such a move.
 - The government may agree to a settlement without consulting the relator, as long as the court finds the agreement to be fair, adequate and reasonable under the circumstances.
 - The government may ask the court to limit the relator's participation in the proceedings, particularly with regard to witness examinations, if the relator is interfering with the government's management of the litigation, or delaying the process.
 - If the government does not intervene in the relator's action, the relator may choose not to continue, and will remain anonymous. If the relator decides to proceed with the action, he is the one who manages it, at his own expense, but he may not agree to a settlement without the consent of the government. Moreover, the latter may choose to intervene in the action at any time, even after initially deciding not to do so.
 - If the relator obtains a judgment in favour of the government, he can receive between 15% and 30% of the money recovered (the average is around 15%). The relator's reasonable extrajudicial costs and fees (whether or not the government has intervened) are payable by the defendant directly to the relator. If the defendant prevails, the relator assumes all costs.
 - Damages may be increased by up to three times the amount claimed, depending on certain factors, such as government involvement in the action, or when an agreement is reached or a judgment rendered. The amount may also be reduced, even to nil, depending on the relator's participation in the alleged acts.
 - The FCA also provides for civil penalties for perpetrators of fraud. The purpose of these penalties is to punish conduct that without causing financially quantifiable damages, still causes significant harm to the integrity of the government contracting system.

The essential elements of the FCA

Two crucial elements must be combined in a statute to make it an FCA. First, the statute must provide for a reward, or at least compensation, to relators, who often risk their careers in disclosing confidential information. The Commission has already described the risks to which whistleblowers are exposed, as well as the consequences of such actions on their personal lives. Second, there must be a possibility for the relator to continue the suit against an alleged

fraudster, even if the government decides not to proceed on its own account. To proceed, the relator requires authorization from either the government or the court. In some cases, the government may refuse to commit for fear that certain flaws in its own conduct will be revealed. By allowing the individual to proceed alone, the Act puts pressure on the government to maintain good governance. From this perspective, a simple reward for the whistleblower is insufficient. It is in fact the reward, coupled with the possibility for the relator to proceed even without the government, that constitutes the keystone of a qui tam-type procedure.

Between 1987 and November 2014, the FCA provided for recovering \$45 billion, of which \$30.3 billion was on the basis of information from relators, and \$11.7 billion on the basis of government investigations. These statistics show that there are substantial sums of money being recovered, but also that a large proportion of these sums (about 70%) comes from actions filed by relators.

Many people believe that the benefits of establishing a qui tam procedure exceed monetary considerations. This type of law has the effect of intensifying the detection and punishment of fraud, which increases the deterrent effect of sanctions. It also increases the likelihood that whistleblowing will be effective, which is an important motivation for whistleblowers.

Introducing an FCA to Quebec

It is always tricky to transplant a system, model or mechanism from one legal culture into another. However, there are arguments to address most of the concerns that may arise with regard to adopting an FCA or qui tam law in Quebec.

Giving a private party the right to sue on behalf of the government

It may be worrisome to allow a private party to sue on behalf of the government. While this may appear to conflict with the norm, it is not new, given that such a procedure already exists in criminal matters, as in the *Act respecting elections and referendums in municipalities*. Indeed, section 312.1 of that Act provides for an application concerning the provisional incapacity of a member of the municipal council. The application may be brought “by the municipality, the Attorney General or any of the municipality’s electors.” A mayor has already been dismissed using this procedure.

More generally, the mechanics of an FCA can be presented not as the privatization of law enforcement, but as a partnership between the authorities responsible for law enforcement and citizens.

The risk of abusive or frivolous actions

Adopting an FCA in Quebec could give rise to a fear that frivolous or abusive actions would overwhelm the courts, unduly solicit judicial resources and unnecessarily damage reputations.

The U.S. experience shows that the FCA has not clogged the courts. In addition, a number of mechanisms are available to limit abusive or frivolous actions by relators. The fact that they are required to be represented by a lawyer is an effective barrier against such abuse. Furthermore, the government must approve any settlement between the relator and the defendant. Finally, a judge may dismiss a frivolous proceeding, and the losing party bears all “reasonable” costs incurred by the opposing party, including legal fees. In other words, if the action is dismissed or

lost, the government never pays the costs incurred by the relator and his lawyer.

It is difficult to predict the impacts of an FCA on judicial resources. However, the obligation for representation by counsel and government approval of any agreement between a relator and defendant are likely to produce similar filtering effects, as is the power of a court to dismiss unreasonable or frivolous actions. In Quebec, the losing party is only exceptionally ordered to pay the actual fees of the opposing party. Given the unique legal situation in Quebec, the rules in the *Code of Civil Procedure* respecting extrajudicial fees should not be amended, and even if such orders remain exceptional, they are likely to have a significant deterrent effect.

Amounts paid to the relator

The issue of financial rewards for whistleblowers is a source of criticism (essentially moral and cultural). The idea is that financial rewards can lead to perverse effects, including an increase in frivolous actions, a weakening of internal control procedures, and a deterioration in the work environment within companies. Nearly 25% of U.S. public corporations have been the subject of allegations from whistleblowers, which could suggest either a surplus of accusations or a significant amount of malfeasance.

In addition, according to the Institute for Legal Reform, an organization associated with the U.S. Chamber of Commerce, whistleblowers are overpaid, and lawyers typically receive nearly 40% of the whistleblower's reward. As the reward is significant and is tied to the magnitude of the fraud, a whistleblower might delay coming forward in order to increase the financial reward.

Some people feel that fulfilling a moral obligation should be sufficient compensation for whistleblowers. This is consistent with the opinion expressed in the memorandum of the Ordre des CPA du Québec to the effect that the act of whistleblowing should not be seen as a means of enriching oneself, but rather as a mark of respect for society. The one does not exclude the other, however.

Several studies have suggested that paying a whistleblower money in return for a tip improves the detection and punishment of malfeasance, diminishes its occurrence and is cost-effective for the government. According to experts consulted by the Commission, the motivations of whistleblowers and relators to report wrongdoing remain essentially linked to ethical considerations, even when they are remunerated. These experts noted that whistleblowing is usually accompanied by significant personal costs, that this measure is effective, and that in the context of cartels, it is often the only way to detect them. From this perspective, it would therefore be perfectly justifiable to compensate these individuals for the significant risks they take in coming forward. The percentage of the compensation to be shared between the lawyer and the relator should be left to the discretion of the judge.

That said, the Commission feels that the Quebec legislature could adapt the American model to Quebec's legal, political and social culture.

The Commissioners therefore recommend that the government:

Adopt a law allowing citizens to prosecute fraudsters on behalf of the government.

RECOMMENDATIONS 51-53 - ENCOURAGE PUBLIC DEBATE ON CONTRACTING ISSUES AT THE MUNICIPAL LEVEL

Transparency in contract management is a prerequisite for the monitoring and control of elected officials and institutions by the citizens of Quebec. For this reason, citizen groups, non-governmental organizations and international experts consider measures to increase transparency to be key in reforming democratic institutions. During the Commission hearings, a number of experts specifically suggested introducing transparency measures to reduce the influence of collusion, corruption, illegal political financing and organized crime on the awarding and management of contracts.

In recent years, the Government of Quebec has adopted numerous initiatives along these lines. At the municipal level, however, transparency remains very uneven, which can make the public procurement mechanism unintelligible to citizens.

Recommendation 51

Limit exceptions to public debate

Under the *Cities and Towns Act* (LCV) and the *Municipal Code of Québec*, by-laws, resolutions and other municipal enactments must be passed by the council in session. The latter may also make a by-law delegating to any officer or employee of the municipality the power to make contracts. This person must then indicate the contract in a report, which is submitted to the council.

These contracts awarded by municipal officials are used to carry out projects that were most likely discussed or debated in council. If the council itself is not transparent, citizens cannot play their monitoring and control role in contract management. Xxxx Similarly, in its brief, the Fédération professionnelle des journalistes du Québec described the difficulties encountered by journalists covering municipal affairs.

Article 322 of the LCV and articles 149 and 150 of the *Municipal Code of Québec* make it clear that council meetings must be public. Each council sitting must also include a period during which the persons attending may put oral questions to the members of the council. These two Acts do not provide for an exception to this principle, which is reiterated at least three times in the Guide d'accueil et de référence pour les élus municipaux (reference guide for municipal councillors) prepared by the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT). However, this guide provides elected officials with an opportunity to hold working meetings to prepare for council meetings. Such meetings allow "the elected representatives to agree on the agenda, to look at certain issues in more depth and hold substantive debates on subjects that require further reflection." [Translation] There is therefore still some ambiguity.

Where there is a question regarding the ethics of one or more municipal councillors, citizens may file a complaint with MAMOT's complaints commissioner (BCP). Since the BCP was created in 2010, 27% of complaints have related specifically to the awarding of municipal contracts (all fields), and almost one third have dealt with the conduct of municipal councillors. MAMOT reporting on this issue does not provide an accurate picture of how these complaints were handled.

Given the above, the situation in Quebec does not contrast favourably with that of Ontario. In that province, section 239 of the *Municipal Act, 2001* stipulates that all meetings of a municipal council, local board or a committee of either shall be open to the public. It also provides for nine strict exceptions to this requirement, allowing municipalities to consider these matters in camera, although they are not required to do so.

Sections 239.1 and 239.2 of that Act also provide for a complaint and investigation mechanism if the public nature of these meetings is not respected. In such cases, the municipality concerned is authorized to appoint an investigator to investigate and report to it. If it does not follow up on a complaint, the Ontario Ombudsman takes over. This office has a specialized team to investigate such complaints in all Ontario municipalities. Every year, it publishes a report presenting the results of its investigations and making observations on transparency.

The Ontario legislation and practices appear to be a good model for Quebec.

The Commissioners therefore recommend that the government:

Adopt provisions to limit the exceptions to the public nature of the deliberations of elected municipal officials of Quebec, drawing on sections 239 and 239.1 of Ontario's *Municipal Act, 2001*.

Recommendation 52

Increase accessibility to contract management by-laws

For a by-law to come into force, its adoption must be made public. Where the municipality is governed by the *Cities and Towns Act (LCV)*, the notice must be posted at its office and published in a newspaper in its territory. If, on the contrary, the municipality is governed by the *Municipal Code of Québec*, the public notice must be posted "in two different places in the territory of the municipality, fixed from time to time by resolution." If no such resolution has been passed, the notice must be posted in the office of the municipality and in another public place in its territory. Moreover, like any other register or document in the possession of the clerk or secretary-treasurer and forming part of the archives of the municipality, the regulations may be inspected during regular working hours by any person applying to do so.

In practice, while citizens or journalists may communicate with a municipality in order to have access to certain by-laws, this procedure can be time consuming and tedious. In addition, the Commission determined that access to municipal by-laws varies greatly from one city to another. Some cities have set up powerful search engines to access all the regulations on their website, while other cities only provide electronic access to a small proportion of them.

Easy access to municipal by-laws, particularly those relating to contract management, should help create equal opportunities for bidders and suppliers wishing to contract with Quebec's cities and municipalities. This approach would also have the advantage of facilitating citizen monitoring of issues relating to contract management.

The Commissioners therefore recommend that the government:

Require municipalities to provide Internet access to municipal by-laws on contract management in order to enhance municipal transparency and citizen participation at the local level.

Recommendation 53

Impose a minimum period for submitting documents related to the awarding of public contracts to the municipal council

Groups of elected officials and citizens have called for the establishment of a minimum period for submitting documents to the municipal council. The Fédération professionnelle des journalistes du Québec and the Ligue d'action civique defended this position in their briefs submitted to the Commission. Their main argument is that filing documents at the council meeting prevents the municipal council and citizens from playing their part. This practice diminishes their capacity to scrutinize municipal affairs, including public procurement.

In terms of transparency, not only do decision-makers require access to documents, they must also have sufficient time to review and analyze them. In the absence of provisions to this effect, it is left to the goodwill of municipal administrations to file documents in a timely manner, including those relating to the awarding and management of contracts.

The Commission is of the view that monitoring and oversight by elected municipal officials and citizens would be greatly facilitated if they had access to public procurement documents some time before council meetings. In some municipal jurisdictions, these documents are even made available to citizens on the Internet.

The Commissioners therefore recommend that the government:

Impose a minimum deadline for submission to municipal council of documents relating to the awarding of public contracts in order to provide elected representatives and the public adequate time for analysis.

5. RENEW CONFIDENCE IN ELECTED OFFICIALS AND PUBLIC SERVANTS

This fifth block of recommendations reflects the need to uphold the integrity and ethical conduct of elected officials and members of the Quebec public service. It is intended to support a strong regulatory system that has the confidence of the public.

Recommendation 54

Review the ethics and professional conduct framework

Since 2009, in the wake of allegations relating to the construction industry, the National Assembly has adopted or strengthened a number of measures aimed at improving ethics within the state apparatus and municipalities. These measures include the adoption of the *Code of ethics and conduct of the Members of the National Assembly*, the adoption of the *Municipal*

Ethics and Good Conduct Act and the setting up of training courses for public service ethics advisors, executives and managers.

While the Ethics Commissioner for the National Assembly (CED) is responsible for ensuring ethical conduct and compliance with the rules of ethics on the part of elected officials and their political staff, the Commission municipale du Québec (CMQ), in cooperation with the Ministère des Affaires Municipales et de l'Occupation du territoire (MAMOT), investigates and sanctions ethical breaches by municipal councillors. Quebec's public service is also subject to ethical standards, which are applied by the deputy minister, in the case of a department, or the chief executive officer, in the case of an agency. The Bureau de la gouvernance en gestion des ressources humaines (HMGRB) of the Secretariat of the Conseil du trésor (TBS) monitors implementation of these ethics measures and coordinates a network of ethics advisors within departments and agencies (excluding health and education networks and state-owned enterprises). Municipal employees, on the other hand, are guided by their respective municipalities. Finally, individuals and private businesses acting as lobbyists are subject to ethical and professional conduct obligations that are enforced by the Quebec Lobbyists Commissioner (CLQ).

All these different agencies generally operate in a vacuum. The ethics framework for the Quebec government and municipalities is a series of heterogeneous measures, each targeting one category of persons, with the categories sometimes overlapping. This creates a coordination problem for the numerous entities responsible for ensuring compliance, which may also have to apply contradictory or incompatible standards, or not treat similar situations in the same manner. The phenomenon of ethical breaches observed by the Commission often involves actors under the purview of more than one body, however. This is the case, for example, when a consulting engineering firm (lobbyist) makes representations to a municipal councillor in order to obtain a contract, and then to a chief of staff (political staff) to influence the decision of a minister (elected provincial official) with respect to a subsidy for the municipality. It is also common for a problem situation to raise questions of ethics, conflict of interest and lobbying.

The current structure creates a fragmented approach to this kind of situation, which undermines the development of a culture of integrity. Each organization specializes in one area, but has no global perception of ethics within Quebec institutions. As a result, some conduct does not receive the attention it deserves because it is not specifically targeted by the mandate of any of these organizations. This diversity of organizations also results in the splitting of resources devoted to dealing with ethical issues (less than \$7.75 million annually).

In order to remedy these problems, the Commission believes it is necessary to create a single body incorporating numerous entities currently responsible for applying rules on ethics, professional conduct and lobbying. This body, led by an ethics and lobbying commissioner, would group together all the powers and resources currently vested in the CLQ and the CED. The mandate and share of the CMQ's resources devoted to ethics (including the allocation to MAMOT for handling these complaints) would also be turned over to the new agency.

The mandate of the ethics and lobbying commissioner would be to monitor application of all the statutes and regulations currently under the CLQ and CED, as well as the regulatory texts relating to ethics that are currently the purview of the CMQ. It would also be responsible for overseeing application of the rules governing deputy ministers, agency heads, and chairs of the boards of government agencies and state-owned enterprises. The ethics and lobbyist commissioner would have no direct power over public servants, municipal employees or

members of the boards of directors of government agencies and state-owned enterprises. He could, however, intervene with agency heads, deputy ministers, municipal councillors and board chairs when they fail to assume responsibility for applying the rules to their subordinates.

In order to ensure the independence of the ethics and lobbyist commissioner and enable him to carry out his mandate freely, it would be desirable for him to be appointed by a two-thirds vote in the National Assembly, as is currently the case for the CED and CLQ. The successful candidate would be appointed for a fixed term of seven years, as is currently the case for the Director of Criminal and Penal Prosecutions (DPCP). The incumbent could only be removed by a resolution of two thirds of the votes of the National Assembly.

By combining the resources currently devolved to the CLQ, the CED, the ethics component of the CMQ and the MAMOT complaints office (for municipal ethics complaints), the new body would be well equipped to carry out its work. Pooling expertise in a single body would allow it to consolidate and continue to develop, which should also enhance the credibility of those involved in ethics at the provincial and municipal levels.

The consolidation of these organizations would furthermore enhance the flow of ethics-related information and provide for better detection and more effective sanctioning of certain conduct. Finally, the creation of the ethics and lobbyist commissioner would enable the ethics oversight body to take a broader look at all public institutions and their interactions with the public, which would promote the development of a global and coherent culture of integrity.

The Commissioners therefore recommend that the government:

Adopt a law creating a single agency that would incorporate existing entities responsible for monitoring and applying the rules related to ethics and lobbying in the Quebec government and its municipalities, including in it the following provisions:

- Abolition of the Ethics Commissioner for the National Assembly (CED) and the Québec Lobbyists Commissioner (CLQ);
- Appointment of an ethics and lobbyist commissioner by a two-thirds vote in the National Assembly for a fixed term of seven years;
- Power to monitor all provincial and municipal elected officials and their political staff, deputy ministers, heads of public agencies, and chairs of boards of agencies and state-owned enterprises.

To carry out this mandate, the ethics and lobbyist commissioner would have all the powers currently assigned to the CED, CLQ, CMQ and MAMOT (with respect to receiving complaints, investigating and sanctioning). The Commission did, however, identify certain gaps in the powers of these entities, and is proposing solutions to address them.

Investigative initiative

The CED and the CLQ both have the power to initiate investigations on their own. In terms of municipal ethics, however, the CMQ can only act when a complaint filed with MAMOT has been referred to it. Thus, while it may be aware of potential breaches of ethics and ethical obligations in a municipality, it cannot act. The Commission finds this situation to be unsatisfactory.

Compliance with ethical and professional conduct obligations in Quebec municipalities should not depend on the receipt of a formal complaint by MAMOT. In addition, the complaint process does not allow for anonymity or confidentiality. The complaint must be “made in writing and under oath, contain reasons and include any supporting documents.” Moreover, when the complaint is received, the CMQ sends the identity of the complainant to the person against whom the complaint is made, which may discourage potential informers.

The ethics and lobbyist commissioner should therefore have the power to initiate any ethics-related investigation involving provincial or municipal elected officials, their political staff or lobbyists. The application of ethics rules for the public service, municipal employees and directors of state-owned enterprises (with the exception of the chair of the board) would continue to be managed within each department, agency, municipality and state-owned enterprise.

The ethics and lobbyist commissioner would have monitoring power with respect to statutes governing ethics and lobbying and could make all necessary recommendations.

The Commissioners therefore recommend that the government:

Recommendation 54.1

Include in the enabling legislation of the ethics and lobbyist commissioner the power to self-initiate ethics investigations into any provincial or municipal elected official and any member of their political staff, as well as criminal investigations related to lobbying.

Transparency

The *Lobbying Transparency and Ethics Act* requires lobbyists to register in the registry of lobbyists. Among other things, they must indicate in the registry the purpose of their activities, the period covered, the institution in which the public office holder concerned is employed and the nature of that person’s functions. There is no requirement, however, for public office holders to disclose their meetings with lobbyists.

In November 2014, the Premier of Quebec announced a new transparency measure in the form of an electronic portal to disclose ministers’ public activities on a daily basis, as well as certain private meetings (held at the request of someone outside government) three months after the event. While this measure improves transparency within government, it is inadequate. Only meetings attended by ministers are disclosed, whereas lobbying in Quebec also involves administrative officials (including deputy ministers and public servants) and MNAs. Moreover, the fact that it is only a directive and not a regulation or a statute means that there is no meaningful way to control the quality of the information disclosed. According to the OECD, experience has shown that a legislative solution is preferable to voluntary measures.

This measure, which could be very useful for the activities of the ethics and lobbyist commissioner, should be expanded and strengthened. Ministers and members of the National Assembly, as well as their staff, and appointees to government agencies within the meaning of the *Auditor General Act* should be required to submit information about the professional activities on their agendas to the ethics and lobbyist commissioner on a quarterly basis.

The Commissioners therefore recommend that the government:

Recommendation 54.2

Amend the *Lobbying Transparency and Ethics Act* to require ministers, members of the National Assembly, their staff and appointees to government agencies within the meaning of the *Auditor General Act* to submit all information relating to their professional activities to the ethics and lobbyist commissioner.

RECOMMENDATIONS 55 AND 56

Tighten post-employment rules

According to the OECD, “[i]n line with new public management practices, several countries have encouraged movement of personnel between the public sector and the private sector,” increasing the frequency of transfers to the private sector and thus multiplying the number of at-risk situations. Two types of abuse can occur when employees use the information obtained and relationships developed in the course of their duties. In the first case, an official uses his current position to obtain private gain in a future job. In the second, a former public servant wrongfully exploits his previous public office.

The American Revolving Door Working Group believes it is important to implement post-employment rules for elected officials and public servants in order to prevent them from obtaining undue advantages at the expense of the public interest. These undue advantages are not insignificant, as they may result in unfair competition or the inequitable access of individuals to government. The phenomenon of “revolving doors” also creates doubts about the integrity of the entire public administration, and contributes to an increasing lack of confidence in it.

The OECD identifies four situations where post-employment risks are particularly high: using insider information for one’s own benefit or that of a third party, seeking employment in the private sector (which may encourage officials to give preferential treatment to certain firms in order to maximize their chances of being hired), post-employment lobbying, and switching sides (when public employees or elected officials move to the private sector and handle the file for which they were responsible in the public sector).

In Quebec, the applicable legal framework for post-employment depends on the position held. The *Lobbying Transparency and Ethics Act* provides a framework for post-employment activities for all public office holders. It prohibits some of them from acting as lobbyists for a certain period after the end of their term of office.

It also prohibits any former public officer holder from deriving “undue advantage in the course of lobbying activities from having held a public office, or lobby[ing] in respect of a procedure, negotiation or other specific operation in which the person was involved in [sic] or in connection with the exercise of that office” and from disclosing “confidential information obtained in or in connection with the previous exercise of a public office.”

These prohibitions do not apply, however, to former public office holders who do not engage in lobbying activities. Outside this framework, we must fall back on the various statutes and

regulations applicable to elected officials, public servants, directors of state-owned enterprises and municipal employees.

Some of these rules therefore require strengthening. The first change required is a general prohibition on employees of any public contracting authority who accept employment with a supplier of that authority from working on a project in which they were involved in any way. This practice is already prohibited in Quebec, but only for ministers and provincial public servants. The evidence presented at the Commission hearings clearly demonstrated that numerous individuals had made this type of transition.

Similarly, the *Regulation respecting ethics and discipline in the public service* and the *Public Service Act* from which it flows preclude deputy ministers and assistant or associate deputy ministers, within one year of termination of employment as a public servant, from accepting employment within an entity with which they had official, direct and significant dealings in the year preceding the end of employment. With certain exceptions, they may not intervene on behalf of an entity with any department where they have worked in the year preceding the end of their employment or with another entity with which they had official, direct and significant dealings in that year.

Quebec is not alone in attempting to establish post-employment rules. The federal government's Policy on Conflict of Interest and Post-Employment also includes restrictions that apply to employees in positions designated by the deputy head for a period of one year after leaving the public service. Among these restrictions is the prohibition on accepting employment with a private entity with which they had significant official dealings during the year immediately prior to the termination of their service. The official dealings in question may be directly on the part of the employees, or through their subordinates. They are also prohibited from making representations on behalf of persons or entities outside of the public service to any government organization with which they had significant official dealings during the period of one year immediately prior to the termination of their service. The official dealings in question may either be directly on the part of the public servants or through their subordinates.

Moreover, public servants involved in contract management for a government entity should be required to inform their employer of any discussions they have with a supplier as to potential employment with the latter. The public contracting authority could then ensure that the employee or public servant does not consciously or unconsciously favour the supplier in question.

The Commission believes that the government should draw on the directives contained in the Code of ethics and conduct of the Members of the National Assembly and the federal Policy on Conflict of Interest and Post-Employment and apply them to public servants and any employee of a public contracting authority.

Any failure to comply with the post-employment rules should also be accompanied by a penalty for the supplier.

The Commissioners therefore recommend that the government:

Recommendation 55

Amend the relevant statutes and regulations to:

- prohibit employees involved with the contract management of a public entity from accepting a position or employment, within one year of termination of employment, with a private sector entity with which they had formal, direct and significant dealings in the year preceding termination of employment, except with the written consent of the public entity;
- require officials involved with the contract management of a public entity to inform their employer in writing of any discussions they have with a supplier with regard to potential employment with the latter.

Recommendation 56

Amend the *Act respecting contracting by public bodies*, the *Cities and Towns Act* and the *Municipal Code of Québec* to include a contract cancellation clause and a back-to-tender clause, in the event of non-compliance with the post-employment rules.

Recommendation 57

Prohibit ministers and their staff from soliciting political contributions from suppliers and beneficiaries of their departments.

Several witnesses described the relationships that existed from 2005 to 2009 between staff members from the office of the Minister of Municipal Affairs and Land Occupancy (MAMOT) and representatives of some engineering firms. The firms apparently acted as consultants for municipalities that were applying for subsidies from MAMOT for infrastructure projects. The subsidies then generated income for the engineering firms, since they enabled the municipalities to proceed with the projects, and award the contracts for their detailed design and construction supervision to the firms in question.

Some executives or representatives of these firms participated – sometimes through the use of straw donors – in sectoral political fundraising activities orchestrated by the chief of staff to the minister of MAMOT. Key individuals from two of these firms were also involved in organizing such fundraising events. Witnesses commented that contributions from engineering firms to provincial political fundraising facilitated their access to the minister's office in order to make representations in support of their clients' subsidy applications for infrastructure projects.

At that time, the MAMOT subsidy programs provided the minister with discretion for selecting projects and in some cases, determining the subsidy amounts awarded to them. One witness, who had been a political staffer to the minister and responsible for infrastructure subsidies, admitted that he saw in these dealings the appearance of conflict of interest on the part of the minister.

The Commission has already made a recommendation concerning the codes of ethics applicable to elected officials and their staff in order to prohibit them from soliciting or accepting donations to a political party in exchange for intervening in the performance of their duties, as proscribed in the Criminal Code. Given the decision-making role of ministers and the influence of their staff on departmental activities, however, it must be assumed that any solicitation or acceptance on their part of donations or other benefits for a political party, received directly or indirectly from an officer or representative of a supplier or a recipient of subsidies from their department or agency, could be related to the exercise of influence in relation to their duties.

The Commissioners therefore recommend that the government:

Ensure that the ethical rules applicable to ministers and their staff members prohibit the acceptance or solicitation of gifts or other benefits for a political party or for themselves, from officers or representatives of suppliers to their department or agency, or applicants for or recipients of financial assistance from their department, or their suppliers.

Recommendation 58

Tighten the rules on gifts

The Commission's work demonstrated the magnitude of the problem surrounding the acceptance of gifts from suppliers by public office holders. Examples of public employees and elected officials from the City of Montréal and the Quebec departments of Transport and Municipal Affairs are particularly representative of this issue.

The Commission is convinced that the existence of these practices in an organization is a sign of indifference at the top, and an indicator of more serious problems. The practice of unreserved and sometimes overt solicitation and acceptance of gifts at various administrative and political levels can only evolve and persist to the extent that senior officials themselves benefit from it, allowing it to become an integral part of the organization's culture.

In this context, new employees gradually learn that they can expect a variety of rewards if they cooperate with certain suppliers, provide confidential information, facilitate the payment of extras, turn a blind eye to problems, etc. Colleagues embroil them in the practice in order to compromise them so they won't report what is happening, while their superiors remain silent. Later in their career, when they hold a senior position, not only do they not have any credibility for putting an end to these practices, they are also expecting benefits commensurate with their status. The evidence heard by the Commission clearly illustrated how this laissez-faire environment was conducive to the development of serious corruption practices in numerous jurisdictions.

Before making its recommendation, the Commission believes it important to reiterate the various rules that are in place on this subject.

Prior to the coming into force of the *Code of ethics and conduct of the Members of the National Assembly* (the Code), the rules on gift receiving that were applicable to members of the executive and parliamentary assistants were set out in the *Directives du premier ministre*. These guidelines stipulated that only commemorative plaques or documents, or gifts of modest value personally offered in connection with an event were acceptable. They also specified that any

other gift must either be returned to the giver or turned over to the government. The Commission notes that the adoption of the Code by the National Assembly relaxed the rules governing the acceptance of gifts that were in force prior to 2010, at least those applicable to ministers and parliamentary assistants, by allowing them to accept gifts of a higher value and gifts that are not related to a specific event.

The Code stipulates that all gifts may be accepted, subject to a few exceptions. For example, elected officials may not accept a gift in exchange for speaking on an issue, or when it could impair independence of judgment or compromise their integrity or that of the National Assembly, which creates some confusion for interpretation. The Ethics Commissioner believes that in general, members of the National Assembly have gotten into the habit of consulting him before accepting gifts. Members must also declare any benefit worth more than \$200 to the Commissioner, who maintains a public register of these gifts.

Municipal councillors are also required to disclose benefits of \$200 or more. The declaration must be made to the secretary-treasurer or the clerk of their municipality. However, this is a minimum requirement, as municipalities are free to adopt stricter standards. The representative of the Commission Municipale du Québec (CMQ) pointed out that in general, municipalities stick to the amount provided for by law, although some have imposed a very small amount. It should be noted that once disclosure is made, municipal councillors who receive a benefit that they do not believe influences their independence of judgment or compromises their integrity may keep it, regardless of its value.

Public servants, on the other hand, may not “accept gifts, tokens of hospitality or benefits other than customary benefits of modest value. All other gifts, tokens of hospitality or benefits received must be returned to the giver or handed to the State.” The regulations do not, however, specify what is meant by a customary benefit of modest value. The *Municipal Ethics and Good Conduct Act* is silent with regard to the receipt of gifts, donations or benefits by municipal employees. Each municipality is therefore free to decide whether or not to prohibit it.

Most other provinces have a different rule for provincial elected officials, with a ban on accepting anything other than modest or customary gifts (generally worth less than \$200).

The Commissioners therefore recommend that the government:

Amend the relevant statutes, regulations, guidelines or codes of ethics to prohibit all elected provincial and municipal officials and their political staff, public servants, municipal employees, and government and public administrators from accepting any gift, regardless of its nature or value, from any supplier of goods or services whatsoever.

Recommendation 59

Provide for the temporary suspension of an elected official for corruption or collusion

It has become clear that it is possible for a person holding elected office to be involved in collusion or corruption related to public contracts in the field of construction. These are serious criminal offences punishable by a maximum of 5 to 14 years of imprisonment, depending on the case.

Where such charges are laid against an elected official, it is important that the public not lose confidence in the institution to which that person was elected. The rules to be followed in such situations must promote the effective functioning of the institution involved, maintain public confidence and have a deterrent effect on participation in such offences.

At the municipal level, since 2013, the *Act respecting elections and referendums in municipalities* authorizes the Superior Court to declare provisionally incapable to perform any duty of office and to suspend a municipal councillor against whom proceedings have been brought for an offence punishable by a term of imprisonment of two years or more. The application for the suspension may be brought by the municipality, the Attorney General of Quebec or any of the municipality's electors.

The court must consider the connection between the alleged offence and the council member's duties and the extent to which the alleged offence is likely to discredit the administration of the municipality. If the suspension is ordered by the court, it continues until the charges are stayed or withdrawn, the council member is acquitted or the council member's term ends, as the case may be.

If found guilty, the council member must repay to the municipality any sum received from the municipality during the suspension. The member also loses the right to any severance or transition allowance and must reimburse the municipality for any expenses paid in the context of defending the suspension. Moreover, the council member will be disqualified from municipal elections for a period equal to twice the term of imprisonment.

Provincially, the *Act respecting the National Assembly* does not set out provisional measures applicable to a member who is being prosecuted for collusion or corruption. The Act only establishes that the member's term ends if he is convicted of an indictable offence punishable by imprisonment for over two years. The member then becomes disqualified and may not stand for election for the term of the sentence pronounced. With some exceptions, the National Assembly does not pay the defence costs of a member who has been found guilty of a criminal or penal offence.

Because this matter falls under the courts, the Ethics Commissioner appointed by the National Assembly cannot rule on the merits of such a situation. At most, he can examine the charges and recommend that a vote be held to suspend the member until the judgment, without ruling on the merits of the case, a role that the statute does not currently attribute to him. In order to preserve the independence of the National Assembly, it should be able to decide to suspend one of its members, as per the provisions that it adopts.

The Commissioners therefore recommend that the government:

Propose to the National Assembly provisions governing the temporary or permanent suspension of one of its members who is being prosecuted for offences related to collusion or corruption involving public funds.

Recommendation 60

Reflect on the term of office for mayors

Municipal councillors play an active role in contract management. The awarding of public contracts at the municipal level is carried out by a resolution of the municipal council, or by the executive committee where there has been delegation.

In the course of its work, the Commission noted that municipal councillors had intervened in choosing members of selection committees, and that some of them tended to favour firms established in their cities, at the expense of healthy competition.

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In a context where the regulatory framework set out by the provincial government grants a great deal of autonomy to municipalities or cities, it is important to look at the risks created by the concentration of power and the length of the term of mayors in certain municipalities.

At present, no Canadian province imposes limits on the number of consecutive terms of office for an elected official. Canadians who advocate this option, however, suggest a maximum of three consecutive terms, i.e., 12 years. Several major American cities have already taken this step and adopted measures to limit terms. These include New York (two terms), Los Angeles (two terms), Houston (three terms) and San Francisco (two terms).

Numerous studies have looked at the effect of these measures. Some have found that imposing a limit on terms of office may be an effective means of combatting corruption at the municipal level, while others suggest that limits on the number of terms may result in the loss of institutional knowledge and expertise of elected officials.

Certainly, lack of political opposition and low citizen participation can affect all spheres of activity of municipal bodies, and the awarding and management of contracts is no exception. On its own, the evidence heard during the Commission's hearings calls for collective reflection on the issue. Given that a majority of municipal councillors were elected without opposition in the last elections, there is indeed cause for concern with regard to the risks of patronage, favouritism, the use of turn-key election schemes, corruption and collusion.

The Commissioners therefore recommend that the government:

Establish a public consultation process on limiting terms of office for mayors.

TABLE OF RECOMMENDATIONS

1. Review the framework for the awarding and management of public contracts

No.	Statement	Purpose
1	<p>Create a provincial public procurement authority mandated to:</p> <ul style="list-style-type: none"> • monitor public contracts to identify malfeasance; • support public contracting authorities in managing contracts; • intervene with public contracting authorities when necessary. 	Prevention Detection
2	Standardize laws and regulations to allow all public contracting authorities to decide, in cooperation with the Public Procurement Authority and under its supervision, the appropriate weighting of price and quality criteria in the public procurement process for a contract in the construction industry.	Prevention
3	Establish a committee of independent experts to approve Ministère des transports du Québec programming for projects involving preservation of pavement and structures and improvements to the road network, based on a budget established by the Conseil du trésor and the Minister of Transport.	Prevention
4	Reduce the time required to obtain certificates of authorization for the installation of mobile asphalt plants and for their designation to tender in order to promote competition in the paving sector.	Prevention
5	Encourage public contracting authorities to recognize similar products approved by other jurisdictions where relevant and to analyze requirements that limit the number of potential competitors in their procurement processes.	Prevention
6	Subject all para-municipal corporations and NPOs controlled or subsidized by a public body or municipality to the same contractual obligations as the organizations with which they are associated.	Prevention
7	Adopt rules enabling a public contracting authority to establish the reasonable time for the receipt of bids, depending on the financial significance and the complexity of the project being tendered.	Prevention

2. Improve prevention and detection activities and strengthen sanctions

No.	Statement	Objective
8	<p>Improve the whistleblower protection system to ensure:</p> <ul style="list-style-type: none"> • anonymity for all whistleblowers, regardless of the agency to which they report; • assistance to whistleblowers in their efforts; • financial support, when required. 	Prevention Detection
9	Give the Director of Criminal and Penal Prosecutions the power to accord	Detection

	certain benefits to cooperating witnesses, in the public interest and after consultation with the authorities concerned; in particular, to order a stay of any disciplinary proceeding, civil proceeding undertaken by a public authority, or Quebec tax claim, and to maintain communications with the federal agencies involved.	Sanction
10	Add to article 58(8) of the <i>Building Act</i> the offences of trafficking, producing or importing drugs, laundering the proceeds of crime and those related to collusion and corruption as grounds for non-issuance of an RBQ licence.	Sanction
11	Amend the <i>Building Act</i> such that: <ul style="list-style-type: none"> • The five-year waiting period following loss of the contractor's licence or loss of the right to enter into a public contract commences after the end of the term of imprisonment fixed by the sentence resulting from the conviction giving rise to the RBQ's decision; • A licensee convicted a second time for an indictable offence listed in the <i>Building Act</i> may not obtain a licence from the RBQ or run a business unless that individual has obtained a pardon or the criminal record has been expunged. 	Sanction
12	Amend the <i>Building Act</i> to: <ul style="list-style-type: none"> • Reduce from 20% to 10% the proportion of the company that a shareholder must hold in order to be considered an officer of a corporate entity and be included in the assessment of the company's integrity; • Clarify the power of the Régie du bâtiment du Québec to examine the integrity of officers who indirectly hold shares in a company subject to the provisions of the <i>Building Act</i>. 	Detection
13	Amend article 194 of the <i>Building Act</i> to specify that criminal offences include: <ul style="list-style-type: none"> • any natural person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, lends his name to another person; • any legal person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, has an officer who lends his name to another person; • any natural or legal person who uses a "proxy" in any of the situations described above. 	Sanction
14	Require of the following organizations that any active participation in the share capital of a construction company, beyond a certain financial threshold determined by the government, be entered into only with a company whose name is listed in the Autorité des marchés financiers Register of authorized firms: <ul style="list-style-type: none"> • workers' funds and any company for which the purchase of shares entitles the shareholder to a tax credit; • Investissement Québec; • The Caisse de dépôt et placement du Québec. 	Prevention
15	Adopt legislative or regulatory provisions to propose a standard on the timing for the production of incremental invoices and payments in the	Prevention

	context of a main contract and any subcontracts, in order to reduce the stranglehold that site supervisors and public contracting authorities have on companies in the construction industry, as well as the possible infiltration by organized crime.	
16	Require all public contracting authorities to report to the Commission de la construction du Québec any situations involving intimidation or violence on worksites established for their projects.	Detection
17	Require that the five-year study on developments in the Quebec construction industry, which is produced by the Minister of Labour, in collaboration with the Commission de la construction du Québec, include a status report on violence and intimidation on construction sites.	Prevention
18	Amend the <i>Act respecting labour relations, vocational training and workforce management in the construction industry</i> (Act R-20) in order to combat intimidation in the construction industry and maintain a healthy working environment by amending article 113.1 to remove the words “to cause” and replace them with “likely to provoke”, and article 119.11 to add articles 113.1 and 119.0.3 to the list of offences that disqualify persons from leading or representing.	Sanction
19	Amend the <i>Act respecting labour relations, vocational training and workforce management in the construction industry</i> and the <i>Act respecting occupational health and safety</i> to: <ul style="list-style-type: none"> • limit the terms of office of all directors of the Commission de la santé et de la Sécurité du travail and the Commission de la construction du Québec to two consecutive terms, for a maximum of six years; • prohibit any person from being simultaneously a director of the Commission de la santé et de la Sécurité du travail or the Commission de la construction du Québec and a president or chief executive officer of an employer or trade union organization. 	Prevention
20	Standardize the legislative provisions applicable to public bodies in order to: <ul style="list-style-type: none"> • ensure the confidentiality of the names of selection committee members; • ensure the anonymity of bidders who choose not to have their identity disclosed; • prohibit any elected official or public employee from disclosing the number and names of parties who request tender documents and bidders prior to the opening of tenders. 	Prevention
21	Create a penal offence to sanction any attempt by a bidder to communicate directly or indirectly with a member of a selection committee of a public contracting authority for purposes of influencing that individual's decision.	Sanction
22	Amend the <i>Tax Administration Act</i> to create a penal offence for the production and possession of a false document.	Sanction
23	Expedite efforts to increase the internal expertise of the Ministère des Transports du Québec in order to meet the established targets for 2017 and develop an improvement plan for subsequent years.	Prevention
24	Review the criteria for subsidy programs to include in eligible expenditures the costs associated with the salaries of the municipality's	Prevention

	professionals involved in carrying out the projects.	
25	Extend to all public contracting authorities the relevant exclusions provided for in article 19 of the <i>Act respecting labour relations, vocational training and workforce management in the construction industry</i> (Act R-20) in order to support the development of more in-house construction expertise.	Prevention
26	Add municipalities with fewer than 100,000 inhabitants to the jurisdiction of the Auditor General of Quebec so that he can conduct audits and report to the municipal councils concerned.	Detection
27	Amend the <i>Regulation respecting the annual reports of professional orders</i> to impose standardized reporting of expenditures on protection of the public, including professional inspections and discipline.	Prevention Detection
28	Amend the <i>Professional Code</i> of Quebec such that professional services firms connected to the construction sector are subject to the oversight of professional orders in their sector of activity.	Prevention Detection
29	Make it mandatory for all professional orders covered by the Commission's mandate to adopt a regulation requiring their professional members, and those wishing to become members, to receive training in ethics and professional conduct.	Prevention
30	Require newly elected directors of professional orders covered by the Commission's mandate to complete training on good governance and ethics, as well as the statutes and rules to which they are subject within the scope of their duties.	Prevention
31	Amend the <i>Anti-Corruption Act</i> to make the term of office and manner of appointment and removal of the Anti-Corruption Commissioner similar to those of the Director of Criminal and Penal Prosecutions.	Prevention
32	Require Revenu Quebec to take the necessary measures to improve the reliability of the data in the Quebec enterprise register.	Detection
33	Review the penal provisions of the <i>Act respecting the legal publicity of enterprises</i> in order to include incentives to comply with legal obligations.	Sanction
34	Issue a directive to the Fonds de recherche du Québec – Société et culture instructing it to encourage research initiatives that deal with the phenomena of collusion, corruption and infiltration of the construction industry by organized crime.	Prevention
35	Require the Director of Criminal and Penal Prosecutions to adopt and disseminate a clear policy regarding its jurisdiction to institute criminal proceedings under the <i>Competition Act</i> of Canada.	Sanction
36	Clarify the provisions of the <i>Act respecting contracting by public bodies</i> to require all bidders to provide a statutory declaration in which they disclose any discussions they have had with respect to their bid, with whom and on what subject.	Prevention Detection
37	Apply a limitation period on criminal proceedings of three years after the offence has come to the attention of the prosecutor, but not exceeding seven years since its commission: <ul style="list-style-type: none"> • in the Act respecting contracting by public bodies; • in the sections of municipal bylaws dealing with contracts; • in election Acts relating to political financing; • in the <i>Lobbying Transparency and Ethics Act</i>; • in the <i>Act respecting labour relations, vocational training and</i> 	Sanction

	<p><i>manpower management in the construction industry;</i></p> <ul style="list-style-type: none"> • in the provisions of the <i>Professional Code</i> relating to the initiation of criminal proceedings before judicial bodies; • in the provisions of the <i>Anti-Corruption Act</i> relating to protecting whistleblowers from reprisals. 	
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3. Protect political party financing from influence

No.	Statement	Objective
38	<p>Amend the <i>Elections Act</i> to require that:</p> <ul style="list-style-type: none"> • the annual financial report of the party or authority be signed by the party leader and the highest official of each party authority in addition to the official representative; • the party leader, the elected representative or the candidate sign a statement in the annual financial report and in the report on election expenses stating that: <ul style="list-style-type: none"> - the representative or official agent informed him of the financing rules; - he reminded his colleagues of the obligation to respect these rules; - he has been informed of the fundraising practices of his party and is satisfied that they comply with the law; and - he obtained any clarification he required from the representative or the official agent on the contents of the financial report. 	Prevention
39	Specify in the <i>Election Act</i> that volunteer work must at all times be performed personally, voluntarily and without consideration.	Prevention
40	Amend electoral laws to require that authorized political entities disclose in their annual financial reports and their returns of election expenses the names of individuals who have worked as volunteers in the area of expertise for which they are usually remunerated.	Prevention Detection
41	Make the training on political financing rules prepared by the Chief Electoral Officer of Quebec mandatory for the official representatives and official agents of political parties and their authorities, as well as independent candidates.	Prevention
42	Require that the contribution sheet used by provincial political parties and candidates include the name of the contributor's employer at the time of contribution, as is the case at the municipal level.	Detection
43	Amend the <i>Taxation Act</i> to prohibit the deduction of expenses related to the payment or reimbursement to persons, in any form whatsoever, of contributions made for political purposes in Quebec when calculating income from a business or property.	Prevention
44	Strengthen the provisions of the electoral statutes relating to political financing through loans and guarantees by requiring a non-proxy declaration in loan and guarantee instruments in which an elector participates, fixing a ceiling at the provincial level on loans and	Prevention

	guarantees from electors, and re-evaluating the existing ceiling at the municipal level.	
45	Amend the <i>Act respecting elections and referendums in municipalities</i> to prohibit partners in a partnership from making political contributions in a municipality where they are not domiciled.	Prevention
46	Amend the codes of ethics and professional conduct applicable to elected provincial and municipal officials and their staff to prohibit the announcement of projects, contracts or grants in the context of political fundraising events.	Prevention
47	Change the composition of the advisory committee to the Chief Electoral Officer of Quebec (DGEQ) to exclude MNAs and add persons appointed by the DGEQ who are independent of political parties.	Prevention
48	Ensure that the statutory hearing of the Chief Electoral Officer of Quebec is held before a parliamentary committee once a year in order to assess his performance with regard to compliance with the rules of political financing.	Prevention
49	Mandate the Chief Electoral Officer of Quebec to produce and publish a five-year review of the application of provincial and municipal financing rules.	Prevention

4. Promote citizen participation

No.	Statement	Objective
50	Adopt a law allowing citizens to prosecute fraudsters on behalf of the government.	Detection Sanction
51	Adopt provisions to limit the exceptions to the public nature of the deliberations of elected municipal officials of Quebec, drawing on sections 239 and 239.1 of Ontario's <i>Municipal Act, 2001</i> .	Prevention Detection
52	Require municipalities to provide Internet access to municipal by-laws on contract management in order to enhance municipal transparency and citizen participation at the local level.	Prevention Detection
53.	Impose a minimum deadline for submission to municipal council of documents relating to the awarding of public contracts in order to provide elected representatives and the public adequate time for analysis.	Prevention Detection

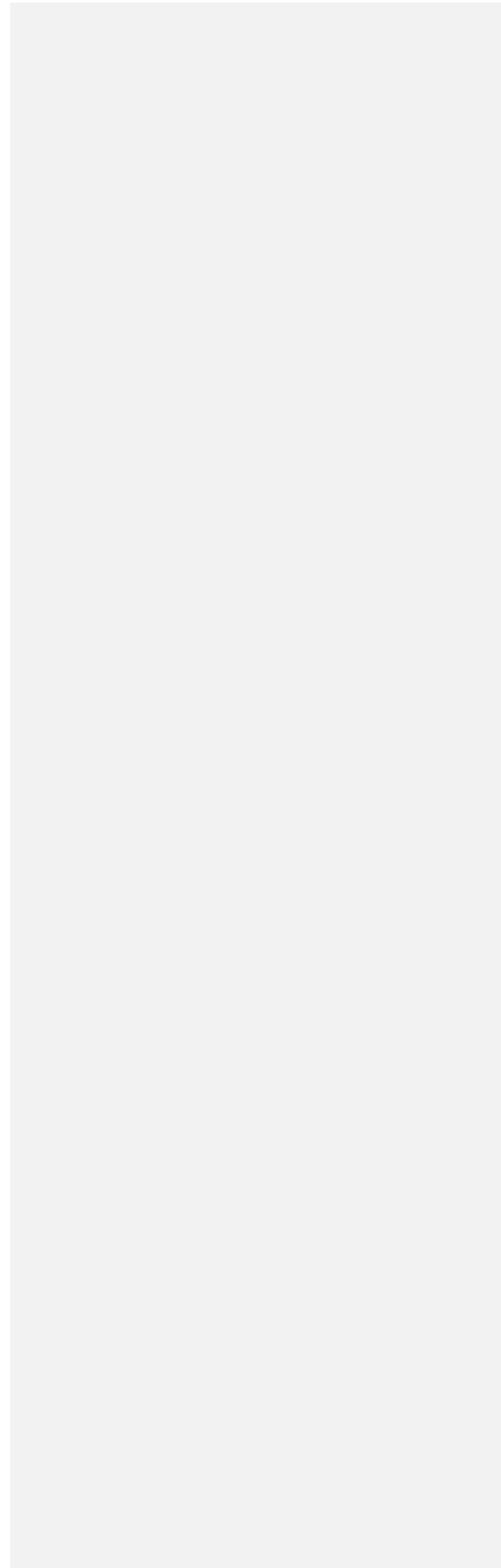
5. Renew confidence in elected officials and public servants

No.	Statement	Objective
54	Adopt a law creating a single agency that would incorporate existing entities responsible for monitoring and applying the rules related to ethics and lobbying in the Quebec government and its municipalities, including in it the following provisions: <ul style="list-style-type: none"> • Abolition of the Ethics Commissioner for the National Assembly (CED) and the Québec Lobbyists Commissioner (CLQ); • Appointment of an ethics and lobbyist commissioner by a two- 	Prevention Detection

	<p>thirds vote in the National Assembly for a fixed term of seven years;</p> <ul style="list-style-type: none"> • Power to monitor all provincial and municipal elected officials and their political staff, deputy ministers, heads of public agencies, and chairs of boards of agencies and state-owned enterprises. 	
55	<p>Amend the relevant statutes and regulations to:</p> <ul style="list-style-type: none"> • prohibit employees involved with the contract management of a public entity from accepting a position or employment, within one year of termination of employment, with a private sector entity with which they had formal, direct and significant dealings in the year preceding termination of employment, except with the written consent of the public entity; • require officials involved with the contract management of a public entity to inform their employer in writing of any discussions they have with a supplier with regard to potential employment with the latter. 	Prevention
56	<p>Amend the <i>Act respecting contracting by public bodies</i>, the <i>Cities and Towns Act</i> and the <i>Municipal Code of Québec</i> to include a contract cancellation clause and a back-to-tender clause, in the event of non-compliance with the post-employment rules.</p>	Prevention Sanction
57	<p>Ensure that the ethical rules applicable to ministers and their staff members prohibit the acceptance or solicitation of gifts or other benefits for a political party or for themselves, from officers or representatives of suppliers to their department or agency, or applicants for or recipients of financial assistance from their department, or their suppliers.</p>	Prevention
58	<p>Amend the relevant statutes, regulations, guidelines or codes of ethics to prohibit all elected provincial and municipal officials and their political staff, public servants, municipal employees, and government and public administrators from accepting any gift, regardless of its nature or value, from any supplier of goods or services whatsoever.</p>	Prevention
59	<p>Propose to the National Assembly provisions governing the temporary or permanent suspension of one of its members who is being prosecuted for offences related to collusion or corruption involving public funds.</p>	Sanction
60	<p>Establish a public consultation process on limiting terms of office for mayors.</p>	Prevention

PART 6

CONCLUSION



CONCLUSION

Much has been said about the political and social context surrounding the establishment of the Commission. Outsiders saw in it the expression of a distressing cultural reality, others a sad repetition of history and the failure of an institutional and democratic system designed to protect the common good.

In actual fact, where some would have preferred to conceal the truth, Quebec chose to act. In this sense, the freedom of the press, citizen mobilization and parliamentary debates that led to the creation of the Commission are the very embodiment of Quebec's democratic aspirations. The Commission itself is undeniable proof of the vitality of Quebec's democracy and institutions.

None of this minimizes the seriousness of the Commission's findings. The events presented in this report and the analysis of them speak volumes. For more than a decade, certain people succeeded in hijacking the system from its real purpose and profited from their illegal behaviour at the expense of the entire Quebec society. As stated in its terms of reference, the Commission did not seek to identify the perpetrators – that being the purview of investigative agencies, such as the Unité permanente anticorruption – but rather to understand the schemes involving collusion and corruption in the awarding and management of public contracts in the construction industry, the infiltration of that industry by organized crime, and the links to the financing of political parties. Along the way, a number of vulnerabilities and weaknesses in the system were identified that require prompt action.

Numerous stakeholders did not wait for the report to be tabled before acting, but much remains to be done. That said, despite the gravity of its findings, the Commission is convinced that Quebec is now better equipped to understand, rectify and modify some of the problem behaviour that was uncovered. The public reaction when such conduct is reported in the media today also demonstrates the extent to which the work carried out has been instructive. Today, the public is more than ever aware of the issues inherent in collusion and corruption in the construction industry and the financing of political parties. It also better understands the workings of criminal organizations and their desire to infiltrate the legal economy. The recommendations set forth by the Commission are therefore falling on fertile ground.

Driven by objective and systemic considerations, these recommendations form a coherent set of measures that will assume their full potential when combined. The Commission believes it essential that the actions it is proposing be implemented in their entirety. The proposed recommendations are critical for cleaning up public procurement and avoiding a repeat of the events uncovered in recent years.

Although these recommendations were drafted with a view to the specificities of the construction industry, most could be of benefit to other sectors of activity, which makes them all the more relevant. They also have the advantage of considering the current economic context by focusing on better use of existing resources rather than new investments.

Regardless of what happens with these recommendations, the issues discussed will not disappear with the tabling of the report. Collusion, corruption and organized crime are dynamic phenomena that are quickly reinstated. Consequently, the Commission's report is only one step in a continuous process of improving efforts to prevent, detect and punish the phenomena that were observed. At the same time, it invites vigilance; vigilance fuelled by the critical eye of the citizenry, as well as the education, awareness and commitment of an entire society to preserve the integrity of its public institutions.