



# 8.1.

## **Excerpts from the *Cities and Towns Act***

**2020 ANNUAL REPORT**

Auditor General of the Ville de Montréal



## 8.1. Excerpts from the *Cities and Towns Act*

### IV.1. — *Chief auditor*

2001, c. 25, s. 15.

#### **a. — Appointment**

**2018, c. 8, s. 33.**

**107.1.** The council of every municipality having 100,000 inhabitants or more shall have an officer called the chief auditor who is a member of the Ordre des comptables professionnels agréés du Québec.

2001, c. 25, s. 15; 2018, c. 8, s. 34.

**107.2.** The chief auditor shall, by a resolution approved by a two-thirds majority of the votes of the members of the council, be appointed for a single term of seven years.

2001, c. 25, s. 15; 2018, c. 8, s. 35.

**107.2.1.** The chief auditor shall perform his duties of office exclusively and on a full-time basis. However, he may participate in educational activities, in particular as an instructor, or professional activities within associations of auditors, educational or research institutions, committees within his professional order, or the Association des vérificateurs généraux municipaux du Québec.

2018, c. 8, s. 36.

- 107.3.** In no case may the following persons act as chief auditor:
- (1) a member of the council of the municipality and, where applicable, of a borough council;
  - (2) the associate of a member mentioned in subparagraph 1;
  - (3) a person who, personally or through an associate, has any direct or indirect interest in a contract with the municipality, a legal person referred to in subparagraph 2 of the first paragraph of section 107.7 or a body referred to in subparagraph 3 of that paragraph;
  - (4) a person who, in the four years preceding his appointment, was a member of a council, or an employee or officer, of the municipality, unless the person was an employee under the direction of the chief auditor during all or part of those years.

The chief auditor shall disclose in every report produced any situation that could cause a conflict between the chief auditor's personal interest and duties of office.

2001, c. 25, s. 15; 2018, c. 8, s. 37.

- 107.4.** If the chief auditor is unable to act, or if the office of chief auditor is vacant, the council shall:
- (1) not later than at the sitting following the inability to act or the vacancy, designate a person qualified to replace the chief auditor, for a period of not more than 180 days;
  - (2) not later than at the sitting following the inability or the vacancy, or not later than at the sitting following the expiry of the period fixed under paragraph 1, appoint a new chief auditor in accordance with section 107.2.

2001, c. 25, s. 15.

**b. — Operating expenses**  
2018, c. 8, s. 38.

**107.5.** The budget of the municipality shall include an appropriation to provide for payment of a sum to the chief auditor to cover the expenses relating to the exercise of the chief auditor's duties.

Subject to the third paragraph, the appropriation must be equal to or greater than the sum of A + B + C where:

- (1) A is \$500,000;
- (2) B is the product obtained by multiplying 0.13% by the portion of the appropriations provided for in the budget for operating expenses that is equal to or greater than \$345,000,000 but less than \$510,000,000; and
- (3) C is the product obtained by multiplying 0.11% by the portion of the appropriations provided for in the budget for operating expenses that is equal to or greater than \$510,000,000.

Where the budget of the municipality provides for appropriations for operating expenses related to the operation of a system of production, transmission or distribution of electric power, 50% only of those appropriations shall be taken into account in establishing the total of the appropriations referred to in the second paragraph.

2001, c. 25, s. 15; 2001, c. 68, s. 5; 2018, c. 8, s. 39.

**c. – Mandate**  
**2018, c. 8, a. 40.**

**107.6.** The chief auditor is responsible for the application of the municipality's policies and standards relating to the management of the human, material and financial resources assigned to auditing.

2001, c. 25, a. 15.

**107.6.1.** Despite section 8 of the Act respecting Access to documents held by public bodies and the Protection of personal information ([chapter A-2.1](#)), the chief auditor shall perform the duties conferred by that Act on the person in charge of access to documents or the protection of personal information with regard to the documents the chief auditor prepares in performing his duties or with regard to the documents he keeps for the purposes of his mandate, provided the latter documents are not also kept by a body subject to that Act.

The chief auditor shall transmit without delay to the person in charge of access to documents or the protection of personal information within a concerned body any application he receives concerning documents that are also kept by the body.

2018, c. 8, s. 41.

- 107.7.** The chief auditor shall audit the accounts and affairs:
- (1) of the municipality;
  - (2) of every legal person
    - a) that is part of the reporting entity defined in the municipality's financial statements;
    - b) of which the municipality or a mandatary of the municipality appoints more than 50% of the members of the board of directors; or
    - c) of which the municipality or a mandatary of the municipality holds more than 50% of the outstanding voting shares or units;
  - (3) of any body referred to in the first paragraph of section 573.3.5, provided
    - a) in the case of a body referred to in subparagraph 1 of the first paragraph of that section, it is the mandatary or agent of the municipality;
    - b) under subparagraph 2 of the first paragraph of that section, the majority of the members of its board of directors are members of the council of, or are appointed by, the municipality;
    - c) its budget is adopted or approved by the municipality;
    - d) in the case of a body referred to in subparagraph 4 of the first paragraph of that section, it receives part or all of its financing from the municipality; or
    - e) or in the case of a body designated under subparagraph 5 of the first paragraph of that section, it has its principal place of business in the territory of the municipality.

If, under this section, section 108.2.0.1, article 966.2.1 of the Municipal Code of Québec ([chapter C-27.1](#)) or section 86 of the Act respecting the Commission municipale ([chapter C-35](#)), a mandate to audit certain aspects of the accounts and affairs of a body referred to in section 573.3.5 is entrusted to more than one auditor, the audit of those aspects must be conducted exclusively by the following designated auditor:

- (1) the chief auditor of the municipality with the largest population;
- (2) if no chief auditor of a municipality is concerned, the Commission municipale du Québec;
- (3) if neither a chief auditor of a municipality nor the Commission is concerned, the external auditor of the municipality with the largest population

2001, c. 25, s. 15; 2010, c. 18, s. 20; 2018, c. 8, s. 42.

**107.8.** The audit of the affairs and accounts of the municipality and of any legal person or body referred to in subparagraph 2 or 3 of the first paragraph of section 107.7 includes, to the extent considered appropriate by the chief auditor, financial auditing, auditing for compliance of their operations with the Acts, regulations, policies and directives, and auditing for value-for-money.

The audit must not call into question the merits of the policies and objectives of the municipality or legal persons or bodies referred to in subparagraph 2 or 3 of the first paragraph of section 107.7.

The chief auditor in the performance of his duties is authorized

- (1) to examine any document concerning the affairs and accounts relating to the objects of the audit ;
- (2) to require from any employee of the municipality or any legal person or body referred to in subparagraph 2 or 3 of the first paragraph of section 107.7 all information, reports and explanations the chief auditor considers necessary.

2001, c. 25, s. 15; 2001, c. 68, s. 6; 2018, c. 8, s. 43.

**107.9.** Any legal person receiving an annual subsidy from the municipality of at least \$100,000 is required to have its financial statements audited.

The auditor of a legal person not referred to in paragraph 2 of section 107.7 that receives an annual subsidy from the municipality of at least \$100,000 shall transmit to the chief auditor a copy of

- (1) the annual financial statements of the legal person;
- (2) the auditor's report on the statements;
- (3) any other report summarizing the auditor's findings and recommendations to the board of directors or the officers of the legal person.

That auditor shall also, on the request of the chief auditor

- (1) place at the disposal of the chief auditor any document relating to the auditor's audit and its results;
- (2) provide all information and explanations the chief auditor considers necessary concerning the auditor's audit and its results.

Where the chief auditor considers that the information, explanations and documents provided by an auditor under the second paragraph are insufficient, the chief auditor may conduct such additional audit as he considers necessary.

2001, c. 25, s. 15.

**107.10.** The chief auditor may conduct an audit of the accounts or documents of any person or body having received financial assistance from the municipality or from a legal person or body referred to in subparagraph 2 or 3 of the first paragraph of section 107.7 to verify the use made of such assistance.

The municipality and the person or body having received the financial assistance are required to furnish to or place at the disposal of the chief auditor any accounts and documents that the chief auditor considers relevant to the performance of the chief auditor's duties.

The chief auditor is authorized to require from any officer or employee of the municipality or from any person or body having received financial assistance any information, reports and explanations the chief auditor considers necessary to the performance of the chief auditor's duties.

2001, c. 25, s. 15; 2018, c. 8, s. 44.

**107.11.** The chief auditor may conduct an audit of the pension plan or pension fund of a pension committee of a municipality or a legal person referred to in paragraph 2 of section 107.7 where the committee requests the chief auditor to do so with the approval of the council.

2001, c. 25, s. 15.

**107.12.** The chief auditor shall, every time the council so requests, investigate and report on any matter within the competence of the chief auditor. In no case, however, may the investigation take precedence over the primary responsibilities of the chief auditor.

2001, c. 25, s. 15.

**d. — Reporting**  
**2018, c. 8, s. 45.**

**107.13.** Not later than 31 August each year, the chief auditor shall transmit a report presenting the results of the audit for the fiscal year ended on 31 December to the mayor of the municipality, or to the legal person or body, that was audited.

A report on the audit of a legal person or body shall also be transmitted to the mayor of a municipality related to the legal person or body under subparagraph 2 or 3 of the first paragraph of section 107.7, subparagraph 4 or 5 of the first paragraph of section 85 of the Act respecting the Commission municipale ([chapter C-35](#)), or subparagraph 2 or 3 of the first paragraph of article 966.2 of the Municipal Code of Québec ([chapter C-27.1](#)).

Where applicable, the report must also indicate any fact or irregularity concerning, in particular,

- (1) control of revenue including assessment and collection;
- (2) control of expenditure, including authorization, and compliance with appropriations;
- (3) control of assets and liabilities including related authorizations;
- (4) accounting for operations and related statements;
- (5) control and safeguard of property owned or administered;
- (6) acquisition and utilization of resources without sufficient regard to economy or efficiency;
- (7) implementation of satisfactory procedures to measure and report effectiveness in cases where it is reasonable to do so.

The chief auditor may also, at any time, transmit to the mayor of a municipality or to a legal person or body a report presenting his findings and recommendations. Such a report concerning a person or body must also be transmitted to the mayor of a municipality related to the person or body under the provisions mentioned in the second paragraph

The mayor of a municipality shall file any report he receives under this section at the first regular sitting of the council following receipt of the report.

2001, c. 25, s. 15; 2010, c.18, s. 21; 2018, c. 8, s. 46.

**107.14.** (*Repealed*).

2001, c. 25, s. 15; 2006, c. 31, s. 16; 2010, c. 18, s. 22; 2017, c. 13, s. 50; 2018, c. 8, s. 47.

**107.15.** (*Repealed*).

2001, c. 25, s. 15; 2018, c. 8, s. 47.

**e. – Immunity**  
**2018, c. 8, s. 48.**

**107.16.** Notwithstanding any general law or special Act, neither the chief auditor nor the employees under the chief auditor’s direction or the professionals under contract may be compelled to give testimony relating to any information obtained in the performance of their duties or to produce any document containing such information.

Neither the chief auditor nor the employees under the chief auditor’s direction may be prosecuted by reason of any act they have done or failed to do in good faith in the performance of their duties.

No civil action may be instituted by reason of the publication of a report of the chief auditor prepared under this Act or of the publication in good faith of an extract or summary of such a report.

Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure ([chapter C-25.01](#)) may be exercised nor any injunction granted against the chief auditor, the employees under the chief auditor’s direction or the professionals under contract acting in their official capacity.

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

2001, c. 25, s. 15; I.N. 2016-01-01 (NCCP).

**107.17.** The council may establish an audit committee and determine its composition and powers.

Despite the first paragraph, in the case of the urban agglomeration of Montréal, the council must establish an audit committee composed of not more than 10 members appointed on the proposal of the mayor of the central municipality. Two of the committee members must be council members representing the reconstituted municipalities. Those two members shall take part in deliberations and votes of the committee on any matter related to an urban agglomeration power.

In addition to the other powers that may be entrusted to it, the committee established in the case of the urban agglomeration of Montréal shall submit opinions to the urban agglomeration council on the requests, findings and recommendations of the chief auditor concerning the urban agglomeration. It shall also inform the chief auditor of the interests and concerns of the urban agglomeration council with respect to the audit of the accounts and affairs of the central municipality. On an invitation by the committee, the chief auditor or a person designated by the chief auditor may attend a sitting and take part in deliberations.

2001, c. 25, s. 15; 2008, c. 19, s. 11; 2009, c. 26, s. 19.

**V. — External auditor**  
**2001, c. 25, s. 16.**

**108.** The council shall appoint an external auditor for not less than three nor more than five fiscal years. At the end of the term, the external auditor shall remain in office until replaced or reappointed.

In the case of a municipality with a population of at least 10,000 but less than 100,000 inhabitants, the council may appoint two external auditors. In such a case, the council shall entrust one auditor with the audit mandates under section 108.2 and the other with the audit mandate under section 108.2.0.1.

Every external auditor must be a member of the Ordre des comptables professionnels agréés du Québec.

When carrying out their value-for-money audit mandate and despite any general law or special Act, neither an external auditor nor the employees under the external auditor's direction or the professionals under contract may be compelled to give testimony relating to any information obtained in the performance of their duties or to produce any document containing such information. A judge of the Court of Appeal may, on an application, summarily annul any proceeding instituted or decision rendered contrary to this paragraph.

Neither an external auditor nor the employees under the external auditor's direction may be prosecuted for any act they have done or failed to do in good faith in the performance of the duties related to their value-for-money audit mandate.

No civil action may be instituted for the publication of a report of an external auditor prepared under this Act in connection with a value-for-money audit mandate or the publication in good faith of an extract or summary of such a report.

Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure ([chapter C-25.01](#)) may be exercised nor any injunction granted against an external auditor, the employees under the external auditor's direction or the professionals under contract when the external auditor, employees or professionals are acting in their official capacity in connection with their value-for-money audit mandate.

R. S. 1964, c. 193, s. 104; 1975, c. 66, s. 11; 1984, c. 38, s. 11; 1995, c. 34, s. 12; 1996, c. 27, s. 12; 1999, c. 43, s. 13; 2001, c. 25, s. 17; 2003, c. 19, s. 110, s. 250; 2005, c. 28, s. 196; 2009, c. 26, s. 109; 2016, c. 17, s. 8; 2018, c. 8, s. 49.

**108.1.** If the office of the external auditor becomes vacant before the expiry of his term, the council shall fill the vacancy as soon as possible.

1984, c. 38, s. 11; 2001, c. 25, s. 18; 2003, c. 19, s. 111.

**108.2.** The external auditor of a municipality having less than 100,000 inhabitants, or the external auditor designated by the council where two external auditors have been appointed, shall audit, for the fiscal year for which he was appointed,

- (1) the financial statements of the municipality and of any legal person referred to in subparagraph 4 of the first paragraph of section 85 of the Act respecting the Commission municipale (chapter C-35) that is related to the municipality in the manner provided for in that subparagraph;
- (2) the effective aggregate taxation rate to verify its compliance with Division III of Chapter XVIII.1 of the Act respecting municipal taxation (chapter F-2.1);
- (3) any document determined by the Minister of Municipal Affairs, Regions and Land Occupancy by a regulation published in *the Gazette officielle du Québec*.

1984, c. 38, s. 11; 1996, c. 2, s. 209; 1999, c. 43, s. 13; 2001, c. 25, s. 19; 2003, c. 19, s. 250; 2005, c. 28, s. 196; 2006, c. 31, s. 17; 2009, c. 26, s. 109; 2017, c. 13, s. 51; 2018, c. 8, s. 50.

**108.2.0.1.** In addition to his mandate under section 108.2, the external auditor of a municipality having at least 10,000 but less than 100,000 inhabitants, or the designated auditor, as applicable, shall conduct, to the extent he considers appropriate, a value-for-money audit of the municipality and of any legal person or any body referred to in subparagraph 4 or 5 of the first paragraph of section 85 of the Act respecting the Commission municipale (chapter C-35) that is related to the municipality in the manner provided for in that subparagraph.

Such an audit must be completed once every two years.

The auditor shall report to the council on his audit.

If, under this section, section 107.7, article 966.2.1 of the Municipal Code of Québec (chapter C-27.1) or section 86 of the Act respecting the Commission municipale, a mandate to audit certain aspects of the accounts and affairs of a body referred to in the first paragraph of section 573.3.5 is entrusted to more than one auditor, the audit of those aspects must be conducted exclusively by the following designated auditor:

- (1) the chief auditor of the municipality with the largest population;
- (2) if no chief auditor of a municipality is concerned, the Commission municipale du Québec; or
- (3) if neither a chief auditor of a municipality nor the Commission is concerned, the external auditor of the municipality with the largest population.

2018, c. 8, s. 51.

**108.2.0.2.** A municipality referred to in section 108.2.0.1 may, by by-law, entrust to the Commission municipale du Québec the audit mandate provided for in that section. An authenticated copy of the by-law must be transmitted to the Commission without delay.

A by-law made under the first paragraph applies from the fiscal year following that of its coming into force, provided it comes into force before 1 September; if it does not, the by-law applies from the second fiscal year following that of its coming into force. Section 108.2.0.1 ceases to apply to the municipality's external auditor as of that fiscal year.

Despite the third paragraph of section 86 of the Act respecting the Commission municipale ([chapter C-35](#)), the audit mandate entrusted to the Commission by a by-law adopted under this section must be carried out once every two years.

The by-law may not be repealed.

2018, c. 8, s. 51.

**108.2.1.** The external auditor of a municipality having 100,000 inhabitants or more shall audit, for the fiscal year for which he was appointed,

- (1) the accounts and affairs of the chief auditor;
- (2) the financial statements of the municipality and of any legal person referred to in subparagraph 2 of the first paragraph of section 107.7;
- (3) the effective aggregate taxation rate to verify its compliance with Division III of Chapter XVIII.1 of the Act respecting municipal taxation ([chapter F-2.1](#)); and
- (4) any document determined by the Minister of Municipal Affairs, Regions and Land Occupancy by a regulation published in the *Gazette officielle du Québec*.

2001, c. 25, s. 20; 2001, c. 68, s. 7; 2003, c. 19, s. 250; 2005, c. 28, s. 196; 2009, c. 26, s. 109; 2017, c. 13, s. 52; 2018, c. 8, s. 52.

**108.2.2.** An audit conducted by an external auditor must not call into question the merits of the policies and objectives of the municipality or of a person or body whose accounts and affairs are being audited.

2018, c. 8, s. 53.

**108.3.** Each year, not later than on the date determined by the municipal council, the external auditor shall transmit any report for the preceding fiscal year that was made under section 108.2, 108.2.0.1 or 108.2.1 to the treasurer of the municipality concerned or to the legal person or body concerned.

Any report on the audit of a legal person or a body must also be transmitted to the mayor of a municipality related to the legal person or body under subparagraph 2 or 3 of the first paragraph of section 107.7 or under subparagraph 4 or 5 of the first paragraph of section 85 of the Act respecting the Commission municipale (chapter C-35).

Any report made under section 108.2.0.1 on the value-for-money audit of a municipality having at least 10,000 but less than 100,000 inhabitants must also be transmitted to the Commission municipale du Québec not later than 30 September following the last fiscal year to which the report pertains. The Commission shall publish the report on its website.

The treasurer of a municipality shall file any report he receives under this section at the first regular sitting of the council following receipt of the report.

1984, c. 38, s. 11; 2001, c. 25, s. 21; 2010, c. 18, s. 23; 2017, c. 13, s. 53; 2018, c. 8, s. 54.

**108.4.** The council may require any other audit it considers necessary, and require a report.

However, a council may not ask the external auditor for audits that fall under the mandate assigned to the Commission municipale du Québec under the Act respecting the Commission municipale (chapter C-35).

1984, c. 38, s. 11; 2018, c. 8, s. 55.

**108.4.1.** The external auditor shall have access to the books, accounts, securities, documents and vouchers and may require the employees of the municipality to furnish any information and explanations necessary for the performance of the external auditor's mandate.

2001, c. 25, s. 22.

**108.4.2.** The chief auditor shall place at the disposal of the external auditor all books, statements and other documents prepared or used by the chief auditor during the audit conducted under section 107.7 and that the external auditor considers necessary to carry out his mandate.

2001, c. 25, s. 22; 2005, c. 28, s. 49.

- 108.5.** In no case may the following persons act as external auditor of the municipality;
- (1) a member of the council of the municipality and, where applicable, of a borough council;
  - (2) an officer or an employee of the municipality;
  - (3) the associate of a person mentioned in paragraph 1 or 2;
  - (4) a person who, during the fiscal year for which the audit is carried out, has, directly or indirectly, personally or through his associate, any participation, interest or commission in or under a contract with the municipality or in respect of such a contract, or who derives any benefit from the contract, unless his connection with the contract arises from the practice of his profession.

1984, c. 38, s. 11; 1996, c. 2, s. 209; 1999, c. 40, s. 51; 2001, c. 25, s. 23.

- 108.6.** The external auditor may be an individual or a partnership. The external auditor may entrust his employees with his work but his responsibility is then the same as if he had performed all the work personally.

1984, c. 38, s. 11; 1999, c. 40, s. 51; 2001, c. 25, s. 24.

## **VII. — Director general**

- 113.** The director general is the chief officer of the municipality.

The director general has authority over all the other officers and employees of the municipality, except the chief auditor, who reports directly to the council. With respect to an officer or employee whose duties are prescribed by law, the authority of the director general is exercised only within the framework of his duties as the administrator of human, material and financial resources of the municipality and may in no case hinder the carrying out of duties that are prescribed by law.

The director general may suspend an officer or employee from his duties. He shall immediately make a report of the suspension to the council. The council shall decide the case of the suspended officer or employee, after inquiry.

R. S. 1964, c. 193, s. 109; 1968, c. 55, s. 5; 1983, c. 57, s. 50; 2001, c. 25, s. 27.