

Quebec City, March 22, 2022

Mr. Pierre Said Director General  
Municipality of Pontiac 2024, route 148  
Pontiac (Quebec) J0X 2G0

Mr. Director General,

We have received and reviewed a disclosure of wrongdoing regarding the payment of annual grants to homeowners' or residents' associations for winter or summer maintenance of private roads. These associations were allegedly directly awarding contracts for this purpose.

In this context, the Commissioner of Municipal Integrity and Investigations ordered an investigation pursuant to section 11 of the Public Bodies Disclosure Act (LFDAROP). At the conclusion of the investigation, we will report to you on the findings of our investigation and provide you with recommendations or directions.

From the outset, the Commissioner of Municipal Integrity and Investigations (CIME) would like to state that all the facts presented have been gathered and analyzed by the people mandated for this purpose as well as by those who assisted them. However, where the situation required a legal interpretation, an opinion was sought from the Legal Affairs Branch of the Ministry of Municipal Affairs and Housing. The findings in this report are the result of analyses conducted by CIME and the interpretation provided by the Legal Affairs Branch.

It appears from the investigation that, since 2010, the Municipality has entrusted associations with the responsibility for the maintenance of private roads rather than exercising it itself, and this, despite the fact that the Municipality had been informed in 2006 by its legal counsel and the Deputy Minister of the *Ministère des Affaires municipales et des Régions* that there was no legislative provision allowing a municipality to delegate its responsibility for the maintenance of private roads to an association.

While Section 4 of the Municipal Powers Act (*Loi sur les compétences municipales - LCM*) grants general jurisdiction over transportation, Sections 66 and 70 of the LCM restrict the routes over which a municipality has jurisdiction and the conditions under which a municipality may act.

Section 70 of the LCM provides that a municipality may maintain a private roadway that is open to the public by tolerance of the owner or occupant, upon application by a majority of the abutting owners or occupants. However, there is no statutory provision for this power to be delegated to a third party by a municipality. Indeed, section 4 of the LCM provides that a local municipality may only delegate a power, including a power of transportation, to the extent provided by law.

Similarly, the Municipality may not use public funds to assist an individual, business or non-profit organization unless specifically authorized to do so. There is no provision in the LCM that allows a municipality to subsidize a homeowners' association for the purpose of maintaining private roads.

The argument that private roads cannot be currently maintained by the Municipality, since they do not meet the standards, does not appear to us in any case to justify the delegation of its competence and the payment of financial aid. If, for this reason, the Municipality cannot directly take charge of the maintenance of private roads, it is the responsibility of the owners of these roads, or of the occupants along the road, to do so and to assume the inherent fees.

Based on the foregoing, the CIME concludes that the actions described constitutes a violation of the law and wrongdoing within the meaning of section 4(1) of the *LFDAROP*.

Considering the outcome of its investigation and findings, the CIME recommends that the Municipal Council:

- puts an end to any delegation of authority for the maintenance of private roadways and the consequent awarding of annual grants to homeowner's or resident's associations to be used for winter or summer maintenance of tolerance roads and thus repeal bylaw 03-10;
- to review its private road maintenance bylaw to comply with the requirements of the LCM and, if necessary, to determine, upon request of a majority of riverside owners or occupants, whether or not the Municipality will proceed with the maintenance of private roads opened to the public by tolerance of the owner or occupant;
- to determine, if necessary, the terms and conditions of responsibility for the maintenance of private roads and to ensure compliance with the contractual management rules applicable in the event of subcontracting;
- to initiate a reflection on the financing of the maintenance of private roads by the riparian owners or occupants, on the principle of the user-payer.

Finally, it provides the following guidelines:

- that, as Director General, table this letter and read it at the next regular Council meeting and that it be made public immediately in the manner prescribed for the publication of municipal notices;
- that the Municipality of Pontiac informs the CIME of the reading and publication of the letter within 30 days of its tabling at a Council meeting;
- that the Municipality of Pontiac inform the CIME, or, as of April 1, 2022, the Directorate litigation and enquiries of the *Commission municipale du Québec*<sup>1</sup> of the corrective measures taken to address its recommendations within 4 months following the tabling of the letter at the Council meeting.

The Municipality has provided its comments to the CIME and these have been incorporated as an appendix to this letter.

Please note that this letter will be posted on the Ministry of Municipal Affairs and Housing website at <https://www.mamh.gouv.qc.ca/divulgation/avis-et-rapports-denquete/>

Please accept, Mr. Director General, our best wishes.

The Commissioner of Municipal Integrity and Investigations

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1- In accordance with the Act to amend the Act respecting elections and referendums in municipalities, the Act respecting municipal ethics and professional conduct and various legislative provisions, the responsibilities relating to the application of the Act to facilitate the disclosure of wrongdoings in relation to public bodies will be entrusted to the *Commission municipale du Québec* as of April 1, 2022.

## **The Municipality's comments following the presentation of this letter**

The Director General indicated that he agreed with the contents of this letter. He emphasized that it would be up to the Council to take note of it and to determine what action to take.

### ***ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS RELATING TO PUBLIC BODIES (RLRQ, C. D-11.1):***

**4.** For the purposes of this Act, any act that constitutes or consists in, as the case may be:

- (1) a contravention of a Québec law, of a federal law applicable in Québec or of a regulation made under such a law,
- (2) a serious breach of the standards of ethics and professional conduct,
- (3) a misuse of funds or property belonging to a public body, including the funds or property it manages or holds for others,
- (4) gross mismanagement within a public body, including an abuse of authority,
- (5) any act or omission that seriously compromises or may seriously compromise a person's health or safety or the environment, or
- (6) directing or counselling a person to commit a wrongdoing described in any of paragraphs 1 to 5,

**15.** Once the audit or investigation has been concluded, the Public Protector reports the findings to the highest-ranking administrative official of the public body concerned or, if warranted by the circumstances, to the minister responsible for that body. The Public Protector makes the recommendations the Public Protector considers appropriate and may ask to be informed, within a specified time, of the corrective measures taken to implement them.

However, in the case of a public body referred to in paragraph 9 of section 2, the Public Protector reports the Public Protector's findings to the Minister of Families and, if warranted by the circumstances, to the board of directors of the public body concerned or to the natural person who is the holder of a day care centre permit.

In the case of a public body referred to in paragraph 9.1 of section 2, the Public Protector may, in addition to the communication provided for in the first paragraph and if warranted by the circumstances, report the findings and send the recommendations to the board of directors of the public body and to any local municipality having ties with that body if the latter is not a local municipality.

If the Public Protector considers it appropriate, the Public Protector may inform the person who made the disclosure of any follow-up given to the disclosure.

**17.1.** Disclosures concerning public bodies referred to in paragraph 9.1 of section 2 are processed by the minister responsible for municipal affairs in compliance with the rules set out in sections 10 to 15, with the necessary modifications.

**ACT RESPECTING THE MINISTÈRE DES AFFAIRES MUNICIPALES, DES RÉGIONS ET DE L'OCCUPATION DU TERRITOIRE (RLRQ, c. M-22.1) :**

**13.** Any advice or recommendation referred to in section 12 shall be sent to the most senior officer and to the secretary of the municipal body by registered mail. The most senior officer and the secretary shall refer any advice or recommendation received to the council at its next regular sitting. If the advice or recommendation is sent to a municipal body other than a local municipality, the Minister shall send a copy to any local municipality with ties to the municipal body. [...]

**14.** The Minister may, following a verification or an investigation conducted, as the case may be, under section 15 or 16, subsection 1 of section 22 of the Act respecting the Commission municipale (chapter C-35) or section 11 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1) give instructions to the council of the municipal body that was the object of the verification or investigation. The council shall comply with the instructions and take the measures prescribed by the Minister.

Section 13 applies, with necessary modifications, to directions issued by the Minister.