DIRECTORS' AND OFFICERS' INSURANCE FOR YORK REGION RAPID TRANSIT CORPORATION

The Rapid Transit Public/Private Partnership Steering Committee recommends the adoption of the recommendations contained in the following report, August 22, 2003, from the Commissioner of Finance:

1. RECOMMENDATIONS

It is recommended that this report be received for information.

2. PURPOSE

The purpose of this report is to outline Directors' & Officers' insurance coverage for the Board of Directors of the York Region Rapid Transit Corporation.

3. BACKGROUND

At its meeting of June 19, 2003, the Committee requested that staff provide details of Directors' and Officers' Insurance (D&O) acquired for the York Region Rapid Transit Corporation ("YRRTC") which was incorporated on June 2, 2003.

This report does not cover other types of insurance, such as general liability, property and crime, which will be acquired once YRRTC becomes fully operational .

Generally, D&O insurance is obtained to protect Board members at risk of lawsuits from many sources including customers, contractors and other third parties. To minimize the risk of personal liabilities, Directors and Officers must be aware of the legal ramifications, and thoroughly understand their responsibilities in addition to being properly indemnified.

Directors and Officers of any corporation are required by law:

1) to act diligently and with due care;
2) to avoid conflicts of interest and activities that benefit them personally at the expense of the corporation, and;
3) to both personally and corporately comply with numerous federal, provincial and municipal statutes regulating management and corporate conduct.

4. ANALYSIS AND OPTIONS

The Ontario Municipal Insurance Exchange (OMEX), the Region's main insurer, is providing YRRTC's Directors' and Officers' coverage as an endorsement to the Region's Errors & Omissions policy until a stand alone D & O policy is drafted. OMEX has agreed to add this type of policy to its available coverages due to the recent changes in the Municipal Act allowing the formation of municipally owned corporations. OMEX is now in the process of drafting its final policy wordings for this coverage which should be available by the end of September 2003.

While the wording of the policy protecting the Directors' and Officers' of York Region Rapid Transit Corporation is not yet available; we have been advised that the following usual issues and exclusions will be included and addressed.

4.1 Specific Coverage under a D&O Policy

Directors and Officers will be protected from liability from a variety of sources, some of which include:

a) Employment Law-including wages & vacation pay, workplace safety & protection, human rights, harassment; and negligent acts of employees;

b) Environmental Law-including environmental protection legislation, transportation of dangerous goods, environmental assessment and audits;

c) Financial reporting and disclosure-including financial statements, the prospectus, timely disclosure, management discussion and analysis, insider reporting and trading, proxy rules;

d) Taxation Laws-including Income tax Act, Goods and Services Tax, Canada Pension Plan, Employment Insurance, Provincial taxes, Workers' Compensation;

e) Securities Laws-including legislation & and other regulations, financing, disclosure obligation, proxies, liability under the Criminal Code; and

f) Class Processing Act- including Class Actions.

4.2 Specific Exclusions under a D&O Policy

Exclusions often define a policy better than any other part of the policy, particularly in D&O.

The standard exclusions that are anticipated will apply to this policy from OMEX are similar to the Errors and Omissions policy which include:

a) Bodily injury, personal injury or property damage;

b) Claims arising out of the failure to maintain adequate insurance, bonds or financial guarantees on assets, construction or employees benefits;

c) Failure to collect money or apply for grants or improper investment of funds;

d) Claims arising out of breach of contract;

e) Actual, alleged or threatened discharge, release etc. of any solid, liquid, gaseous or thermal irritant or contaminants including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste, materials to be recycled, reconditioned or reclaimed at or from premises, owned, rented or occupied by the Insured or others at any associated premises, at or from and/or any location used by the Region, transported, handled, stored or treated by the Region;

f) Any loss, cost, or expense arising out of any government direction or request that that the Region test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize pollutants; and

g) Arising out of any dishonest, criminal or fraudulent wrongful act.

4.3 Other Details of the Policy

Currently the policy has a coverage limit of up to $50,000,000 limits with a $100,000 deductible that will be self-insured by YRRTC.

In addition, the policy will expand the definition of insured to include spousal liability.

5. FINANCIAL IMPLICATIONS

OMEX has provided this endorsement as part of the Region's Error & Omissions coverage at no additional cost.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact associated with this report.

7. CONCLUSION

Directors' and Officers' Liability insurance is a necessary expenditure for the York Region Rapid Transit Corporation. We have yet to receive the wordings from OMEX, however we will endeavour to ensure that all proper and expected coverage is in place and that there are no exclusions out of the ordinary.

In the meantime coverage has been bound within the OMEX Errors and Omissions policy.

The Senior Management Group has reviewed this report.