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September 15, 2023

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Chair of the Board,
Mayor Steven Del Duca
Vice Chair of the Board
York Region Rapid Transit Corporation, and
Mr. Bruce Macgregor
Chief Administrative Officer
The Regional Municipality of York
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Delivered via email for external professional contact.

Final Governance Report for York Region Rapid Transit Corporation (YRRTC)
The Regional Municipality of York

Boardexpert.com

Board Effectiveness Assessment Methodology

Board of Directors BEAM™ • Audit Committee BEAM™ • Compensation / HR Committee BEAM™ • Nomination / Governance Committee BEAM™ • Chair of the Board BEAM™
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Introduction

I have been retained by The Regional Municipality of York Region to conduct a review of YRRTC's governance.

Please find herein my Governance Report based on the results of (i) documentation reviews, (ii) governance questions that I have posed and the answers that have been provided, and (iii) a series of interviews with select Management of The Regional Municipality of York, select Management of YRRTC, and the Chair of the Board and Vice Chair of YRRTC.

When I write "this Report" or "my Report," I am referring to this document.

Normally, when I use capitals, such as "Board Chair" or "Directors," I am referring to the Chair of the Board or the Directors of YRRTC, respectively. When I use the term "the CEO," I am referring to CEO (or President as delegate) of YRRTC. When I do not use capitals, such as "a chair" or "directors," or I use the word "a CEO," I am referring to these positions generally.

I am also partial to use of hyperlinks, for ease of reading and understanding, and the Oxford comma when appropriate.

Not surprisingly, given the common Shareholder, The Regional Municipality of York Region, YRRTC, a municipal services corporation, and York's other corporation, Housing York Inc. (HYI), which is not a municipal services corporation, share similar governance structure and processes. Thus, Recommendations within this Governance Report of YRRTC are similar to that of HYI. Documentation reviews, governance questions and answers, and interviews, however, were carried out separately for each corporation, YRRTC and HYI.

YRRTC was incorporated as a municipal services corporation and is governed by section 203 and now O. Reg. 599/06 of the *Ontario Municipal Act*, which allowed for its incorporation. Of note is that YRRTC must operate in accordance with the limitations and restrictions contained in its Articles as required by the Ministry of Municipal Affairs and Housing at the time of its incorporation as a Municipal Services Corporation, the *Ontario Business Corporation Act*, and the *Ontario Municipal Act* and its regulations as they apply to municipal services corporations like YRRTC. This should be kept in mind when reviewing this Report.

Independence and Qualifications

I am an independent advisor possessing expertise in corporate governance. I hold a PhD in the area of board and director effectiveness. I have advised and assessed over 150 boards of directors, lifetime, including public sector boards in highly regulated industries, and interviewed hundreds of directors. See my additional background at the Appendix, below.

Role of the Shareholder, and Management of YRRTC

The Shareholder, The Regional Municipality of York, and Management of YRRTC have provided me with all information that I have requested in a timely manner. Both have been

highly competent and cooperative. There is not a piece of information that I have requested that I have not received.

YRRTC Governance Rating: A-

I would rate YRRTC's governance, based on the methodology to be described in the next section, as an "A-". There are no material omissions that I have observed; however, there are opportunities for development to reach the "A" or "A+" range, which I include in my Recommendations section of this Report.

Methodology

The methodology for this Report for YRRTC to enhance its governance include a documentation review; written questions and answers; participatory and collective interviews with each of The Regional Municipality of York and of YRRTC Management; and reviews of federal and provincial generally accepted governance guidelines as a comparative benchmark.

More particularly:

- (i) The following documents pertaining to YRRTC were reviewed: Annual Reports; Board Member information; Business Plans and Budgets; By-laws, Policies and Guidelines; Constating and other Legal Documents; Bills and Legislation;¹ Agreement between The Regional Municipality of York and YRRTC, September 10, 2009; Other Information; and Risk, Compliance and Audit documents.

A total of seventy-five documents were reviewed.

- (ii) Seventy-five questions were posed to The Regional Municipality of York and to YRRTC Management on April 22, 2023, pertaining to the governance of YRRTC. The Regional Municipality of York and YRRTC Management cooperated fully and provided answers in a full, true and plain manner. Answers were provided by Carmen Cancelliere, Legal Department; Glenn Lang, CAO Office; Laura Mirabella, Regional Treasurer; Michelle Morris, Regional Auditor; Chris Raynor, Regional Clerk; and Brian Shifman, YRRTC President.
- (iii) Interviews were conducted virtually (i) with The Regional Municipality of York on May 23, 2023, including Heather Babcock-Cormier, Carmen Cancelliere, Kyle Catney, Sarah Kim, Dan Kuzmyk, Glenn Lang, Jason Li, Bruce Macgregor, Erin Mahoney, Laura Mirabella, Michelle Morris, Chris Raynor, Brian Titherington and Guests Daniel Ferguson and Brad McLellan; (ii) with YRRTC Management on May

¹ YRRTC was incorporated as a Municipal Services Corporation (MSC) and is governed by section 203 and now O. Reg. 599/06 of the Ontario Municipal Act, which allowed for its incorporation as a MSC, which comes with some advantages. Of note is that YRRTC must operate in accordance with the limitations and restrictions contained in its Articles as required by the Ministry of Municipal Affairs and Housing at the time of its incorporation as a MSC, the *Ontario Business Corporation Act*, and the *Ontario Municipal Act*, and its regulations as they apply to MSCs. I have noted as applicable, in this Report.

25, 2023, including Stephen Hollinger, Danielle Hutson, Liza Sheppard, Brian Shifman, Gurpreet Uppal, and Guest Paul May; and (iii) with the Chair of the Board, and Vice Chair of the Board of YRRTC, Mayors and Messrs. Frank Scarpitti and Steven Del Duca, respectively, on July 12, 2023.

- (iv) Governance reports were reviewed by Dr. Leblanc from his client library of comparable public sector organizations, as applicable.
- (v) Provincial and federal governance legislation was reviewed, for generally accepted best corporate governance practices.

All the Recommendations within this Report are based on best governance practices, to be described next.

Definition of Best Governance Practices

For a succinct view of best practices in governance, please see the Ontario Securities Commission (OSC) Corporate Governance Guidelines (OSC Guidelines), [here](#), and the Office of Superintendent of Financial Institution (OSFI) Corporate Governance Guideline (OSFI Guideline), [here](#), which are applicable to public companies and financial institutions respectively.

I include these two Guidelines herein because they (particularly the first) succinctly set out governance standards and practices. For disclosure, I have advised the OSC and OSFI on both of these guidelines, and I am familiar with them.

I will be referring to sections of these Guidelines (mainly the OSC Guidelines, above, and the OSFI Guideline when I describe risk governance) in my Recommendations below.

Government is not necessarily governance. Because of conflicts of interest restrictions, many elected political leaders that I have trained over the years do not serve on private and public company boards of directors. There are best practices in governance that began in Canada in 1994, almost thirty years ago.

It would be a mistake to be of the view that, because YRRTC is not the type of organization that is governed by the OSC and OSFI, and because there is no uniform set of required standards for state-owned enterprises and not-for-profit organizations, the above Guidelines do not apply. The standards that apply to public and financial companies have been used as proxies to tailor governance practices to agencies, boards, commissions, universities, hospitals, charities and associations – in other words, state-owned enterprises (such as YRRTC) and not-for-profit organizations – for the last thirty years, and in particular since 2005 when broader Guidelines have been adopted across Canada, in all provinces and territories.

In other words, there is nothing particularly unique about YRRTC (or any other state-owned enterprise whose governance I have reviewed) that warrants deviating substantially from generally accepted best governance practices, other than that YRRTC is a Municipal Services

Corporation and must be compliant with the requirements of section 203 of the Ontario Municipal Act, O. Reg. 599/06 (Municipal Services Corporations) and any other YRRTC legislative or other underpinnings. In addition, any voluntary, industry or firm-specific governance standards that I review, applicable to state-owned enterprises and not-for-profit organizations, are consistent with the foregoing Guidelines for comparative purposes.

The Board of YRRTC and The Regional Municipality of York are free to accept, reject or modify any Recommendation that I make within this Report.

Recommendations and Implementation

For the YRRTC Board and Regional Council to consider the Recommendations within this Report, the Recommendations should be reviewed and reported on by senior Management of YRRTC (in conjunction with senior Management of York Region at Agenda Review Committee) to the Board. The Board may then endorse, reject or modify the Recommendations and then send to York Region Council for approval.

The Recommendations within this Report reflect best governance practices, observations and findings that I have made, and consensus among all of my interviews from input provided to me.

Budgetary allocation should be allotted as appropriate to fulfil the Recommendations approved by York Region Council.

Governance Recommendations For YRRTC

My overall scoring of the Board of Directors of YRRTC, as stated above, is an “A-”.

We now begin.

1. Clarity of Mandate

There exists consensus that there has been duplication and lack of clarity between roles and responsibilities of The Regional Municipality of York vis-à-vis those of YRRTC.

During the interviews, “duplication” was mentioned three times by separate individuals.

“Redundancy and lack of clarity,” “looking to see clarity” and “Clarity is the #1 goal this mandate needs to resolve” and “clarity required” was mentioned by four individuals, including three individuals apart from the remarks made about “duplication” in the foregoing paragraph.

In other words, clarity and duplication were mentioned during interviews by seven different individuals.

In addition, the York Region Rapid Transit Corporation Audit Report, November 2021, at page 4, reads:

“There is an absence of clarity regarding the YRRTC’s mandate compared to the Articles of Incorporation, the York Region Rapid Transit Agreement and actual practice.”

However, there was also consensus among Board Leaders of YRRTC that the lack of clarity or duplication, as the case may be, should not mean dissolution of YRRTC as an entity, even if the 2009 Rapid Transit Agreement between The Regional Municipality of York and YRRTC is set to expire in 2024, after a 15-year term.

There are advantages as YRRTC continuing as a separate corporation, including focus, continuity, growth and reputation, as were mentioned during interviews. As one respondent put it, the “job’s not yet done with 34km constructed ... more is needed (132 km more).”

I have, therefore, with drafting input from Public works staff and the Legal team of The Regional Municipality of York, and senior Officer input from YRRTC, brought what I believe is enhanced clarity, and accountability from YRRTC to The Regional Municipality of York (also mentioned during interviews), to a revised Mandate for YRRTC.

Please see “Clarified Mandate of Rapid Transit System, Rapid Transit Projects and Related Infrastructure,” at item 1 within the Mandate Report that I have prepared for YRRTC.

Recommendation 1

It is recommended that (i) YRRTC shall continue as a stand-alone corporation, notwithstanding the sunset date of 2024 within the 2009 Rapid Transit Agreement (Agreement) between The Regional Municipality of York and YRRTC; (ii) the foregoing Agreement shall be continued or replaced, as the case may be, beyond 2024, utilizing reforms suggested within the Mandate Report submitted by me under separate cover; and (iii) the Mandate of YRRTC is clarified in the Mandate Report so as to strengthen communication and accountability from YRRTC to The Regional Municipality of York, and mitigate possible duplication between The Regional Municipality of York and YRRTC, if or as applicable.

2. Up-to-Date and Comprehensive Governance Policies

“Lack of clarity” was mentioned throughout four interviews, as mentioned.

I rarely see a board without some form of mandate for the board, and position descriptions for the chair of the board, directors and the CEO.

See section 3.4, [here](#), for a board mandate:

“Board Mandate

3.4 The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for:

- (a) to the extent feasible, satisfying itself as to the integrity of the chief executive officer (the President in the case of YRRTC) and other executive officers and that the CEO/President and other executive officers create a culture of integrity throughout the organization;
- (b) adopting a strategic or business planning process and approving, on at least an annual basis, a strategic or business plan which takes into account, among other things, the opportunities and risks of the business;
- (c) the identification of the principal risks of the issuer’s business, and ensuring the implementation of appropriate systems to manage these risks;
- (d) succession planning (including appointing, training and monitoring senior management);
- (e) adopting a communication policy for the issuer;
- (f) the issuer’s internal control and management information systems; and
- (g) developing the issuer’s approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the issuer.²

The written mandate of the board should also set out:

- (i) measures for receiving feedback from stakeholders (e.g., the board may wish to establish a process to permit stakeholders to directly contact the independent directors), and
- (ii) expectations and responsibilities of directors, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.”

...

See section 3.5, [here](#), for position descriptions:

“Position Descriptions

3.5 The board should develop clear position descriptions for the chair of the board and the chair of each board committee. In addition, the board, together with the CEO [President], should develop a clear position description for the CEO [President], which includes delineating management’s responsibilities. The board should also

² “Issuers may consider appointing a corporate governance committee to consider these issues. A corporate governance committee should have a majority of independent directors, with the remaining members being “non-management” directors.”

develop or approve the corporate goals and objectives that the CEO [President] is responsible for meeting.”

Relying on by-laws, legislation, or a shareholder agreement, for the foregoing is inadequate because such drafting normally is general, limiting or permissive in nature, and does not speak to the roles and responsibilities with sufficient precision so as to enhance clarity, drive performance, and reinforce accountability.

Up-to-date, stand-alone, website accessible, and a board-approved mandate and position descriptions establish roles, responsibility and accountability; can guard against drift or over-reach; and can deter dysfunction. The foregoing has been a best practice since the mid 2000s.

Recommendation 2

It is recommended that a suite of governance documents: (i) be developed or updated, as the case may be, under the oversight of the Legal Department and Regional Clerk’s Office (or the equivalents), for recommendation to the Board of YRRTC for review and approval; (ii) include Mandate for the Board, and Position Descriptions for the Board Chair, Vice Chair, individual Directors, and the President; and (iii) be disclosed on the governance section of the YRRTC’s website.

3. Independent Director, Competency and Diversity Succession Planning

There was consensus throughout interviews that Independent Directors should be recruited, (i) given best governance practice accorded to the importance of independent directors; (ii) to assist with recruiting desired directorial competencies; (iii) to enhance the diversity of the YRRTC Board; and (iv) to augment general board effectiveness.

I agree with all of these rationales.

It is anomalous not to have some independent director representation on a board of directors, which is to say independent of YRRTC and The Regional Municipality of York.

See the following best practices for independent directors and their recruitment, at sections 3.1, and 3.12 – 3.14, [here](#):

“3.1 The board should have a majority of independent directors.”

...

“3.12 Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:

(A) Consider what competencies and skills the board, as a whole, should possess. In doing so, the board should recognize that the particular competencies and skills required for one issuer may not be the same as those required for another.

- (B) Assess what competencies and skills each existing director possesses. It is unlikely that any one director will have all the competencies and skills required by the board. Instead, the board should be considered as a group, with each individual making his or her own contribution. Attention should also be paid to the personality and other qualities of each director, as these may ultimately determine the boardroom dynamic.

The board should also consider the appropriate size of the board, with a view to facilitating effective decision-making.

In carrying out each of these functions, the board should consider the advice and input of the nominating committee.

3.13 The nominating committee should be responsible for identifying individuals qualified to become new board members and recommending to the board the new director nominees for the next annual meeting of shareholders.

3.14 In making its recommendations, the nominating committee should consider:

- (a) the competencies and skills that the board considers to be necessary for the board, as a whole, to possess;
- (b) the competencies and skills that the board considers each existing director to possess; and
- (c) the competencies and skills each new nominee will bring to the boardroom.

The nominating committee should also consider whether or not each new nominee can devote sufficient time and resources to his or her duties as a board member.”

Recommendation 3

It is recommended that the following shall occur:

- (i) A “Competencies and Skills Matrix” (Matrix) shall be designed by a representative of the Shareholder or an Independent Consultant, to be aligned with the (clarified) Mandate, the Strategic Plan, and the Enterprise Risk Management Framework (or the equivalents) of YRRTC;
- (ii) This Matrix shall apply to each incumbent Director of YRRTC, or incumbent Directors as a class, as the case may be, so as to determine what the desired Competencies and Skills should be of two (2) Independent Directors to be recruited to the YRRTC Board;
- (iii) The retention of an Independent Director Recruitment Firm (or the equivalent) shall occur, to arrive at an evergreen list of between four to six prospective Independent Directors (a) resident in the York Region, (b) possessing one or more desired Competencies and Skills, and, ideally, (c) possessing diversity of background;

- (iv) The Board of YRRTC and The Regional Municipality of York shall receive compensation and legal advice (which could be internal advice, but ideally, would be external and independent advice, including comparator compensation benchmarks for similar independent directors, provided by an independent compensation consultant) on the compensation of the two (2) new Independent Directors for the YRRTC Board; and
- (v) Two (2) Independent Directors shall be recruited for membership on the Board of YRRTC, in addition to the existing Directors on the Board of YRRTC.

4. Enterprise Risk Management Framework

One of the answers to my questions on risk governance was: “The Region does not have a Chief Risk Officer, nor has it implemented Enterprise Risk Management.”

See section 3.4 c of the OSC guidelines, [here](#).

“Board Mandate

3.4 The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for:

- ...
- (c) the identification of the principal risks of the issuer’s business, and ensuring the implementation of appropriate systems to manage these risks;

See, for greater detail, page 7-8 of the OSFI Guideline, [here](#), and Annex B.

It is best practice for a board annually to approve a written enterprise risk management framework for the organization.

Recommendation 4

It is recommended that there shall be a written Enterprise Risk Management Framework (Framework, or the equivalent) that aligns with that of York Region (including corporate services such as IT, HR, Finance, Legal, etc.) and that is reviewed and approved by the Board of YRRTC annually.

This Framework should include (i) the identification and defining of material financial and non-financial risks; (ii) the internal controls to mitigate each of these risks, along with embedded reportable limits for each risk; and (iii) independent assurance (by Audit Services, or a similar independent function such as Compliance) that the design and implementation of the controls are effective.

Information technology should be appropriately invested to track and monitor the risks, controls, limits and reporting up to the Board of YRRTC.

5. In Camera Sessions

It has been a best practice for almost thirty years that a board's directors should meet regularly without management, other employees, or any other stakeholder present. This is known as an "in-camera session," in which the directors may speak in a free-flowing, confidential way about the performance of management, information flow, or any concern that directors may have. This type of session is invaluable for a board to establish a "sense of self" and management accountability.

See section 3.3, [here](#):

"Meetings of Independent Directors

3.3 The independent directors should hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance."

Directors have told me over the years that in camera sessions is the single greatest contributor to board effectiveness.

These sessions have matured over the years, to occur regularly at each Board meeting (only Directors); to include a private session with each of the CEO and CFO; and to include a private session with only the External Auditor.

However, I found that such in-camera sessions did not occur at YRRTC, or if so, did so infrequently or only with the Board Chair. There should be more regularity of such sessions, and many boards have these sessions now at each board meeting (at the beginning, or the end, or both).

Recommendation 5

There is consensus for the foregoing sessions across my interviews, so I am recommending the following, which are also set out in my Mandate Report for YRRTC, at items 11, 12 and 44:

- (i) The Board meet at each regularly scheduled Meeting in an in camera session in the absence of YRRTC Officers or other Staff, other than with the attendance of the representative of the Shareholder (e.g., Chief Administrative Officer) and Regional Clerk.
- (ii) The Board shall meet at each regularly scheduled Meeting in an in camera session with the President only, and no other YRRTC Officer or other Staff, other than with the attendance of the representative of the Shareholder (e.g., Chief Administrative Officer) and Regional Clerk.
- (iii) The Board shall enter into private session periodically with each of the President, the Vice-President Finance and Treasurer, and the External Auditor to ask if each is aware of any incidents or suspected incidents of fraud, in respect of YRRTC.

At the end one or more of the foregoing sessions, within a reasonable period of time, the Board Chair should debrief with the President on any concerns that the Board may have, or the President can be invited back into the meeting for a collective debriefing. The Board Chair should exercise care during the debriefing not to identify any individual Director, but rather speak collectively on the overall sentiment of the Board.

6. Director Orientation and Education

See section 3.6 and 3.7, [here](#):

“Orientation and Continuing Education

- 3.6 The board should ensure that all new directors receive a comprehensive orientation. All new directors should fully understand the role of the board and its committees, as well as the contribution individual directors are expected to make (including, in particular, the commitment of time and resources that the issuer expects from its directors). All new directors should also understand the nature and operation of the issuer’s business.
- 3.7 The board should provide continuing education opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the issuer’s business remains current.”

There is consensus across the interviews that I conducted on the importance of Director orientation and education.

I found that orientation of new, and continuing education of current, Directors were treated reasonably informally, across my interviews and documents reviewed, e.g., a PowerPoint deck and an orientation session. Formal, detailed and customized policies to be followed did not occur. There was no budget allocated to director education opportunities. Director education was not tracked on a per-Director basis.

It is important for a robust and formal orientation and education to occur, given the nature of YRRTC’s operations and the future appointment of Independent Directors.

Recommendation 6

It is recommended that a Director Orientation Policy and Director Education Policy, drafted by a representative of the Shareholder or an Independent Consultant, shall be reviewed and approved by the Board, consistent with best practices, for new and continuing Directors.

The Orientation Policy should address the nature and operation of YRRTC’s business; the legal, regulatory, financial, technological and sustainability environment of YRRTC; the relationship and accountability to the Shareholder; financial reporting; and governance and risks of YRRTC.

Within the Director Education Policy, educational opportunities (external and internal) should be available (with budgetary support) to any Director(s) who wishes to pursue them, including director certification programs, along with offerings for Directors to maintain their competencies and knowledge of YRRTC, and the contribution that they are expected to make.

7. Tailored Conflict of Interest Policy

Real or perceived examples of conflicts of interest were stated during the interviews, together with examples.

Conflicts of interest are also addressed in legislation and by-laws.

Increasingly, boards of directors are having conflict of interest policies to clarify how and when conflicts may arise, and how to identify and manage them.

The word “politicized” was mentioned during the interviews.

Conflicts are not only self-, family- or affiliate-interest of a director, but, with political leaders, a conflict may arise in a company if the director, on a corporate board, is advocating for his or her region or constituency, rather than the best interests of the organization as a whole.

It is regarded as a best practice to have a separate, stand-alone Code or Conflict of Interest Policy, that applies to Directors and sets out the various ways conflicts of interest may occur given the nature of the organization, and if or when so, how to disclose and manage such conflicts of interest.

See for example, section 3.8, [here](#) (underlining below at section 3.8 (a) and 3.9 mine):

“Code of Business Conduct and Ethics

3.8 The board should adopt a written code of business conduct and ethics (a code). The code should be applicable to directors, officers and employees of the issuer. The code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, it should address the following issues:

- (a) conflicts of interest, including transactions and agreements in respect of which a director or executive officer has a material interest;
- (b) protection and proper use of corporate assets and opportunities;
- (c) confidentiality of corporate information;
- (d) fair dealing with the issuer’s security holders, customers, suppliers, competitors and employees;
- (e) compliance with laws, rules and regulations; and

(f) reporting of any illegal or unethical behaviour.

3.9 The board should be responsible for monitoring compliance with the code. Any waivers from the code that are granted for the benefit of the issuer's directors or executive officers should be granted by the board (or a board committee) only.”

Recommendation 7

It is recommended that a stand-alone Conflict of Interest Policy (Policy) shall be reviewed and approved by the Board of YRRTC, (i) applying to Directors, family members of Directors, and affiliates of Directors; (ii) containing examples of conflicts of interest that Directors can expect to, or that Directors may, encounter, whilst serving on the YRRTC Board; (iii) provide for monitoring and enforcement; (iv) provide for a fair process and investigative protocol, if or when needed; and (v) provide a certificate of compliance with the Policy for Directors to acknowledge or sign-off upon regularly.

This Policy should apply to the two (2) new Independent Directors, as well as existing incumbent Directors on the YRRTC Board.

8. In-person Annual Strategy and Governance Retreat

Evidently, the Board of YRRTC has not met in person since the pandemic had started. I am also not aware of an annual retreat, of a day or 1.5 days, whereby Management and the Board meet, in-person, if possible, to review and approve the Strategic Plan for the next year (or the equivalent activity), and receive training and dialogue about governance matters.

An annual board retreat is quite common (indeed it is anomalous not to have it). It forces management and directors to bear down and prepare fully, more than for regular board meetings. A retreat is healthy, and develops chemistry and comradery.

I am not aware of many boards that remain exclusively virtual. There is merit for in-person meeting for interactive work like strategy, at an annual retreat.

A retreat is normally a working day or half day in length (the latter should be the shortest), and frequently includes a dinner on the first evening, or the eve of the retreat, and/or a second morning meeting. Many times, the retreat can occur away from company headquarters, and is planned a year or so in advance so attendance is assured.

Recommendation 8

It is recommended that, subject to more discussion with the Board to determine if they are in agreement with the process and how it can be integrated and coordinated with York Region, and budget implications also to be discussed, (i) an Annual Strategy and Governance Retreat (Retreat) shall be incorporated into the work plan and agenda of YRRTC Board and senior Management, starting in 2024; (ii) the Agenda for this Retreat shall be established by the Board

Chair, the President and the Regional Clerk; (iii) the Retreat shall be mandatory for all Directors and senior Management; and (iv) the Retreat be incorporated by reference into all governance policies, including the Board Mandate, and Position Descriptions for the Board Chair, Vice Chair, Individual Directors and the President.

Ideally, the two (2) new Independent Directors will be able to join the 2024 YRRTC Retreat.

9. Anonymous Reporting of Possible Wrongdoing to the Board

There is no law in Canada, so far as I know, requiring a safe disclosure, otherwise known as a whistle-blowing program, for organizations. However, the foregoing is nonetheless widely regarded as a best governance practice, to enable possible wrongdoing within the organization to reach the board of directors.

The ability of a complainant to reach a board in a protected and anonymous manner with concerns of possible wrongdoing is highly beneficial for state-owned enterprises receiving taxpayer funding, but also more broadly for public companies.

It is especially important for public entities to have whistle-blowing programs because of the public trust.

The cities of [Hamilton](#), [Mississauga](#), and [Toronto](#) have whistle-blowing (or the equivalent nomenclature, whereby possible wrongdoing may be reported) programs. The Regional Municipality of York may not have such a program, I believe, so I recommend one for YRRTC.

Recommendation 9

It is recommended that, in conjunction and in alignment with an overall Whistle-Blowing Policy and Program for York Region, YRRTC shall adopt a Whistle-Blowing Policy and Program (Program) within nine months of this Report, (i) such that a report(s) of possible wrongdoing within YRRTC may reach the Board, or a subset of Directors, anonymously if desired by the complainant, and (ii) using any peer learnings within the above three programs (Hamilton, Mississauga and Toronto) as appropriate.

Such a Program (i) shall provide anonymity to the complainant, (ii) shall be communicated to relevant stakeholders of YRRTC, (iii) shall be anti-retaliatory in nature, and (iv) shall take all reasonable steps to ensure that any report of wrong-doing, if found to be legitimate, is followed up upon by addressing, remedying or curing the wrongdoing, and reporting of such action, conclusion or decision, as the case may be, appropriately to the whistle-blower.

10. Regular Board Assessment

See section 3.18, [here](#):

“Regular Board Assessments

3.18 The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution. An assessment should consider[:]

- (a) in the case of the board or a board committee, its mandate or charter, and
- (b) in the case of an individual director, the applicable position description(s), as well as the competencies and skills each individual director is expected to bring to the board.”

Evaluating board, committee and individual directors began in Canada in 1994 for public companies. Now, many (or most) private, not for profit and state-owned companies have also adopted this practice as a matter of good governance.

Some (albeit a minority) of not for profit organizations or state-owned enterprises make the mistake of foregoing such evaluations. The chief reason is that directorial positions are largely volunteer and/or unpaid or underpaid in nature, implying somehow that directorial duties and obligations are lesser for volunteer positions.

Such evaluation omissions may contribute to the progressive degradation of governance over time because there is no level-setting that comes with an effective evaluation (either self or third-party facilitated, such as within this Report). In addition, courts have held that duties of directors are the same, including for all type of organizations and unpaid directorial positions.

It is beneficial to have some sort of review of a board’s effectiveness from time to time (e.g., every four years, during a term of Council).

Governance assessments are a desirable best practice, and can be done reasonably easily. The key is board leadership, executing the evaluation, and acting on the results.

Recommendation 10

As set out in my Mandate Report at item 14, it is recommended that, every four years, the Board of YRRTC shall, in writing, self-assess any opportunities for development or possible strengthening of governance practices, and act on implementing any governance enhancement as appropriate.

I turn now to specific areas where I am not making any recommendation, and my rationale for refraining from doing so.

Satisfactory Governance Areas and No Recommendations Required

I have found the following governance areas to be satisfactory and performing in nature.

- (i) Strategic Role of the Board: The Board of YRRTC has reviewed and approved the Business Plan of YRRTC, each year in writing, which has included Key Performance

Indicators to measure the achievement of the business plan, and has regularly monitored the achievement of the Business Plan by YRRTC Officers.

- (ii) Audit and Assurance Responsibilities. The Audit Committee of Council has effectively overseen financial reporting, budget recommendation, and oversight of the External Auditors and Audit Services. Audit Services has demonstrated independence and high competency throughout the interviews and in answering questions posed by me.

I have no recommendations in the above two regards.

Governance Report Implementation Matrix

We turn now to the implementation of the above ten Recommendations.

The Corporate Secretary (or the equivalent, e.g., Regional Clerk, or Legal Department) should create a project matrix to facilitate the implementation of the Recommendations, adopted or modified herein.

More specifically and comprehensively, I recommend that the dedicated resource track, via a project map, deliverables for the Board and The Regional Municipality of York for any Recommendation in this Report that is adopted by Board and The Regional Municipality of York.

There should be follow up on implementing the Recommendations that are approved by the Board of YRRTC and The Regional Municipality of York as appropriate within one calendar year.

Validation (including assurance review by Audit Services) of the implementation of governance recommendations should occur, with a report by Audit Services on implementation of governance recommendations provided to the Board of YRRTC and The Regional Municipality of York, within eighteen months of this Report.

Conclusion

The Board of YRRTC should follow up with responding to this Report in writing to The Regional Municipality of York, and addressing the opportunities for governance enhancement identified in the Recommendations within this Report.

Some background, links, and references will now follow.

I have enjoyed my time assisting YRRTC with this Report and will answer any questions that the Board of Directors of YRRTC or The Regional Municipality of York may have.

Sincerely,



cc: Board of Directors, YRRTC

Appendix: Additional Background of Dr. Leblanc

See 2023 Trends and Issues for Boards and Board Committees, here:

<https://mailchi.mp/boardexpert/dr-richard-leblancs-governance-newsletter-16726297?e=edff6e0729>

Dr. Leblanc's work is known for its rigor and grounding in best practice. There are several references and endorsements, including from past board clients and chairs, on his LinkedIn Profile:

<https://www.linkedin.com/in/rwleblanc>

Approach and Methodology

Dr. Leblanc has assisted over 150 boards and organizations over the last twenty years in respect of governance, legal and ethical enhancements. His work has been used in several board reviews and advisory assignments.

A complete listing of organizations benefitting from Dr. Leblanc's expertise can be viewed here:

<http://boardexpert.com/services/why-board-expert/organizations-benefitted-logos/>

Additional background is available at Dr. Leblanc's advisory firm website at

<http://www.boardexpert.com>.

See Dr. Leblanc's short bio:

<http://www.boardexpert.com/Papers/DrLeblanc%20Short%20Bio%202020.pdf>

See a full curriculum vitae of Dr. Leblanc:

<http://www.boardexpert.com/Papers/DrRLeblancCV14January2020.pdf>

See the brochure for Dr. Leblanc's governance consultancy, Boardexpert.com:

<http://www.boardexpert.com/Papers/Boardexpert.com%20Brochure.pdf>

Speaking brochure for Dr. Richard Leblanc:

<http://www.boardexpert.com/Papers/SpeakingBrochureBoardexpert.com.pdf>

Sample Work and Reputation

Dr. Leblanc has authored the seminal book [Inside the Boardroom](#), which sold 6500 copies; [The Handbook of Board Governance](#), which has sold 7,000 copies; and the second edition of [The Handbook of Board Governance](#) (with 61 chapters and 80 authors globally).

Dr. Leblanc is a dynamic speaker who has been called upon to provide his expertise in governance, law and ethics across all sectors and industries. He has authored over [200 publications and reports](#) and given [471 public appearances](#). See his speaking brochure [here](#).

Dr. Leblanc is regularly interviewed in all types of media, and has appeared on television, on radio, in print, and in digital format. Dr. Leblanc's number of lifetime media appearances are 454. See [here](#).

He is Founder and owner of the LinkedIn Groups "[Boards and Advisors](#)," and "[Audit Committees](#)," with 30,000 and 15,000 members globally, which are among the largest online corporate governance groups. His regular newsletter is accessible to 40,000 directors and other governance professionals.

See Dr. Leblanc's book, entitled "The Handbook of Board Governance: A Comprehensive Guide for Public, Private, and Not-for-Profit Board Members":

https://www.amazon.ca/Handbook-Board-Governance-Not-Profit/dp/1119537169/ref=sr_1_1?crid=2WL1BWZKNLA6G&keywords=the+handbook+of+board+governance&qid=1648466536&prefix=The+handbook+of+board+%2Caps%2C63&sr=8-1