

Amended and Restated By-Law No. 4 ("Appeals Process By-law")

Being a by-law relating to the conduct of the affairs of the
Appeals Sub-Committee of
OMERS Administration Corporation

BE IT ENACTED as a by-law of the Corporation as follows:

ARTICLE 1 GENERAL MATTERS

1.1 Interpretation

In this By-law, the following definitions will be used:

- (a) "**the Act**" means the *Ontario Municipal Employees Retirement System Act, 2006* or any statute which may be substituted therefor, including any regulations thereunder, as amended from time to time;
- (b) "**Board of Directors**" means the board of directors of the Corporation; and "Board Member" means a director of the Corporation;
- (c) "**By-law**" means By-law No. 4 of the OMERS Administration Corporation;
- (d) "**Chair**" means in context, the Chair of the Committee or the Chair of a Panel;
- (e) "**Committee**" means the Appeals Sub-Committee as defined by section 2.3 of this By-law;
- (f) "**Corporation**" means OMERS Administration Corporation as continued pursuant to section 32(1) of the Act;
- (g) "**OMERS Pension Plans**" means the primary pension plan, the supplemental plan established by the Corporation as required by the Act and any retirement compensation arrangements that provide benefits for members and former members of the OMERS Pension Plans and such other pension plans as may be established by the Sponsors Corporation;
- (h) "**oral hearing**" means a hearing involving the parties or their representatives attending in person before the Panel, and also means an electronic hearing;
- (i) "**Panel**" means
 - (i) members of the Committee designated under section 2.4(b) who have been selected to hear an appeal; or
 - (ii) the Board of Directors or the person or persons designated by the Board of Directors to hear an appeal, as the case may be, where an appeal is being heard pursuant to sections 2.5 or 3.1 of this By-law;

- (j) **“party”** or **“parties”** means the person or persons defined under section 2.2 of this By-law;
- (k) **“President”** means the President and Chief Executive Officer of the Corporation. Any reference to the President includes a person to whom the President has duly delegated his or her decision-making authority respecting any matter which is the subject of this By-law;
- (l) **“Sponsors Corporation”** means OMERS Sponsors Corporation as established under section 22(1) of the Act;
- (m) **“Vice-Chair”** means in context, the Vice-Chair of the Committee or the Vice-Chair of a Panel.

ARTICLE 2 THE RIGHT TO APPEAL

2.1 Right of Appeal

Any person aggrieved by a determination made by the President, or by the failure of the President to make a determination, relating to benefits under any provision of the OMERS Pension Plans or relating to an approval, consideration or direction to be given or other action to be taken by the President under any provision of the OMERS Pension Plans may appeal to the Board of Directors from such determination or failure to make a determination, and the decision of the Board of Directors is final.

2.2 Parties to an Appeal

- (a) The following persons are parties to an appeal for the purpose of this By-law:
 - (i) persons who have a right of appeal under the OMERS Pension Plans;
 - (ii) persons otherwise by law entitled to be parties to the proceeding; and
 - (iii) persons who in the opinion of a Panel should be parties.
- (b) The Corporation, as represented by appropriate staff may, at its election, be a party to an appeal.

2.3 The Appeals Sub-Committee

- (a) Pursuant to By-law No. 3 of the Corporation, the Board of Directors shall annually form the Appeals Sub-Committee.
- (b) The Board of Directors shall:
 - (i) select seven Board Members to sit as members of the Appeals Sub-Committee; and
 - (ii) select a Chair and a Vice-Chair of the Appeals Sub-Committee from the seven selected members of the Appeals Sub-Committee.
- (c) Notwithstanding this section, any member of an existing Appeals Sub-

Committee hearing an appeal that has already commenced at the time the Board of Directors meets to form a new Appeals Sub-Committee, shall remain a member of the Appeals Sub-Committee for the purpose of hearing that appeal, until such time that the appeal has concluded.

2.4 Delegation to the Appeals Sub-Committee and Panels to Hear an Appeal

- (a) The Board of Directors shall delegate any matter respecting an appeal to the Committee created by the Board of Directors pursuant to section 2.3 of this By-law, in the exercise of the Board of Directors' authority to adjudicate appeals under the OMERS Pension Plans.
- (b) Upon being delegated a matter referred to in section 2.4(a) above, the Chair and Vice-Chair of the Committee shall form a Panel of three members of the Committee to hear the appeal consisting of the Chair, the Vice-Chair and one other member of the Committee.
- (c) If the Chair is unable to participate on a Panel because the Chair may be in conflict for the reasons outlined in section 2.6(a) below, then for the purposes of that appeal (including the formation of the Panel to hear that appeal):
 - (i) the Vice-Chair will serve as Chair; and
 - (ii) the remaining members of the Committee (including the Vice-Chair serving as a Chair for that appeal) shall designate a Vice-Chair.
- (d) If the Vice-Chair is unable to participate on a Panel because the Vice-Chair may be in conflict for the reasons outlined in section 2.6(a) below, then for the purposes of that appeal (including the formation of the Panel to hear that appeal), the remaining members of the Committee shall designate a Vice-Chair.
- (e) If both the Chair and the Vice-Chair are unable to participate on a Panel because they may be in conflict for the reasons outlined in section 2.6(a) below, then for the purposes of that appeal (including the formation of the Panel to hear that appeal), the remaining members of the Committee shall designate both a Chair and a Vice-Chair.

2.5 Reserve Power of the Board of Directors

Notwithstanding section 2.4, the Board of Directors reserves to itself the power to decide any particular appeal or category of appeals or to delegate to a different committee the power to decide any appeal or category of appeals, as the Board of Directors may consider appropriate.

2.6 Resolution of Conflicts

- (a) A member of the Committee shall not participate in a Panel hearing an appeal where, due to the issues involved in the hearing, the participation of that

Committee member in the hearing could give rise to a reasonable apprehension of bias or conflict of interest.

- (b) Where a member of a Panel becomes unable to participate in a hearing after the Panel has started hearing evidence, the Panel may continue with the hearing in the absence of that member.
- (c) Where the Chair or Vice Chair is unable to participate in a hearing after the Panel has started hearing evidence, the remaining members of the Panel shall designate a Chair or Vice Chair, as the case may be, for the remainder of that appeal.
- (d) A hearing shall not proceed with a Panel of less than two members of the Committee.

2.7 Administrative and Logistical Support

A designated staff member who has not been involved in any prior decision-making related to the matter under appeal shall be responsible for providing and co-ordinating administrative and logistical support for a Panel including communication with the parties on behalf of a Panel, exchanging documents between the parties, meeting locations, and similar administrative matters.

2.8 Counsel to the Appeals Sub-Committee

- (a) On the filing of a notice of appeal, or at such other time that it becomes apparent that an appeal is likely to be made, legal counsel shall be retained to provide advice to the Panel formed to hear an appeal. Among other matters, such legal counsel may advise on the following matters:
 - (i) potential conflicts of interest or apprehension of bias,
 - (ii) proper constitution of the Panel,
 - (iii) questions of natural justice or procedural fairness,and any other matters as the Panel determines appropriate for the purpose of the hearing.
- (b) Unless the Panel decides otherwise, legal counsel shall be present during an oral hearing.

ARTICLE 3 PRE-HEARING MATTERS

3.1 Forum for Hearing an Appeal

- (a) The Chair and Vice Chair of the Committee have discretion to refer any matter for appeal to the full Board of Directors if they determine that the issues in dispute are sufficiently important to the administration and management of OMERS Pension Plans that they should be determined by

the full Board of Directors. This provision shall not derogate from the Board of Directors' power referred to in section 2.5 above.

- (b) The determination shall be made after the filing of initial submissions, or at any later date as may be appropriate. If the matter will be heard by the full Board of Directors, the Committee shall advise the parties accordingly.

ARTICLE 4 APPEAL PANEL DECISIONS

4.1 Voting

Voting shall be conducted by a show of hands and decision-making shall occur by a simple majority of all members who were present for the entire appeal.

4.2 Advising Board of Directors of Decisions

The Chair of the Committee shall annually provide the Board of Directors with a brief written summary of the Committee's decisions. These summaries shall be of a general nature and will not include specifics, such as party names, unless requested by the Board of Directors.

ARTICLE 5 RULES RESPECTING PRACTICE AND PROCEDURE

5.1 Rules

- (a) The Board of Directors may make rules, from time to time, regarding practice and procedure before the Committee.
- (b) These rules may be of general or particular application.

Signed by:

C/S

Original executed by:

Original executed by:

Board Chair

Corporate Secretary

Enacted on July 20, 2006

First Amendment and Restatement on April
20, 2007

Second Amendment and Restatement on
December 17, 2008