

## ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

**In the Matter of the Ontario Municipal Employees Retirement System Act, R.S.O.  
1990, c. O-29 (“OMERS Act”)**

**and**

**In the Matter of an Appeal from the Decision of the President  
by “The Appellant” to the Appeals Sub-Committee**

### DECISION

#### **The Appeal**

The Appellant brings this appeal from the decision of the President dated December 21, 2005.

By this appeal, the Appellant, through representations made by her counsel in correspondence dated January 18, 2006 seeks an order overturning the President’s decision and having her declared ‘*the former wife of [Member] and the designated beneficiary under the OMERS Plan*’. It is the position of the Appellant that ‘*Ms. [◆] was not the common-law spouse of [Member], and was not considered by [Member] to be his common-law spouse.*

The appeal proceeded by way of an oral hearing *de novo* held on November 1, 2006 and November 30, 2006, followed by written submissions. Closing submissions were heard on January 24, 2007. Throughout the proceedings the parties were represented by counsel.

The Member was a firefighter with [●] Fire Services. He was an active member of the OMERS Plan when he passed away on February 20, 2005. The central question before the Appeals Sub-Committee was whether Ms. ◆ and the Member had been in a common-law relationship for at least three years prior to his death, and was this relationship still in place at the time of his death.

The governing legislation states as follows:

Under the OMERS Act:

Definitions:

1.(1) In this Act:

...

“spouse” has the same meaning as in the *Pension Benefits Act*.

Under the *Pension Benefits Act*, R.S.O. 1990, Chapter P.8:

1. (1) In this Act:

...

“spouse” means either of two persons who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years,

## **The Facts**

Considerable evidence was presented by respective counsel. However, it was undisputed that some time during 1999, the Member moved in to Ms. ♦’s residence. It is the position of the Appellant that this was a landlady/tenant relationship while Ms. ♦ asserts that they were living together as common-law partners.

The evidence indicates that subsequent to 1999, Ms. ♦ and the Member vacationed together; and attended social and family functions together, including staying overnight at the Member’s parent’s home. Ms. ♦ was in attendance at key meetings involving the Member’s status as a firefighter. In documentation provided from Mr. [■], a representative of the [●] Professional Firefighters Association, she is identified as having lived with the Member for six years and as his ‘partner’. In the weeks prior to his death, Mr. ■ attended Ms. ♦’s residence to return personal effects to the Member. Ms. ♦ was involved in funeral preparations for the Member. She was named in the notice in the newspaper and was given a share of his ashes.

There is also evidence from a number of neighbours as to the nature of the relationship between Ms. ♦ and the Member. Mr. [★], a barrister and solicitor and a neighbour of Ms. ♦, testified that he believed that Ms. ♦ and the Member were in a common-law relationship because of his dealings with the couple and in particular because: 1) the Member was at Ms. ♦’s house all of the time and came and went freely; 2) the Member took care of Ms. ♦’s dog; 3) the Member drove Ms. ♦’s car; and 4) the Member and Ms. ♦ went shopping together. Ms. [◆], a barrister and solicitor and a neighbour of Ms. ♦, also testified that she

believed that Ms. ♦ and the Member were in a common-law relationship because of her observations, interactions with both the Member and Ms. ♦ and a number of conversations that she had with Ms. ♦ where Ms. ♦ clearly indicated that the Member was moving in with Ms. ♦ as part of a long-term commitment.

Based on the totality of all of the evidence, the Appeals Sub-Committee finds that Ms. ♦ and the Member were in a common-law relationship as defined by the OMERS Act and the *Pension Benefits Act*.

The next question before the Appeals Sub-Committee therefore was whether this relationship continued until the Member's death. Evidence was heard from Mr. [✱] and Mr. ■ to the intended effect that either the Member had wilfully moved from Ms. ♦'s residence or that she had evicted him in the weeks prior to the Member's death on February 20, 2005.

The Appeals Sub-Committee heard that the Member was involved in a number of rehabilitation programs over a number of years which involved him leaving Ms. ♦'s residence from time to time. It also heard that the Member would be absent on occasion because of his drinking problems, even taking up residence in a motel on occasion. In each instance, however, the Member returned and resumed residency with Ms. ♦. The Member died in a motel while on a drinking binge.

The evidence was that on two separate occasions in January 2005, Mr. ■ met with the Member to review papers involving his termination agreement from the [●] Fire Services. Both times this occurred at Ms. ♦'s residence and she was present and assisted at the meeting.

In early February 2005, approximately two weeks prior to the Member's death, Mr. ■ attended Ms. ♦'s residence to return some items to the Member. He was not present and Mr. ■ gave evidence that Ms. ♦ stated that the Member no longer resided at her home and the relationship had essentially ended. It is recognized that this evidence was disputed. Ms. ♦ denied Mr. ■'s recollection of this conversation. Ms. ♦ gave evidence that she told Mr. ■ that she did not know where the Member was, but she "didn't throw [Member] out," and that she expected, as in the past, that he would return after a few days.

There was also evidence from Ms. ♦ that the Member was at Ms. ♦'s residence in mid-February 2005 and stayed overnight. Further, there was evidence that Ms. ♦ and the Member had spoken on that occasion with the intent of possibly celebrating their 'anniversary' on February 14<sup>th</sup>. Ms. ♦'s evidence was that the Member was in the home with her when she went to Church on February 13, 2005, but not there when she returned. Shortly thereafter, he was found dead in a motel. Much of his personal belongings and important papers were still in the home Ms. ♦ owns and in which as we earlier found they lived in a conjugal relationship.

Based on all the evidence before us including the evidence of Mr. ■ and Mr. ✱, we are not persuaded that the conjugal relationship between Ms. ♦ and the Member had terminated at the time of his death, and accordingly we dismiss the appeal of the Appellant.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By Order of the Appeals Sub-Committee

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*Frederick Biro*  
*Chair, OMERS Appeals Sub-Committee*

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*Richard Faber*  
*Vice Chair, OMERS Appeals Sub-Committee*

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*Peter Routliff*

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*David Carrington*