

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

**In the Matter of Ontario Municipal Employees Retirement System Act, 2006, S.O.
2006, c. 2 (“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 OMERS made April 12, 2006 denying her claim for spousal survivor benefits under the OMERS Pension Plan in respect of ["Member"], a deceased OMERS member.

This appeal proceeded by way of written hearing *de novo* held on June 20, 2007 and October 25, 2007.

The applicable statutory provisions to this appeal are 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

The OMERS Member was a psychologist employed by [Employer] from September 1, 1984 to June 30, 1992. The evidence provided by the Appellant indicates the Member had been previously addicted to street drugs but had successfully rehabilitated himself. The Member and the Appellant developed a personal relationship and commenced a conjugal relationship in our about 1989.

In the early 1990s, the Member re-developed a dependency on street drugs. The evidence indicates that this second relapse became quite severe. As a result, in 1997, the Appellant moved out of the Member's residence. Subsequently in 1999, when the Member was diagnosed with lung cancer, the Appellant returned to his residence and cared for him during the last few months of his life.

There is no other claim on the Member's survivor benefits, and the Appellant was named as the Member's sole beneficiary in his will.

The initial evidence delivered by the Appellant suggests that her relationship with the Member had not been continuous. The Committee provided the Appellant with an opportunity to deliver further evidence as to any medical reasons why she did not physically live with the Member during his second relapse.

The Appellant delivered further evidence that explained that it was on the advice of the Member's treating physician that the Appellant physically move out of the Member's residence after his second relapse. There is also evidence that suggests that even after moving out, the Appellant continued to support the Member in a number of ways, such as providing him with food and undertaking domestic duties at his residence.

Based on the totality of all of the evidence, the Appeals Sub-Committee finds that the Member and the Appellant were spouses in a common-law relationship as defined by the OMERS Act and the *Pension Benefits Act*, and that this relationship continued until the Member's death.

The Appellant's appeal of the decision made by OMERS dated April 12, 2006 is allowed.

Dated the 30th day of October, 2007.

By Order of the Appeals Sub-Committee

Frederick Biro
Chair

Ann Mulvale
Vice Chair