

**OMERS BOARDS  
2020 COMPOSITION REVIEW  
and  
SC BOARD  
EFFECTIVENESS REVIEW**

*March 23, 2021*

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## 1. Executive Summary

As provided in the Ontario Municipal Employees Retirement System Act, 2006 (the OMERS Act), the OMERS Sponsors Corporation determines the composition of the two Boards that govern the OMERS Plans – the OMERS Administration Corporation (AC) Board and the OMERS Sponsors Corporation (SC) Board. The composition, desired competencies, method for nominating and appointing members and term limits, among other things, were set out in By-Law Nos. 4 and 13<sup>1</sup>.

In 2020, the SC consulted OMERS Stakeholders on these By-Laws, particularly with respect to:

- **Composition of the SC and AC Boards** - Certain organizations have the ability to nominate or appoint Directors to the AC and SC Boards.
- **Weighted Voting** – Certain directors on the SC Board have multiple votes.
- **Super-Majority Voting** – Certain matters require a 2/3 majority vote.
- **Arbitration for disputes relating to Plan change decisions** – By-Law No. 12 provides for disputes regarding certain Plan change decisions to be referred to a third-party arbitrator for resolution.
- **Arbitration for disputes relating to nomination and appointments to the AC Board** – If a sponsor organization and the SC Board cannot agree on a nominee to the AC Board, the dispute can be referred to a third-party arbitrator.

A number of organizations provided input and comments on the above points. On all points, the input was varied.

Having considered the input and the issues more broadly, the SC Board decided to maintain the current composition of the OMERS Boards, the current status of weighted voting, and the existing matters subject to a super-majority vote. With respect to the two types of issues subject to arbitration, the SC Board decided:

- As the SC Board intends to conduct a review in 2021 of the Plan change process currently set out in By-Law No. 12, it would be more appropriate for any changes relating to the arbitration of Plan change disputes to be considered in the context of that broader review of the entire process, rather than independently. Consequently, any possible changes to the arbitration process were deferred to be addressed as part of the broader review.
- The arbitration process relating to the disputes around the nomination and appointment of directors to the AC Board included in By-Law No. 13 (now By-Law No. 4) will be removed for the appointment of directors whose terms commence after January 1, 2022. This is intended to leave the existing arbitration process in place for directors in the current nomination/appointment process.

The purpose of this report is to outline the changes that were considered, the conclusions reached by the SC Board, and the related rationale. The By-Laws are available at [www.omers.com](http://www.omers.com).

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<sup>1</sup> Subsequent to the Composition Review, By-Laws No. 4 and 13 were revised and renumbered as By-Laws No. 3 and 4, respectively, effective February 23, 2021. The current versions of the By-Laws are available in the SC's Governance Manual at [www.omers.com](http://www.omers.com) *[link]*

## 2. Distinctions between the Two OMERS Boards

The two OMERS Boards each have distinct roles and responsibilities reflective of their unique purpose within the overall governance of OMERS.

The SC is responsible for the design of the benefits provided by the OMERS Pension Plans and the contribution rates applicable to its members and employers. The SC also determines the composition of the two OMERS Boards. The SC provides for strategic oversight and decision-making on major policy directions. SC Directors owe a fiduciary duty to the OMERS Sponsor Corporation, not to any one stakeholder organization or interest group regardless of who appoints them.

The AC is accountable for the day-to-day operations of the Plan, including the management and strategy for investment portfolios, paying pension benefits, collecting contributions and ensuring compliance with legislation such as those governing actuarial valuations. The AC Board has a fiduciary responsibility in the sense that it must act only in the interests of Pension Plan members as a whole and hence in fiduciary matters must maintain independence from Sponsors.

These distinctions in purpose lead to differences in the two Boards. While both Boards must have an understanding of the stakeholder environment as well as the capacity<sup>2</sup> to consider the complex issues that come before them, the focus and emphasis is different for the two Boards. The differences:

- By-Law No. 4 (formerly No. 13) imposes capacity requirements for AC Directors and contemplates that competencies will be developed for the AC Board as a whole, influencing appointments.
- Similarly, AC Directors are limited to sitting four terms on the AC Board to ensure the AC Board evolves with the pension and investment environment.
- For the SC Board there is a greater emphasis and need for a deep understanding of stakeholder interests and long-term strategic considerations relating to Plan design. Nevertheless, in 2020, the SC Board decided to impose the same twelve year maximum term limits on itself as were imposed for the AC Board. Renewal and new thinking are important, balanced against a term that is sufficiently long to provide for continuity and institutional knowledge. In addition, the SC Board developed a competency framework setting out the skills, knowledge and experience that the SC Board believes it needs to meet its obligations, and is using this framework in its discussions with sponsors and in developing its education program.
- The AC Board has an independent chair which reflects the importance of the AC Board acting independent of Sponsors. In 2020, taking effect on January 1, 2021, the SC Board adopted a single Chair model, supported by a Vice-Chair, rather than the Co-Chair model it had in place since 2006. While the SC Board recognizes the fundamental importance of the OMERS Pension Plans as jointly sponsored by employees and employers, it determined that it would operate more effectively with a single Chair approach.

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<sup>2</sup> See the governance manuals of the respective organizations at [www.omers.com/omers-governance](http://www.omers.com/omers-governance).

The greater emphasis on considering stakeholder interests at the SC Board also leads to other more minor distinctions between the composition of the OMERS Boards as follows:

- CUPE Ontario appoints one SC Director, with an additional SC Director being appointed by CUPE 416 and CUPE 79 in rotation. CUPE Ontario nominates to two seats on the AC Board.
- The SC Board uses weighted voting with each AMO appointee having two votes, and the CUPE Ontario appointee having three votes. This structure was reviewed as part of the composition review and will be discussed further below.
- Pursuant to subsection 26(1) of the OMERS Act, the absence of an SC Director is considered a negative vote for purposes of a vote on a matter. This creates challenges for matters requiring a 2/3 vote as the absence of even a single director can impact a vote. In contrast, votes at the AC Board are based on the majority of votes cast.

There was no change to this distinction coming from the 2020 composition review.

### 3. Composition of the OMERS Boards

At the inception of the current governance model in 2006, the Ontario government appointed the initial Directors of the two OMERS Boards, which provided the SC with a period of time to develop By-Laws for subsequent appointments. In the ensuing years, the SC reached agreement on the composition and appointment process for the SC and AC Boards and laid out the details in now By-Laws No. 3 and No. 4, respectively (formerly No. 4 and No. 13). The composition of the OMERS Boards developed by the SC for the two Boards was generally consistent with the approach taken by the Ontario government in 2006.

The following organizations have the ability to nominate or appoint Directors to one or both of the OMERS Boards. These organizations are referred to as Sponsor Organizations.

Organization	Notes
Association of Municipalities of Ontario (AMO)	2 to each of SC and AC
Canadian Union of Public Employees (Ontario) (CUPE)	1 to SC, 2 to AC
Locals 79 and 416 of the Canadian Union of Public Employees (CUPE 79, CUPE 416)	1 to SC, rotating between the organizations
Electricity Distributors Association (EDA)	1 to each of SC and AC
Ontario Association of Children's Aid Societies (OACAS)	1 to each of SC and AC
Ontario Association of Police Services Boards (OAPSB)	1 to each of SC and AC
Ontario Catholic School Trustees' Association (OCSTA) and Ontario Public School Boards' Association (OPSBA)	1 to each of SC and AC, rotating between the organizations
Ontario Professional Fire Fighters Association (OPFFA)	1 to each of SC and AC
Ontario Public Service Employees Union (OPSEU)	1 to each of SC and AC
Ontario Secondary School Teachers' Federation (OSSTF)	1 to each of SC and AC
Police Association of Ontario (PAO)	1 to each of SC and AC
The Retiree Group <sup>3</sup>	1 to each of SC and AC
The City of Toronto	1 to each of SC and AC

<sup>3</sup> Comprised of Ontario Retired Fire Fighters Association, Municipal Retirees Organization Ontario, Police Pensioners Association of Ontario, and/or such other Ontario municipal employee retiree organizations as may be designated by majority vote of the SC Board from time to time.

An equal number of member and employer organizations nominate or appoint to each of the OMERS Boards. The AC Board has an additional seat dedicated to an Independent Chair that is appointed in a joint process involving both OMERS Boards.

In 2006, the Ontario Government also enacted the *OMERS Review Act, 2006* which mandated a review of OMERS governance in 2012 considering the experience during the intervening years. In 2012 Mr. Tony Dean conducted the *Ontario Municipal Employees Retirement System (OMERS) Review 2012 (2012 Review)* on behalf of the Ministry of Municipal Affairs and Housing. Mr. Dean consulted both with Stakeholders and OMERS in conducting his review. In 2013 the Minister of Municipal Affairs and Housing released the related report (Dean Report) which addressed the appropriateness of the composition of the two OMERS Boards.

The report supported the composition of the OMERS Boards. First, it indicated that the process put in place by the SC works practically and is a reasonable effort to ensure that those groups representing the largest number of employers and employees are at the Board table. Second, it noted that there was no compelling information suggesting that the current representational mix on the Boards has resulted in inequities or unfairness in relation to those groups with no direct affiliation with Sponsor Organizations. Since then, OMERS has made significant efforts to engage those groups to ensure they are heard and their issues considered, and the SC Board determined in subsequent composition reviews that these conclusions continue to be valid.

#### 4. Sponsor Organizations

The Sponsor Organizations have been selected from OMERS diverse stakeholder organizations based on the following guiding principles that were adopted at the commencement of the 2020 composition review:

- **Equality between the number of employer and member representatives** - Both perspectives are important and neither group should have more influence than the other. This is a core principle in the OMERS Act and recognizes the jointly sponsored, jointly funded and jointly governed characteristics of OMERS.
- **Proportionality based on headcount** - Board representation should primarily be allocated to organizations in proportion to the number of active members they represent or employ, with due recognition towards liability exposure;
- **Board effectiveness, efficiency, and fairness** - It is in the best interest of OMERS and all Plan members that the Boards be effective and efficient, that large boards are more cumbersome, and that fairness does not require that every group have its own representative; and
- **Sector Representation** – To the extent possible, it is desirable for the Boards to reflect important sectors having distinct characteristics, including meaningful retiree representation.

The principles compete with each other and the complexity of OMERS environment brings further challenges to applying them. In contrast to other jointly sponsored pension plans, OMERS members and their employers are a very diverse group. There are 1,000 employers and more than 40 unions and associations, not to mention a significant number of members who are not affiliated with any union or

association. This is further complicated by the relative size of these organizations, most of which are relatively small.

The SC Board recognized that a trend towards more part-time workers is impacting the workplace. Although no changes are required at this time, the SC Board recognized that it will have to consider the impact of increased numbers of part-time workers in the future. This informed the decision to include a reference to liability exposure in the principles that guided the composition review, recognizing the overall guiding principles of equality and proportionality based on membership numbers. The SC Board realized that it is important to ensure that it is working with the highest quality data, and so it decided to engage in a review of relevant data relating to affiliation, working with its colleagues at the AC, which collects data on OMERS Plan membership in the course of administering the Pension Plans.

In any composition review, a key challenge is balancing limits to the size of the OMERS Boards so they remain effective, while staying true to the other principles. With 14 and 15 members each, the OMERS Boards are large and the SC continues to believe they would be less effective were they to grow in size. This is particularly important for the SC where the OMERS Act imposes a two-thirds threshold for significant votes, and considers the vote of absent members as negative.

The employer Sponsor Organizations, the Association of Municipalities of Ontario, City of Toronto, Police Services Boards, Electricity Distributors Association, School Board Associations, and the Association of Children's Aid Societies, employ directly, or indirectly, 90% of the employees that are members of OMERS. The remaining 10% of employees are spread amongst numerous smaller employers.

For employee Sponsor Organizations, Canadian Union of Public Employees (CUPE Ontario, and locals 79 and 416), the Ontario Professional Fire Fighters Association, the Ontario Public Service Employees Union, the Ontario Secondary School Teachers Federation and the Police Association of Ontario represent 66% of active members.

The SC is of the view that adding additional seats to the Board to expand 'coverage' would be counterproductive.

The SC Board has long grappled with the issue of dealing with OMERS Plan members who are not part of the sponsor organizations referenced above. This has been an issue in all of the previous composition reviews.

The members that are not directly represented on the OMERS Boards are comprised of two groups.

The first group consists of management and non-union members. This group amounts to approximately 60,000 members. The majority of these members are not affiliated with any organization, and those that are, are spread amongst organizations each having a limited number of members in OMERS.

Within the management and non-union group the issue is complex. There are a number of professional organizations whose membership comprise a relatively small number of the total members<sup>4</sup> within this space. Furthermore, the SC is concerned that, for most of these professional organizations, when an individual becomes a member of the organization they are not giving the organization any authority or accountability for addressing employment issues on their behalf<sup>5</sup>, such as one does by choosing to become a member of a union.

The second group of members not directly represented on the OMERS Boards consists of members represented by unions each of whom has a relatively small number of OMERS members, and do not meet the size threshold for a seat. In total, this group amounts to approximately 38,000 members. While the agency challenge does not exist amongst this group, members belong to one of numerous unions, each of which represents a small number of OMERS members.

In past reviews, the SC Board decided that dedicating a seat on the OMERS Boards to accommodate these groups would not provide for enhanced representation, and the SC Board did not revisit this question in this review. The factors leading to the previous decision continue to apply:

- Providing a seat would come at the cost of either increasing the size of the Board by at least two members (the balance of employer and employee representatives must be preserved) or by taking a seat from one of the existing employee Sponsor Organizations, each of whom have clear agency and scale, or from the Retirees. The SC continues to believe this option would be counterproductive and would impact the effectiveness and efficiency of the OMERS Boards.
- Sharing an existing seat is far from ideal. For example, rotating a seat amongst such a large number of organizations would have very little added representative benefit and could harm the effectiveness of the Board if it creates frequent, undesirable turnover.
- Even if a satisfactory process could be created to appoint a Director to the Board on behalf of unaffiliated members, that Director would have no mechanism to ensure that they hear the voices of the diverse members they are meant to represent or any accountability for doing so. It is likely more efficient and effective to establish a process whereby OMERS can engage and seek input from all of these groups directly.

As such the SC is of the view that having selected the largest organizations with a clear accountability to their members<sup>6</sup> for pension related matters, the current composition of the OMERS Boards continues to be appropriate. As noted in the prior section, the current composition and principles are generally consistent with the conclusions from the Dean Report and previous composition reviews conducted by the SC Board.

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<sup>4</sup> Estimated at fewer than 10,000 members, although membership in these organizations is not exclusive and this estimate may double count individuals who are in more than one organization.

<sup>5</sup> COTAPSA is the one professional organization which has such a mandate, but it is relatively small when compared to the size of the total management and non-union group.

<sup>6</sup> The Sponsor Organizations are the largest stakeholder organizations regardless of agency issues.



OMERS firmly believes that their views and the unique perspectives of its stakeholder groups are important and, as such, there is a continuing need to find a way to give them a greater voice to provide input and to dialogue with OMERS on important issues.

## 5. Other Stakeholders

Given the large number of Stakeholders, not every group can have a presence on the OMERS Boards. It is critical then that OMERS puts in place measures to ensure it is fully aware of the entire breadth of the stakeholder environment to ensure those perspectives are considered in its decision-making. SC Directors owe a fiduciary duty to the OMERS Sponsor Corporation, not to any one stakeholder organization or interest group regardless of who appoints them. Making sure OMERS is aware of the interests of all Stakeholders is very important.

The purpose of the enhanced engagement is to engage with unaffiliated organizations at key points in OMERS decision-making process to ensure they are heard and their issues considered.

OMERS continues to use a multi-pronged approach to meet with as many smaller unions and professional organizations from the management and non-union space as possible, with both direct one-on-one meetings and stakeholder forums. These efforts are based on:

- expanding the invitees to include leaders from small unions whose membership comprises at least 0.5% of OMERS members<sup>7</sup>; and
- ensuring targeted and meaningful engagement on the right issues and at the right time. This involves formalizing a schedule of meetings to ensure engagement and input at the appropriate times such as during the SC's Plan change decision-making process.

This process was used in the 2020 Plan change process where OMERS engaged with stakeholder groups (smaller unions and management/non-union organizations) in a series of forums to take the Stakeholders through the process and get their input. The COVID-19 pandemic created a number of logistical hurdles but the level of engagement through video conferences was high.

In addition, OMERS more broadly has embraced the need to enhance its communication and engagement with all members and employers. These efforts are also important since access to information provides more effective engagement.

In addition to the comments provided by the sponsor and stakeholder community, the SC Board received comments from the AC Board on the nomination and appointment process for AC Board members, particularly relating to clarifying and aligning the competency framework process that the AC Board uses to identify the skills, knowledge, experience and attributes that it believes it needs to meet its obligations, and how the SC Board uses the competency framework in its decision-making process.

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<sup>7</sup> To keep the size of the meetings manageable, the SC has decided to invite small unions and associations above the noted threshold. However, the SC will not exclude any of the smaller unions and associations if they wish to participate.

## 6. Board Effectiveness

In addition to the key issues relating to composition of the two Boards, the SC Board decided to deal with several other governance items, as more particularly identified below:

- **The Plan Change Process** – The SC Board sought input into the process by which Plan changes are proposed, evaluated, and decided.
- **Weighted and 2/3 Majority Voting** – Weighted Voting applies to substantially all matters, and 2/3 majority voting to a number of matters in addition to Plan design changes. Consideration was being given to using weighted voting and 2/3 majority votes for Plan design issues only and move to regular voting for the regular business of the SC Board. The OMERS Act requires that Plan design changes be made with a 2/3 majority vote, so this was not a matter under consideration.
- **Arbitration Provisions** – There were two arbitration processes in the SC’s by-laws, the first relating to resolving disputes with respect to Plan design decisions where the SC Board is unable to achieve a 2/3rds majority for decisions on proposed Plan changes, and the second relating to disputes regarding the appointment of directors to the AC Board, where a Sponsor organization and the SC Board cannot agree on the nomination and appointment of a candidate to the AC Board. Neither process has been used, though the arbitration provision relating to Plan changes has been considered prior to the SC Board being able to reach a decision without requiring its use.

In the end, as stated above, the SC Board decided to maintain the current composition of the OMERS Boards, to maintain the current status of weighted voting, and to the maintain the existing matters subject to a super-majority vote, as the current composition is generally fair, and the other two governance processes continue to work effectively and achieve their intended results.

With respect to the two types of issues subject to arbitration, the SC Board decided:

- As the SC Board intends to conduct a review in 2021 of the Plan change process currently set out in By-Law No. 12, it would be more appropriate for any changes relating to the arbitration of Plan change disputes to be considered in the context of that broader review of the entire process, rather than independently. Consequently, any possible changes to the arbitration process were deferred to be addressed as part of the broader review.
- The arbitration process relating to the disputes around the nomination and appointment of directors to the AC Board included in By-Law No. 13 (now By-Law No. 4) will be removed for the appointment of directors whose terms commence after January 1, 2022. This is intended to leave the existing arbitration process in place for directors in the current nomination/ appointment process. The SC Board decided that a decision relating to the appointment of a director was fundamental to its fiduciary duty to the best interest of the OMERS Pension Plans and should not be deferred to a third party. In the end, the SC Board and the relevant sponsor organization will have to work it out between them.

## 7. Conclusion

The SC Board has conducted three composition reviews on a three-year cycle. Recognizing that trends in composition move relatively slowly, the SC Board decided to change its composition reviews to a five-year cycle. These reviews consume a great deal of effort by both the SC Board and our Sponsors and Stakeholders. If a compelling interest arises to consider an issue in the interim, the SC Board can decide to do so but otherwise will base its work on the new five-year cycle.

We would like to take this opportunity to thank all of our Sponsor and Stakeholder organizations for their thoughtful contributions. It is clear that all of you remain committed to making OMERS as effective as possible for our Plan members, and we appreciate your continued dedication.