

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

In the Matter of an Appeal from the Decision of the President by “the Appellant” to the Appeals Sub-Committee Heard October 25, 2006

DECISION

The Appellant brings this appeal from the decision of the President dated April 12, 2006 made pursuant to section 4(2) of the *OMERS Act*, R.R.O. 1990, Regulation 890.

By this appeal, the Appellant seeks a determination from the Appeals Sub-Committee that she is entitled to spousal survivor benefits from the Plan.

The appeal proceeded by way of a written hearing *de novo* on October 25, 2006. The Appeals Sub-Committee considered the written submissions from the Appellant and evidence submitted by Staff including the Minutes of Settlement from the divorce of the Appellant and her husband [the Member].

The facts are as set out below:

- The Member retired on June 30, 1987 and began receiving pension payments on July 1, 1987.
- After their separation, through Minutes of Settlement executed on June 23, 2004 and July 21, 2004, the Appellant and the Member agreed to split the Member’s OMERS monthly pension equally starting on July 1, 2004 and ending at the time of the Member’s death.
- The Divorce Order was finalized on April 12, 2005.
- The Member passed away on July 2, 2005.

The Appeals Sub-Committee considered the relevant statute in effect at the time of the Member’s retirement, namely, the *Ontario Municipal Employees Retirement System Act*, R.S.O. 1980, c. 348 (the “OMERS Act”) and *Ontario Municipal Employees Retirement System Act, Regulation 724* (the “OMERS Regulation”).

The OMERS Regulation in effect at the time of the Member's retirement provided:

s.14(1) A pension is payable under this section on the death of a member before or after the commencement of her or his pension,

(a) to the widow or widower of the member who last married or who is deemed to have last married the member before the member's pension became payable; and

The OMERS Act provided:

(u) 'widow' or 'widower' includes a woman or man who,

establishes to the satisfaction of the Board that she or he had, for a period of not less than seven years immediately prior to the death of a member with whom she or he had been residing and with whom by law, she or he was prohibited from marrying by reason of a previous marriage either of the member or of herself or himself to another person, been maintained and publicly represented by the member as her husband or his wife, or

establishes to the satisfaction of the Board that she or he had, for a number of years immediately prior to the death of a member with whom she or he had been residing, been maintained and publicly represented by the member as her husband or his wife, and that at the time of the death of the member, neither she or he nor the member was married to any other person.

It is clear from the evidence that the Appellant and the Member separated and divorced prior to the death of the Member. Applying the law in place at the time of the Member's retirement, the Appellant does not meet the requirement to be eligible for spousal benefits.

For this reason, the appeal of the Appellant is dismissed and the decision of the President is upheld.

Dated this _____

By Order of the Appeals Sub-Committee

Frederick Biro
Chair

Richard Faber
Vice Chair