

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 the President of OMERS made September 12, 2006 denying his claim for survivor benefits under the OMERS Pension Plan (the “Plan”) in respect of his mother, 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:

1.
...
Interpretation, pension matters
- (2) Words and expressions used in this Act that relate to pension plans and pension funds have the same meaning as under the *Pension Benefits Act*, unless the context requires otherwise.

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 Member was a member of the Plan when she passed away on May 16, 2000. In 2001, OMERS determined that Mr. [★] and the Member were common-law spouses and subsequently spousal survivor benefits were paid to Mr. [★] under the Plan.

In November 2005, the Appellant contested this finding, and claimed that Mr. [★] and the Member were not common-law spouses as defined by the Plan. It is the Appellant’s position that he should be entitled to be paid survivor benefits as the Member’s named beneficiary under the Plan. The President of OMERS denied the Appellant’s claim.

Both Mr. [★] and the Appellant provided documentary evidence in support of their positions. This included copies of receipts, correspondence and affidavit evidence. The preponderance of evidence indicates that that Mr. [★] and the Member were in a common-law relationship. However, the question of whether their common-law relationship was continuous up to the time of the Member’s death was raised by documentation that indicated that prior to her death, she lived in her own residence, physically separate from Mr. [★].

On this point, the Appellant’s evidence was that his mother [the Member] had her own apartment and was living with the Appellant throughout the time period that the common-law relationship was said to exist.

Mr. [★]’s evidence was that for the time period in question, he was recovering from triple bypass surgery, and he could not physically reside with the Member because he was incapable of caring for the Member. Mr. [★] was provided with an opportunity to deliver additional evidence confirming his physical inability to care for the Member at this time. The Appellant was also provided with an opportunity to respond to further evidence on this point delivered by Mr. [★].

Mr. [★] delivered further evidence that both substantiated the timing of his surgery and his subsequent physical inability to care for the Member.

Based on the totality of all of the evidence, the Appeals Sub-Committee finds that Mr. [★] and the Member 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 the President of OMERS dated September 12, 2006 is dismissed.

Dated the 30th day of October 2007.

By Order of the Appeals Sub-Committee

Frederick Biro
Chair

Ann Mulvale
Vice Chair