

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 February 2, 2006**

DECISION

The Appellant brings this appeal from the decision of the President dated April 29, 2005 made pursuant to section 4(2) of the *OMERS Regulation*.

By this appeal, the Appellant seeks to be “made whole” by seeking an order:

- (i) Requiring OMERS to credit the Appellant’s Employer’s OMERS account with a sum equal to the amount that the Employer is seeking in repayment from the Appellant to cover the costs of the employee contributions, and the interest charges on those contributions that it made to the [●] Pension Plan on the Appellant’s behalf; or,
- (ii) (In the alternative), that OMERS pay the Appellant damages equal to that amount to compensate her for the damages she suffered as a result of the error by OMERS staff.

The appeal proceeded by way of a written hearing *de novo* on February 2, 2006. The Appeals Sub-Committee considered the written submissions filed by respective counsel on behalf of the Appellant and OMERS Staff. The Appeals Sub-Committee accepted for consideration the late submission filed by counsel on behalf of the Appellant dated November 30, 2005.

The Appellant was enrolled for a period of 33 months in the OMERS Pension Plan. Both prior and subsequent to this, the Appellant was a member of the [●] Pension Plan. The Appellant was subject to retroactive amendments applicable to the [●] Pension Plan, the effect of which was to render the Appellant a member of the [●] Pension Plan and not a member of OMERS throughout the entire period of her employment including the 33 months in which she had previously been a member of the OMERS Pension Plan.

We agree with the submissions of the President that the enactment of the [●] Pension Plan amendment requires that the [●] Pension Plan, OMERS, the Appellant and the Appellant's Employer proceed on the basis that the Appellant was for all purposes a [●] Pension Plan member, not an OMERS member during the 33 months in question. Given that the Appellant made no contributions to OMERS during the 33 month period, as a result of the contribution holiday in effect at the time, there are no contributions which could be returned to her from the OMERS Fund. There is nothing required from OMERS in order to "make [the Appellant] whole". While we are sympathetic to any hardship the Appellant faces, there is no factual or legal basis upon which a transfer of funds from OMERS to the Appellant's Employer should be made.

As well, although not necessary to this decision, we are of the view that there is no legislative or regulatory authority which would allow us to order the OMERS President to transfer monies from OMERS to the Appellant's Employer's OMERS Account as requested by the Appellant.

With respect to the alternate relief sought by the Appellant, i.e. an award of damages, the Appeals Sub-Committee has neither the jurisdiction nor the authority to award damages of the nature requested by the Appellant.

For the foregoing reasons, we dismiss the appeal of the Appellant.

Dated this sixteenth day of February, 2006.

By Order of the Appeals Sub-Committee

Peter Routliff
Chair

Ann Mulvale
Vice Chair