

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 December 21, 2005 made pursuant to section 4(2) of the *OMERS Act*, R.R.O. 1990, Regulation 890 (the “OMERS Regulation”).

By this appeal, the Appellant seeks a determination from the Appeals Sub-Committee that he 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 the Respondent [the Member’s Daughter acting on behalf of the Member’s Estate] and documents, statements and declarations submitted by each.

The facts are as set out below:

- The Member was an active member of the OMERS Plan.
- The Member passed away on December 8, 2004 prior to her retirement.
- The Appellant, in a letter dated April 18, 2005, addressed to [OMERS Pension Analyst], claimed to be the common-law spouse of the Member.

The *Pension Benefits Act* defines spouse as follows:

“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, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*; (“conjugal”).

Under the OMERS Regulation, a pension is payable on the death of the member before the commencement of his or her pension to the surviving spouse if the spouses were not living separate and apart on the date of the member's death.

There are no children natural or adoptive from this relationship. As a consequence, the bulk of evidence presented by both the Appellant and the Respondent was to either demonstrate that a conjugal relationship existed for a period of at least three years, or it did not, and that they were living separate and apart at the time of the Member's death, or were not.

Numerous documents were presented by both parties. The preponderance of credible evidence demonstrated that during the three-year period prior to the Member's passing (December 8, 2001 - December 8, 2004), the Member lived at three different residences, one of which was a residence shared with the Appellant. It further demonstrated that during this period, the Member chose to move from one residence to another, for a significant period of time, instead of moving back to a shared residence with the Appellant. The Appellant's documents and submissions, when considered with all the evidence, would not persuade an objective party on the balance of probabilities that the parties were living as spouses for a continuous three-year period. In addition, the preponderance of evidence indicated that the parties lived separate and apart at the date of the Member's death.

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