

# Amended and Restated By-Law No. 4 ("Appeals Process By-law")

## Being a by-law relating to Appeals to the Board of Directors of the OMERS Administration Corporation

**BE IT ENACTED as a by-law of the Corporation as follows:**

### **ARTICLE 1** **GENERAL MATTERS**

#### **1.1 Interpretation**

In this By-law, the following definitions will be used:

- (a) **"the Act"** means the *Ontario Municipal Employees Retirement System Act, 2006* or any statute which may be substituted therefor, including any regulations thereunder, as amended from time to time;
- (b) **"Board of Directors"** means the board of directors of the Corporation; and **"Board Member"** means a director of the Corporation;
- (c) **"By-law"** means By-law No. 4 of the Corporation;
- (d) **"Chair"** means in context, the Chair of the Committee or the Chair of a Panel;
- (e) **"Committee"** means the Appeals Committee as defined by section 2.3 of this By-law;
- (f) **"Corporation"** means OMERS Administration Corporation;
- (g) **"OMERS Pension Plans"** means the OMERS Primary Pension Plan, the OMERS Supplemental Pension Plan for Police, Firefighters and Paramedics, and any retirement compensation arrangements that provide benefits for members and former members of the OMERS Pension Plans;
- (h) **"Panel"** means
  - (i) members of the Committee designated under section 2.4(b) who have been selected to hear an appeal;
  - (ii) members of the Committee designated under section 4.2 of the *Statutory Powers Procedure Act* to hear a procedural or interlocutory matter in an appeal; or
  - (iii) the Board of Directors or the person or persons designated by the Board of Directors to hear an appeal, as the case may be, where an appeal is being heard pursuant to sections 2.5 or 3.1 of this By-law;
- (i) **"party"** or **"parties"** means the person or persons defined under section 2.2 of this By-law;

- (j) “**President**” means the President of the Corporation. Any reference to the President includes a person to whom the President has duly delegated his or her decision-making authority respecting any matter which is the subject of this By-law.

## **ARTICLE 2 THE RIGHT TO APPEAL**

### **2.1 Right to Appeal**

Any person aggrieved by a determination made by the President, or by the failure of the President to make a determination, relating to benefits under any provision of the OMERS Pension Plans or relating to an approval, consideration or direction to be given or other action to be taken by the President under any provision of the OMERS Pension Plans may appeal to the Board of Directors from such determination or failure to make a determination, and the decision of the Board of Directors is final.

In exercising its authority to adjudicate appeals under the OMERS Pension Plans, the Board of Directors will make an independent determination of the matter being appealed.

### **2.2 Parties to an Appeal**

- (a) The following persons are parties to an appeal for the purpose of this By-law:
  - (i) persons who have a right of appeal under the OMERS Pension Plans;
  - (ii) persons otherwise by law entitled to be parties to the proceeding; and
  - (iii) persons who in the opinion of a Panel should be parties.
- (b) The Corporation, as represented by appropriate staff will, at its election, be a party to an appeal.

### **2.3 The Appeals Committee**

- (a) Pursuant to By-law No. 3 of the Corporation, the Board of Directors will annually form the Appeals Committee.
- (b) The Board of Directors will:
  - (i) select at least three Board Members to sit as members of the Committee; and
  - (ii) select a Chair from the selected members of the Committee.

### **2.4 Delegation to the Committee and Panels to Hear an Appeal**

- (a) The Board of Directors will delegate any matter respecting an appeal to the Committee created by the Board of Directors pursuant to section 2.3 of this By-law, in the exercise of the Board of Directors’ authority to adjudicate appeals under the OMERS Pension Plans.

- (b) Upon being delegated a matter referred to in section 2.4(a) above, the Chair of the Committee will form a Panel of three members of the Committee to hear the appeal consisting of the Chair and two other members of the Committee.
- (c) If the Chair is unable to participate on a Panel because the Chair may be in conflict for the reasons outlined in section 2.6 below, then for the purposes of that appeal (including the formation of the Panel to hear that appeal), the remaining members of the Committee will designate a Chair.
- (d) If one or more of the remaining members of the Committee are unable to participate on a Panel because they may be in conflict for the reasons outlined in section 2.6 below, such that a Panel consisting of three members of the Committee cannot be formed to hear the appeal, the Chair will refer the matter to the Board of Directors pursuant to section 3.1 of this By-law.
- (e) If the Chair is unable to participate on a Panel for any reason other than conflict for the reasons outlined in section 2.6 below, then for the purposes of that appeal, the Chair will select another member of the Committee to act as Chair.
- (f) Notwithstanding this section, any member of an existing Committee hearing an appeal that has already commenced at the time the Board of Directors meets to form a new Committee, will remain a member of the Committee for the purposes of hearing that appeal, until such time that the appeal has concluded.

## 2.5 Reserve Power of the Board of Directors

Notwithstanding section 2.4, the Board of Directors reserves to itself the power to decide any particular appeal or category of appeals or to delegate to a different committee the power to decide any appeal or category of appeals, as the Board of Directors may consider appropriate.

## 2.6 Resolution of Conflicts

A member of the Committee will not participate in a Panel hearing an appeal where, due to the issues involved in the hearing, the participation of that Committee member in the hearing could give rise to a reasonable apprehension of bias or conflict of interest.

## 2.7 Incapacity of Panel Member

- (a) Where a member of a Panel becomes unable to participate in a hearing after the Panel has started hearing evidence, the Panel may continue with the hearing in the absence of that member and the remaining members may complete the hearing and give a decision.
- (b) Where the Chair is unable to participate in a hearing after the Panel has started hearing evidence, the remaining members of the Panel will designate a Chair for the remainder of that appeal.
- (c) A hearing will not proceed with a Panel of less than two members of the Committee.

## 2.8 Administrative and Logistical Support

A designated staff member who has not been involved in any prior decision-making related to the matter under appeal will be responsible for providing and coordinating administrative and logistical support for a Panel including communication with the parties on behalf of a Panel, exchanging documents between the parties, meeting locations, and similar administrative matters.

## 2.9 Counsel to the Committee

- (a) On the filing of a written request for appeal, or at such other time that it becomes apparent that an appeal is likely to be made, independent legal counsel will be retained to provide advice to the Panel formed to hear an appeal. Among other matters, such independent legal counsel may advise on the following matters:
- (i) potential conflicts of interest or apprehension of bias,
  - (ii) proper constitution of the Panel,
  - (iii) questions of natural justice or procedural fairness,
  - (iv) legal issues that are engaged by the appeal,
- and any other matters as the Panel determines appropriate for the purposes of the hearing.
- (b) Unless the Panel decides otherwise, legal counsel will be present during hearings.

# ARTICLE 3 PRE-HEARING MATTERS

## 3.1 Forum for Hearing an Appeal

The Chair of the Committee has discretion at any time to refer any matter for appeal to the full Board of Directors if he or she determines that: (i) the issues in dispute are sufficiently important to the administration and management of the OMERS Pension Plans such that they should be determined by the full Board of Directors; or (ii) there may be conflicts for the reasons outlined in section 2.6 above, which impair the ability of the Committee to hear the matter.

This provision will not derogate from the Board of Directors' power referred to in section 2.5 above.

## ARTICLE 4 APPEAL PANEL DECISIONS

### 4.1 Decision of Panel

The decision of a majority of all members who were present for the entire appeal, or their unanimous decision in the case of a two-member Panel, is the Committee's decision. If the two-member Panel is unable to agree on a decision, a newly constituted Panel will be formed by the Chair to re-hear the appeal.

### 4.2 Advising Board of Directors of Decisions

The Chair of the Committee will annually provide the Board of Directors with a brief written summary of the Committee's decisions. These summaries will be of a general nature and will not include specifics, such as party names, unless requested by the Board of Directors.

## ARTICLE 5 RULES RESPECTING PRACTICE AND PROCEDURE

### 5.1 Rules

- (a) The Board of Directors may make rules, from time to time, regarding practice and procedure before the Committee.
- (b) These rules may be of general or particular application.

Signed by:

C/S

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Board Chair

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Corporate Secretary

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Enacted on July 20, 2006

First Amendment on April 20, 2007

Second Amendment on December 17, 2008

Third Amendment on December 14, 2012

Fourth Amendment on December 13, 2013

Fifth Amendment on February 26, 2015

Sixth Amendment on May 21, 2015

Seventh Amendment on May 18, 2017

Eighth Amendment on February 23, 2018