

January 6, 2025

Mr. Robert Poirier,
OMERS Governance Review Special Advisor
College Park, 17th Floor,
777 Bay St Toronto, Ontario M7A 2J3



Sent via E-Mail: MFPB@ontario.ca

RE: Ontario Municipal Employees Retirement System – Governance Review

Dear Mr. Poirier:

On behalf of the more than 6,300 non-union employees of the City of Toronto and board of directors of the City of Toronto Administrative, Professional, Supervisory Association (COTAPSA), I wish to begin this letter by thanking you for agreeing to serve as Special Advisor in support of the OMERS Governance Review. COTAPSA has been in existence since 1967 and is the oldest and largest Municipal Management Association in Canada. We are a registered not-for-profit organization representing the non-union and Management employees of the City of Toronto.¹ COTAPSA's members belong to and steadily make financial contributions to OMERS by virtue of statutory requirements.

Our views, you will find, align broadly in a number of areas with the Province of Ontario's general priorities as a government – including promoting transparency and accountability, reducing financial burdens on taxpayers and encouraging sound governance practices. In suggesting a variety of changes regarding OMERS governance, COTAPSA is echoing some of the same concerns you will likely hear from other stakeholders, such as Metrolinx or the Toronto Police Association.

We are engaging directly with you because, true to OMERS entrenched culture of secrecy and poor communication, neither the SC nor the AC Boards have yet publicly acknowledged to contributors that this review is underway, nor have they shared any views on its merits or potential benefits to its members. The SC's and AC's silence on critical governance issues—board operations, director responsibilities, and sponsor and stakeholder engagement—is emblematic of a failure to engage directly and meaningfully with contributors and must come to an end!

In this letter to you, we wanted to orient our critical views of OMERS current governance structure, using the following four touchstones:

1. **Unfair Composition of OMERS AC and SC Boards – “Those Who Pay Must Have a Say”**

¹ You are welcome to please review our online archive of past COTAPSA submissions and statements related to OMERS governance (accessible via <https://cotapsa.ca/omers/>).

According to OMERS own latest membership affiliation disclosures for calendar year 2023, our COTAPSA members are just one component of the more than 24% of OMERS active membership officially referred to by OMERS as “management/non-union” members.²

These “management/non-union” OMERS members have **no** direct representation on OMERS two boards of directors. These members are, according to the same OMERS document, also responsible for nearly 29% of estimated total member financial contributions to the plan. COTAPSA has consistently advocated on behalf of these unrepresented OMERS contributors, both in the context of the previous OMERS Review and other issues impacting this significant group of contributors.

This unfair situation must be changed, and that change must go beyond simply creating a seat at the current OMERS board for the “management/non-union” portion of OMERS membership.

“We believe that devolving the responsibility of OMERS governance will place greater authority in the hands of the contributors,” said John Gerretsen (then Minister of Municipal Affairs and Housing) on November 14, 2005, during a discussion of OMERS potential autonomy from the province.³ This statement makes for interesting reading in light of COTAPSA’s members’ experience with OMERS. Like in George Orwell’s famous novella *Animal Farm*, all OMERS contributors in theory are equal, but “some are more equal than others.”

Former Minister Gerretsen’s words have definitely *not* held up after subsequent developments. As we have said before: OMERS is a jointly-governed “risk-sharing” plan, meaning that members and employers **share the legal obligation for funding the pension plan**, not “sponsor” organizations. Our experience is that far too often, sponsor organizations appear more beholden to OMERS management rather than the contributors they purport to represent. Information on important OMERS matters routinely fails to be filtered down from sponsor organizations to contributing members – a fact that is highlighted by the Toronto Police Association in their submission.

At present, and contrary to former Minister Gerretsen’s remarks about “contributors,” too many of the current sponsors on the OMERS SC’s Board in fact **do not** actually make any direct contributions to OMERS, on behalf of either employers or bargaining units. These would include for example the various retiree groups whose pension promise has been fulfilled, the Association of Municipalities of Ontario (AMO) which makes no contributions on behalf of municipalities – or CUPE Ontario, which neither makes, nor oversees, any financial contributions to OMERS on behalf of any local bargaining units.

A related and interesting irony of the current OMERS structure is that it leaves out a very important “contributor” on the employer side. This contributor is financially responsible for Ontario’s Boards of Education and Children’s Aid Societies, and arguably for a sizeable

² Please see OMERS disclosures as posted to:
https://assets.ctfassets.net/iiifcbkds7nke/3Rv3zLO3vQBQNoStdJSIE3/03d029287feb94a14f9479b24852790/Member_Affiliation_Summary_20231231_Apr_2024_FINAL-ua.pdf

³ <https://www.ola.org/en/legislative-business/committees/general-government/parliament-38/transcripts/committee-transcript-2005-nov-14>

additional portion of overall employer contributions to OMERS. I refer here, of course, to the Province of Ontario.

We acknowledge that our “those who pay must have a say” slogan would logically apply to the Province as well. That is why COTAPSA supports the Ontario Government re-engaging with OMERS governance as a contributor, in keeping with our recommendations for a more inclusive – and more reality-based – governance model.

2. OMERS Governance Model is Overly Complex – “**We Need a Simpler Model - Saving Money for Contributing Employees, Employers, and Ultimately Taxpayers**”

In 2006, the *OMERS Act* gave OMERS a new governance structure, with governance duties and accountabilities divided between a 14-member OMERS Sponsors Corporation board and a 14-member OMERS Administration Corporation board (later a 15 member board after the addition of an independent board chair).

This complex bicameral structure and its associated division of responsibilities between the two corporations was made more complex by the web of labour and employer sponsor interests it entrenched. In 2006, the new arrangement was hailed in some quarters as an example of “balanced” representation of OMERS employer and employee groups within a new governance approach.

As noted in our first section above, however, this talk of “balance” depends entirely on your point of view – if you as an OMERS member belong to the “management/non-union” grouping, for example, this new arrangement turns out to be neither fair nor balanced. We also wonder how “balanced” this system really is when two sponsor groups – AMO on the employer side and CUPE Ontario on the labour side – enjoy weighted votes, on top of having board seats.

Has this 2006 approach lived up to its predicted performance? We believe it **has**, but not in a way that can be a legitimate source of pride for anyone involved. We note that, during discussions of OMERS autonomy in January 2006, a CUPE 4400 representative made the following comment about the related legislation then under consideration at Queen’s Park:

*“The effect of the legislation is to create a sponsors corporation made up of multiple organizations, **none of which have unity of purpose** and many of which may want to play out a political agenda that has nothing to do with the welfare of the participants of the pension plan.”⁴ (emphasis added)*

Our sole comment will be: these are prescient words, from COTAPSA’s view. At its worst, the 2006 structure has merely boxed OMERS sponsors into an inherently adversarial stance towards one another, generally reflecting more of the tone and tenor of municipal wage and benefit bargaining in Ontario than what one would expect of the sponsors connected to a sophisticated global investor with nearly CAD\$140 billion in assets under management.

⁴ <https://www.ola.org/en/legislative-business/committees/general-government/parliament-38/transcripts/committee-transcript-2006-jan-25>

Let us contrast the above with the following statement taken from the latest OTPP annual report, which in simple and direct language captures the intelligent unity of focus that is arguably at the heart of that organization’s sterling reputation for strong governance:

“Since its inception, Ontario Teachers’ has been overseen by independent board members who are required to make decisions in the best interests of plan beneficiaries.”

How can it be that one board composed of ten directors and one chair is able to provide OTPP (with approximately twice the net assets as OMERS under management) the necessary oversight that OMERS needs two boards and 29 directors to achieve?

Some observations on the apparent costs of OMERS governance to end this section: Going by OMERS latest annual report, the direct costs to run just the SC machinery annually is approximately \$4.8 million⁵, up from \$4.4 million in 2022.⁶ But this is not the whole financial story. There is also the approximately \$1.6 million in remuneration and expense reimbursements paid to AC board members in 2023.⁷ Swelling these costs further is, we contend, the quiet practice of the OMERS Administration Corporation staff at various levels sometimes shouldering tasks on behalf of the SC Board, increasing the overall SC-related expenses further. (We cannot quantify this however.)

All of this expense is ultimately paid for by OMERS members and employers, meaning taxpayers. (And please recall here our observation above about how much money flows from the Province of Ontario into OMERS as an indirect sponsor.)

3. Greater Transparency and Accountability are a “Must” in Any New OMERS Governance Model.

You are no doubt already aware of the recent controversy involving the OMERS SC’s high levels of secrecy when it comes to updating ordinary OMERS members on contribution rate changes, and how, in the words of one stakeholder group, this extreme secrecy recently “blindsided” members affected by one such change.⁸ Indeed, this controversy is not new⁹, and is part of the dynamic driving the demands for another OMERS governance review.

Simply put, the OMERS SC enforces a level of secrecy around its meetings and decisions such that the members of its board’s allegiance must be to the SC, not the plan contributors and their financial interest in a thriving, growing plan. This reduces transparency around decision-making, compounded by the SC’s refusal to produce detailed meeting minutes or to hold recorded votes and publish the results on its website.

The SC board is accountable not to OMERS members or employers, but to the SC’s bylaws – which is the exact opposite of how things should be, as it distorts the entire reason for having a board.

⁵ See, e.g., OMERS Annual Report 2023, pg 139.

⁶ OMERS Annual Report 2022, pg 141

⁷ OMERS Annual Report 2023, pg 150

⁸ See *Globe and Mail*, Oct 16, 2024: <https://www.theglobeandmail.com/business/article-omers-pension-governance-review-ontario/>

⁹ See: <https://cupe.on.ca/wp-content/uploads/2020/01/EN-FINAL-BylawReviewDocument-1.pdf>

Some other OMERS stakeholders may approach you within the content of the governance review proposing some tweak or light change to the OMERS SC Board, in the hopes that that alteration would somehow save the SC structure. This well-meaning gesture misses the point entirely. We have accumulated enough experience by now with the OMERS two board model to know it is not working as well as it needs to, and we need decisive change to right the course.

To reiterate our previous point: OMERS needs a replacement governance structure that resembles closely the one in place at OTPP. We do not say this because we believe the OTPP structure is somehow perfect, as it is not – but it certainly would be a tremendous improvement.

4. **OMERS Needs Improved Over-Sight on Plan Decisions Related to Investing – “Good governance must provide the plan with clear direction and accountability”**

The Ontario Government has made it clear that this review of OMERS “will not focus on any financial details or decisions regarding contribution rates, fairness of plan benefits, or the supplemental plan.” We believe that you can honour this directive while still using some of your time as Special Advisor to study and comment upon OMERS worrisome pattern of poor investment decision-making over the last few years.

As pension beneficiaries, we realize that markets go up and down, and that no single investment (despite the best of intentions and attempts at thorough due diligence) is ever risk-free. Nor do we believe it to be a reasonable operating assumption that OMERS will necessarily make money on all of its investments. No financial advisor or pension plan can over the long-term sustain such a record.

That said, we cannot help connecting ongoing media commentary on the poor performance of certain questionable OMERS investments with some of the governance themes raised in this letter. These investments highlighted in the media for performance issues would include: Thames Water¹⁰, Azure Power¹¹, Northvolt¹², Vue Cinemas¹³ and Net4Gas¹⁴. There was also the infamous OMERS currency hedge debacle which resulted in a loss of billions of dollars.¹⁵

The scale of losses associated with these questionable investments is such that we have to wonder “who’s providing checks and balances on management decisions?” – and where are the OMERS boards on these crucial matters? Do the members of the boards have sufficient investment competence to be providing the oversight role that they are supposedly there to carry out?

If not, how can we improve the level of expertise represented at the board level, such that OMERS would have in place a tighter plan and a set of clearer goals/metrics/performance expectations around investments such that it can better avoid similar costly mistakes in future?

¹⁰ <https://www.infrastructureinvestor.com/omers-writing-off-thames-water-was-the-right-fiduciary-call/>

¹¹ <https://financialpost.com/fp-finance/caisse-backed-azure-risks-nyse-delisting>

¹² <https://www.theglobeandmail.com/business/article-canadian-pension-funds-exposed-as-battery-maker-northvolt-struggles-to/>

¹³ <https://www.theglobeandmail.com/business/article-two-canadian-pension-funds-lose-big-on-european-movie-theatre-chain/>

¹⁴ https://www.upstreamonline.com/energy-security/czech-gas-operator-returned-to-state-control-at-fraction-of-privatisation-price/2-1-1529393?zephir_sso_ott=eY2f94

¹⁵ https://www.thestar.com/business/how-do-you-lose-3-billion-in-a-booming-market-a-massive-ontario-pension-comes/article_1b36e263-cbe2-580a-b85e-ad09f8b34f5d.html

A further question must be raised – how much responsibility for the fact that OMERS is the only large Ontario public sector defined benefit pension plan still in a deficit falls on the OMERS boards’ prevailing lack of relevant pension expertise and relevant investment expertise?

Why is it that every other large Ontario defined benefit public sector pension plan except OMERS has found ways to steadily make money since the crisis of 2008 without undue risk for their respective memberships’ retirement savings -- and consistently reaped the results of wise investing?

Why is it only OMERS that flops and flails, still unable to put its funding deficit behind it? OTPP, in comparison, in calendar year 2023 marked its 11th straight year of being full-funded – a remarkable accomplishment.

Once again, moving OMERS towards a more OTPP-style governance structure would be an efficient way to address this critique of OMERS lack of investment success. We simply need a higher level of professionalism at the board level, not as a singular “silver bullet” for OMERS performance issues, but as a stronger, better informed check on management. To achieve this, we need a much different approach to governance than the one we have, in order to attract a higher calibre of board member.

There is more we could say about the topics covered in this letter.¹⁶ We hope to meet with you in person, at a time and place convenient for you, to discuss these matters further.

COTAPSA’s members approach your appointment as Special Advisor with open minds and the hope that the review you are leading will succeed where the previous review fell badly short of the expectations it created. That dismal effort reinforced the ineffective, inconsistent, unfair OMERS governance status quo, and then sank without a trace.

We hope that, in contrast, your review will be long remembered with appreciation for its lasting, positive impact by OMERS members as well as their immediate families, dependants and beneficiaries.

Sincerely,



Mike Major
Executive Director



Andrew Waters
President

¹⁶ For example: There is another investment-related matter that we believe you could usefully address in your recommendations to the Province of Ontario. This involves how OMERS discloses its “administration” related expenses, “investment management” expenses and “transaction and pursuit” costs (that is, the costs of seeking to purchase or sell private market assets, whether these efforts ultimately yield a deal or not) in its annual reports.

However OMERS proposes to qualify these figures in the management discussion and analysis section of the annual report, these three figures should before anything else be all presented up front, on a single page appearing within the first 10 pages of each annual report. Again, we need more transparency, more directness in information sharing.

CC:

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