



REVIEW OF OMERS GOVERNANCE BY-LAWS

May 9, 2013

Table of Contents

1.	Background.....	1
2.	Representation.....	2
3.	By-Law #4 - SC Board.....	3
4.	By-Law #13 - OAC Board	4
	<i>(i) Independent Board Chair</i>	4
	<i>(ii) Capacity Requirements</i>	4
	<i>(iii) Term Limits and Board Transition</i>	6
5.	Compensation	7
6.	Summary.....	8
	<i>Appendix A</i>	9

1. Background

Under the *OMERS Act, 2006* the SC was given a very important role in the governance of OMERS. It was given responsibility for the composition and method of choosing the members of the OMERS Sponsors Corporation (SC) and OMERS Administration Corporation (OAC) Boards. At the inception of the current governance model in 2006, the Ontario government appointed the initial Directors of the OMERS Boards. In the ensuing years, the SC reached agreement on the composition and appointment process for the SC and OAC Boards and laid out the details in By-Laws #4 and #13, respectively.

In 2006, the Ontario Government also enacted the *OMERS Review Act, 2006* which mandated a review of OMERS governance in 2012 based on the experience during the intervening years. The review was to focus on:

1. the effectiveness and fairness of the governance model;
2. The efficiency and effectiveness of decision-making by the SC; and
3. The effectiveness of the governance model in ensuring the overall fairness and financial stability of OMERS¹.

In anticipation of the governance review in 2012 (the “2012 Review”), the SC began the work of reviewing its relevant by-laws in 2011. The SC asked for and received feedback on these fundamental governance issues from many of OMERS stakeholder organizations. Much of that input was also provided to Mr. Tony Dean, who was appointed the Reviewer under the 2012 Review.

On January 25, 2013 the Minister of Municipal Affairs and Housing released Mr. Dean’s report in which he made eight recommendations. With the release of the report, the SC was able to complete its review of By-Laws #4 and #13 and, on April 25, 2013, approved final by-laws. In addition, the SC approved a revised By-Law #6 which sets the compensation for SC and OAC Directors.

The purpose of this report is to provide information related to the revised by-laws and some insight into the related decision making. The report assumes a level of familiarity with By-Laws #4, 6 and 13 and should be read in conjunction with the By-Laws. The By-Laws are available at www.omerssc.com ([About Us/Governance](#)).

¹ Please refer to the 2012 Review section of the SC website for more detail and for links to other relevant websites.

2. Representation

Sponsorship of the OMERS pension plans lies with over 900 employers and over 40 unions and associations. In addition, there are a significant number of members who are not members of a union or association.

The OMERS Boards represent the interests of these various parties, with each Board having seven seats dedicated to employers and seven to employee groups. These interests could be represented in a variety of manners, but ultimately the SC concluded that it is important that the Boards continue to be representative of the plan membership and their various employers with an equal number of employer and employee representatives. Furthermore, the SC concluded that the members of the Boards should be selected with the input of the organizations that represent plan members and their employers.

The SC developed several composition principles which guided its decision-making (*see Appendix A*). The SC evaluated the various principles and decided that the current Sponsor Organizations² and the related nomination and appointment processes represent a reasonable balancing of the principles and practical limitations. The concept that the current approach is reasonable and practical is echoed by Mr. Dean in his report.

Mr. Dean recommended providing unaffiliated groups and members greater engagement with OMERS through enhanced communication and engagement mechanisms to ensure their interests are heard. The SC and OAC have committed to developing a communication and engagement plan to achieve those objectives, and this is an organizational priority. The plan is currently under development and will begin to be implemented over the balance of 2013. We will be seeking the input of stakeholders to ensure that the plan is effective and meets their needs.

Please note that the By-Laws will be reviewed every three years to ensure that the Boards remain representative.

The representation concepts apply to both the SC and OAC Boards. The remainder of this report discusses the SC and OAC Boards separately, followed by compensation at both Boards.

² Sponsor Organizations is defined in the by-laws as the organizations which may nominate or appoint members to the OAC and SC Boards.

3. By-Law #4 - SC Board

Fundamentally, the SC has chosen not to make changes to the SC Board, including the process by which Sponsor Organizations appoint Members to the SC Board. The only significant changes that have been made relate to the timing of the appointment process.

The process (*see By-Law #4 Section 1.4(e)*) will now begin earlier (i.e. by June 30th of the year the term of the seat expires) and Sponsor Organizations will be required to make their appointments earlier in the year (i.e. by October 31st of the year the term of the seat expires) to allow a more orderly transition and to allow committee slates for the following year to be developed accordingly.

Related to composition, the SC felt it appropriate to retain the current weighted voting procedures for the SC Board (*see By-Law #4 Section 1.10*). Weighted voting ensures that the decision-making at the SC is more reflective of the underlying membership proportions. The two largest Sponsor Organizations have been allocated a much smaller proportion of the Board's seats than their respective membership proportions would suggest. Therefore, the seats allocated to these organizations have been given multiple votes to restore the balance. This approach allows Board seats to be available to a greater number of organizations and is an important consideration in the composition of the SC.

4. By-Law #13 - OAC Board

The changes to the OAC Board are more numerous and are summarized as follows:

- i. The SC has added a fifteenth, voting seat to the OAC Board and it will be occupied by an Independent Board Chair;
- ii. The SC has introduced new capacity requirements, along with changes to the nomination and appointment process;
- iii. The SC has introduced term limits which will limit the amount of time an individual can sit on the OAC Board; and
- iv. In order to move to the higher capacity OAC Board envisioned by Mr. Dean, the SC has introduced a transition plan to accelerate some of the expiry dates of current OAC Directors' terms of office.

Each of these changes is explained in more detail below.

(i) Independent Board Chair

In his report, Mr. Dean recommended that there be an Independent Board Chair (IBC) on the OAC Board. Following discussion with Mr. Dean, the SC and OAC Boards both endorsed this concept and reached agreement on the process by which the IBC is recruited and appointed.

The Boards agreed to the creation of a joint working group for that purpose. The joint working group is comprised of four members of each of the SC and OAC Boards and is responsible for:

- Selecting a recruiting firm to assist in identifying individuals for the position;
- Working with the recruiting firm to identify suitable candidates;
- Selecting a candidate for recommendation through a two-thirds vote; and
- Requesting the support and endorsement of the recommended candidate from the OAC Board.

The SC Board, as the appointing body for all OAC Directors, will appoint the IBC, while the OAC Board will define the roles and responsibilities of the IBC.

The process is currently underway with the goal that the IBC will be appointed in the Fall of 2013.

(ii) Capacity Requirements

A significant theme in Mr. Dean's report relates to the capacity of the OAC Board and the potential benefits of moving to a higher-level expertise and capacity. Mr. Dean's report also articulates that OMERS has been a success story in Canada and internationally. Like any successful organization we need to continue to challenge ourselves in the area of governance. This is the basis for the SC's decision to increase the level of expertise and capacity of the OAC Board.

As such, the SC has introduced new qualification requirements for the individuals that can be appointed to the OAC Board. Directors are appointed to the OAC Board in a two step process: first, nomination by Sponsor Organizations, followed by appointment by the SC. The new qualification requirements are best explained in the context of this nomination and appointment process. To be effective, the exercise of increasing the capacity of the OAC Board will be a collaboration between the SC, Sponsor Organizations and the OAC as described below.

Sponsor Organizations have a crucial role in ensuring the success of OMERS. As in the past, the person nominated by a Sponsor Organization to be an OAC Board Member must meet certain basic qualifications requirements (i.e. over the age of eighteen, not bankrupt, of sound mind, etc.). In 2013 we introduced a new threshold. Specifically, By-Law #13, Section 4.3, speaks to the capacity of individual Board Members as follows:

“... an AC Member must not only possess sufficient capacity to critically evaluate and decide on the business, pension and governance matters which come before AC Members but also have the independence to take such action regardless of the wishes of Administration Corporation management, the interests of the Sponsor Organization that nominated him/her, and any personal interests of the AC Member. Consequently, the (SC Board)Members in making an appointment must be satisfied that the nominee possesses such qualities.”

Consequently we will be asking that Sponsor Organizations consider the SC Board’s obligations when identifying individuals to nominate.

Each year the SC will ask the OAC Board to develop a skills and competencies framework as well as a related gap analysis which will be considered by the SC when making appointments. Sponsor Organizations will be strongly encouraged to review the matrix and gap analysis and consider the identified skills and competencies when selecting nominees. Although we expect that the specific skills and competencies described in the framework and gap analysis would be highly desirable and relevant, it is not mandatory that each OAC Director have all of these skills and competencies. It is mandatory though, that nominees have the capacity and independence noted in the By-Law.

To function at the OAC Board’s highest capacity it is important to consider the capacity of the OAC Board as a whole and not just at the individual level. To that end the SC introduced the following to the By-Law:

“When deliberating on the appointment of AC Members, the (SC Board) Members may take into account any capacities that have been identified as being required to enable the AC Members to function more effectively as a whole.”

When making appointments, the SC may look not only at the capacity of an individual nominee, but also at, if and how, that individual's capacity fits with the collective OAC Board. Sponsor Organizations will be encouraged to consider the capacity of the collective OAC Board when making nominations and to provide multiple nominees (up to three) in order to allow the SC flexibility to best meet the needs of the collective OAC Board when making appointments.

We believe that these changes, through collaboration of the SC, OAC and Sponsor Organizations, will enable us to achieve the increase in expertise and capacity that will contribute to OMERS ongoing success.

(iii) Term Limits and Board Transition

Based on the principles of good governance, and echoing the position of Mr. Dean, the SC has elected to impose term limits on the OAC Board such that its Members will only be permitted to sit for three terms (i.e. nine years), and only under exceptional circumstances for four terms (i.e. 12 years, *see sections 4.2 and 4.3*).

With this concept in mind, and considering Mr. Dean's recommendation to implement higher capacity requirements over a 24-month period, the SC has elected to impose those requirements on a retrospective basis. Current members who will have served for longer than nine years at their term expiry date will have their terms shortened³. Members who will have served for more than 15 years will have their term expiry dates moved up to December 31, 2013. Any other members who will have served for more than nine years at their term expiry date, will have their term expiry dates moved to December 31, 2014.

These OAC Board Members, and any future members who sit for three terms, will not be eligible for nomination or appointment to the OAC Board, except four terms may be permitted under exceptional circumstances.

Under this approach, all but two seats will expire by the end of 2014, allowing the new nomination and appointment processes to be applied in respect of 13 of the 15 seats on the OAC Board – effecting, in practical terms, a transition of the OAC Board over a 24-month period.

See Appendix C to By-Law #13 for the revised term expiry dates as well as the revised term lengths.

This approach achieves a desirable balance between a quick transition and continuity.

³ The subsequent term has been lengthened by one year in some cases to compensate for an initial shortening of a term.

Compensation

As part of ongoing processes the SC undertook a review of **By-Law #6 - Director Compensation**, in 2013. Two of the changes made to the OAC Board were a significant factor in the compensation review; the introduction of the IBC and the new capacity requirements. These two changes were considered at length by the SC in consultation with the compensation advisor hired to assist the SC.

The SC approved Member compensation for the OAC and SC through a flat fee retainer as follows:

(Annual flat fee retainer)	SC	OAC
Board Chair	\$75,000	TBD
Committee Chair	\$40,800	\$67,500
Member	\$35,800	\$60,000

It is expected that the compensation of the IBC will be considerably higher than that of the OAC Directors to reflect the significantly higher level of commitment and effort that will be expected of the IBC, although the final amount will be defined at a later date.

The revised compensation levels will be effective January 1, 2014 and represent an increase of \$5,000 to the SC annual retainer, and an increase of around \$30,000 to the OAC annual retainer. The increase to SC compensation reflects an inflationary increase; the increase to OAC compensation reflects a desire to compensate OAC Directors at a level consistent with comparator Canadian public sector pension plans. Specifically, comparator plans are those which maintain their Boards at a capacity level which is comparable to the objectives set for the OAC Board. It is expected that the increase in OAC Director compensation will contribute to a successful transition to a higher capacity.

5. Summary

Over the past two years, the SC has been focused on governance issues to address the needs of the SC and OAC Boards and stakeholders, as well as the best interests of the OMERS Pension Plans. The SC has made several significant governance changes which will contribute to the ongoing success of OMERS. We have begun the process of implementing these changes and will soon meet with Sponsor Organizations to initiate the 2013 nomination and appointment process.

There are additional issues the SC will be reviewing over the course of the year, and we will keep you informed.

The SC wishes to thank stakeholders for their input. The input received, as well as the input provided to Mr. Dean under the 2012 Review, made an invaluable contribution to the review.

SC and OAC Board Composition Principles

The SC has adopted the following principles for the composition of the OAC and SC Boards.

Principle	
1 Proportionality based on headcount *	Board representation should primarily be allocated to organizations in proportion to the number of active members they represent or employ
2 Sector representation	While the above criteria is the primary consideration, given the significant number of organizations and the practical limitation on the number of Board seats, it is desirable to ensure the Board represents important and distinct sectors
3 Retiree representation	It is beneficial to the plan and its members for the Board to have a seat allocated to retirees
4 Board Effectiveness and Efficiency	It is in the best interest of the Corporation and all plan members that the Board be effective and efficient
5 Board Member Roles and Responsibilities	SC Board Members owe a fiduciary duty to the Corporation. OAC Board Members owe a fiduciary duty to plan members
6 Review and Revision	Board composition should be reviewed every three years to ensure the Boards are representative and to ensure that the other principles are adhered to. An earlier review could be made at the discretion of the SC
7 Competencies	The Boards can best conduct their business if their Board Members have certain basic competencies that equip them for their jobs as Board members
8 Board Chairing	The OAC and SC have unique chairing needs. The current SC approach of having a Co-Chair from each caucus remains appropriate whereas the OAC will have a voting independent chair.

* Due to practical limitations on the size of the Boards it is not possible for each union, association or employer to have direct board representation. Furthermore, weighted voting is appropriate at the SC Board in order to offer a greater number of seats for smaller employer or employee groups, while ensuring the SC Board is representative. This approach is not appropriate at the OAC Board given the very different mandates of the SC and OAC.