Canadian Union of Public Employees Ontario

Submission to:

Robert Poirier, Reviewer

Regarding:

2025 OMERS Governance Review

July 18, 2025

Contents

Summary

With over 290,000 members, CUPE Ontario is a powerful voice for the rights and fairness of our members and our communities. We work at the provincial level to drive legislative, policy, and political change on issues affecting public services, equality, healthy communities and a better Ontario for everyone.

CUPE has been a major stakeholder in the Ontario Municipal Employees Retirement System (OMERS) since its inception. CUPE is by far the largest plan sponsor representing workers in the OMERS plan. We represent 145,000 active OMERS members, with four in ten active OMERS members represented by our union. We represent nearly five times the number of OMERS members as the next smallest sponsor. We nominated a member to the first governing board of OMERS in 1967.[1] We played a key role in moving OMERS to joint sponsorship in 2006 and have been an active joint sponsor of OMERS ever since. Our national union has extensive experience with jointly-sponsored plans nationwide.

CUPE Ontario takes OMERS issues very seriously. This pension plan is incredibly important to our members, who unfortunately earn less than they deserve for the important work they do.

CUPE has been clear about our serious concerns with various governance trends at OMERS. Changes have been made at both OMERS governing corporations that diminish the role and voice of unions and all sponsors. It is our view that OMERS no longer functions like other jointly sponsored plans that our members are part of around the country, to the detriment of plan members. Despite being given joint control of OMERS in 2006, the voices of sponsors have, in recent years, been silenced. And at the administrative board, members' voices have been outsourced to financial experts. OMERS members have not been well-served by any of this. They have lost their voice in the plan, and their pension fund is significantly smaller than it could be. Pushing members out of OMERS governance has, not surprisingly, resulted in an OMERS that is not working for plan members. OMERS is, however, apparently working well for OMERS executives and board members, whose compensation and remuneration growth have outpaced that of OMERS members and retirees, as well as the size of the plan. Restoring a real role for plan sponsors will make OMERS a better plan.

This submission will outline CUPE's perspective on these issues. We want OMERS to continue as a jointly sponsored defined benefit pension plan. We believe the bicameral structure of the plan is proper and should be maintained. However, serious changes to governance at both corporations are needed – changes that can be achieved through clear direction for internal by-laws and governance changes that restore the role of plan sponsors. Workers need a real voice at the sponsor body regarding plan design decisions and should have the ability to choose their directors for the administrative body. OMERS will be a better pension plan with plan members playing the real role they have always deserved.

We would like to reiterate that CUPE is a key stakeholder in this plan. We make this submission on behalf of our 145,000 OMERS members. We also note that over 16,000 CUPE members to date have taken the extra step of signing the petition attached in Appendix A, and we continue to gather signatures.

[1] Department of Municipal Affairs, "Press Release," December 18, 1967, Premier John P. Robarts general correspondence, RG 3-26, container B292478, file "Pensions, Municipal. Jan-Dec 1967 MUNICIPAL AFFAIRS," Archives of Ontario, Toronto, accessed under the *Freedom of Information and Protection of Privacy Act*.

Summary: CUPE Proposals

CUPE PROPOSAL	RATIONALE
Issue #1 – Sponsors Corporation Mission (Pages 7-29)	
1. *Amend SC bylaws to ensure that SC reps are appointed by, able to act on, represent the views of, and fully communicate with their sponsor organization.*	The SC was created to be a bargaining board. Workers deserve a real say in the design of their pension plan. Current SC rules prevent real representation or bargaining at the SC.
2. *Amend the confidentiality bylaw to ensure that plan sponsors are given access to SC documents to support sponsor decision-making on SC issues. SC directors must be able to communicate freely with their sponsoring organization.*	SC rules prevent SC directors from speaking to their appointing sponsor about most SC matters. This makes real representation impossible.
3. *Restore the by-laws to clarify that the SC Board is equally made up of employer and union (employee) representatives. This includes, but is not limited to, bringing back the co-chair model and reconstitute employer and union caucuses.*	Workers and employers often have different interests with respect to pension plan design. SC rules no longer recognize this reality. For many years the SC recognized this by formally recognizing employer and employee representatives and "sides" in by-laws.
4. *Introduce funding for legal and actuarial support for each caucus, which can reduce and replace corporation-wide expenses and would better align with the representative, bargaining function the SC is supposed to play.*	SC expenses have grown sharply since it was refashioned as a body of "neutrals." Conducting multiple individual meetings (of SC staff directly with individual sponsors/stakeholders) in silos is expensive and wasteful. Properly resourcing restored caucuses would be more efficient and would better promote representation of members' and employer interests at the SC table. This method is consistent with certain other JSPP models such as the University Pension Plan.
Issue #2 – Board Composition (Pages 31-38)	
5. *"Representation by population" at the SC must be maintained.*	"Representation by Population" allocates SC seats proportionally to sponsors who represent the most OMERS members. CUPE's SC voice and weighted vote reflects the fact that we represent 41% of active OMERS members. This is appropriate and fair and must be maintained.
6. No new seats on the member-side of the SC for non-union or management associations.	Voluntary, non-union associations cannot play the same democratic, representational role that unions do. The voice of management is already represented on the employer-side of the SC Board.

7. No new seats on the SC for Metrolinx or other employers.	Adding new seats will increase an already large and costly governance system. New employer seats would require new member-side seats to ensure balance is maintained. Ultimately, CUPE's vote share must be maintained.
8. If any changes are made, no changes should dilute CUPE voice and vote share in any way on either board.	CUPE is by far the largest plan sponsor representing active members so our seats, voice and weighted vote must be maintained.
9. Engage with stakeholder groups how processes can be improved for non-sponsor groups. Consider using SC caucuses for these discussions rather than SC staff.	The views of non-sponsor stakeholder members are incredibly important. A process that channels their views through re-established SC caucuses would be much more effective than the status quo.
10. Add CUPE Retiree Network to the Definition of the Retiree Group.	The current 3 retiree groups do not represent all sectors of OMERS members and should be expanded to include this group.
11. No changes to the composition or voting at the AC.	CUPE sees no reason to change the status quo.
Issue #3 – OMERS Administration Corporation (AC) Professionalization (Pages 39-47)	
12. Fully empower plan sponsors to have a choice about who they appoint to the AC. The decision of whether or not to appoint an expert should be up to individual plan sponsors.	Lay trustees bring unique and important perspectives to boardrooms and are fully capable of delivering excellent results. The OMERS expert board has overseen a long period of sub-standard investment returns.
13. The AC "Board and Director Competencies" document should be amended to allow for a balanced board inclusive of lay members.	The current document is narrowly-focused to lean towards corporate finance.
14. *The AC must be made more accountable to plan sponsor organizations.*	The AC has been dismissive of serious concerns raised by plan sponsors.
Issue #4 – Compensation @ OMERS (Pages 48-55)	
15. Reduce OMERS executive compensation to be in line with other plans of similar size and performance	OMERS executive compensation is out of line with industry standards. OMERS executives earn similar compensation as executives at much larger, better-performing pension plans.
16. Change "Absolute Return" benchmarking to actual market-based benchmarking for public equity / fixed income	OMERS benchmarking is out of line with industry standards, and the plan has not provided a rationale to demonstrate that their unique approach to benchmarking is in members' best interests.
17. Reduce AC and SC director compensation to be in line with other plans of similar size and performance	OMERS director compensation has increased much faster than OMERS' active members or retirees annual increases. This is not justifiable or politically sustainable.

Issue #1 – Sponsors Corporation Mission

> *I want to take a few minutes at this point in time to talk a little bit about the reasons why we want to devolve the governance of this pension plan. We want to ensure that the sponsors of the OMERS pension plan, the employees, as I said, who pay into the pension plan through their contributions and who some day will receive pension benefits and payments through the plan, and their employers, who also contribute to the plan -- they must be able to make decisions that other pension plan sponsors can make as well. They are most affected by those decisions, so they should have representatives at the table going to bat for them.*[2]
>
> -Ontario Government lead spokesperson on OMERS reform,
> December 12, 2005.

Overview

The OMERS Sponsors Corporation (SC) determines the terms of OMERS. The SC sets the plan's benefit levels, retirement rules and contribution rates, bounded by both the minimum standards of provincial law and the maximum ceilings of federal tax law.

Before 2006, the provincial government controlled the terms of OMERS. A major reform that year saw OMERS "devolved" from the province, which transferred control of the plan's terms to the employer and member groups, who became the "joint sponsors" of the newly autonomous OMERS. The pension dealmaking was to take place at the new SC. It was clearly understood and agreed upon by all parties that the SC would serve as a bargaining body**,** where representatives of OMERS members and employers could bring their interests to bear at a joint table, allowing the OMERS "pension deal" to be amended over time.

The SC has deeply strayed from this mission.

The SC has gradually but persistently rewritten its internal by-laws and policies in a single direction. The SC has been re-fashioned as a body of "neutrals," radically reforming the essential purpose of the SC itself, with a clear end goal of distancing plan sponsors, such as unions and employers, from exercising any real control over the terms of OMERS. The interests of employer and union plan sponsors are no longer directly represented at this table. Instead, their interests are managed, mediated and merely given "due consideration."

This has resulted in important plan decisions being made behind closed doors, leading to a lack of transparency and growing levels of dissatisfaction among plan sponsors on both sides of the table. None of this will serve OMERS members' or sponsors' interests, and if left alone, this issue will not go away.

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[2] Legislative Assembly of Ontario, Hansard, December 12, 2005, https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-2/2005-12-12/hansard

“Good Governance” and “Alignment of Interests”

The “Review Consultation Deck” circulated by your office offers a definition of “good governance” on slide 9. A key piece of your definition is a “strong alignment of interests” within a governance structure.

CUPE agrees, but only in part. There are several areas of pension governance and management where a clear alignment of interests exists between plan sponsors and stakeholders. Everyone within OMERS would want the plan to achieve strong investment returns, for it to be run efficiently, and for retirees to receive their pension cheques in the proper amounts on time.

However, it is clear that there are other areas of pension governance – particularly concerning pension plan design (the levels of benefits provided under the plan and the contributions required to fund them) – where worker and employer interests often diverge.

Employers and members see pension plan design differently because they are exposed to different sides of the pension balance sheet. In a jointly sponsored pension plan like OMERS, the minimum required pension contributions are set by provincial law. These plan costs are shared by both active members and employers, meaning both employers and members pay close attention to pension costs and risks. The other side of the pension ledger—OMERS benefits—flows only to plan members. This explains why employers typically focus on the side of the pension ledger that principally affects employers: contribution amounts and the risks that those contributions could increase. Plan members are exposed to the same contribution rate issues. Still, since members (unlike employers) also eventually collect pension benefits, unions tend to focus more on the balance between both sides of the plan ledger.

Our union has national experience with pension plan design issues. We typically see employers pushing for similar plan design changes at the pension table while unions advocate for different types of changes. Employers and unions have different pension bargaining agendas because their plan design interests quite often diverge. Real pension bargaining will lead to a pension plan design that, having been agreed upon, will be supported by all parties. This dynamic is a feature, and not a bug, of the “jointly-sponsored pension plan” model. This also mirrors the dynamics of collective bargaining in general, where the interests of both sides are brought to the table in a process where those differences are debated and resolved.

The Supreme Court of Canada has deemed collective bargaining to be a *Charter* right in Canada, notably concluding recently that “genuine collective bargaining cannot be based on the suppression of employees’ interests, where these diverge from those of their employer, in the name of a “non-adversarial” process.”[3]

[3] Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, [2015] 1 S.C.R. 3, paragraph 97.

History of OMERS Governance – Pre-JSPP

From the inception of OMERS in 1963 to 2006, the terms of the plan were controlled by the provincial government. The OMERS "plan text" was a Regulation of the provincial *OMERS Act*. While there was a governing Board for the plan, which did include union representatives (who were, notably, always a minority on the Board), the OMERS Board's mandate was administrative in nature. The Board would oversee investment and actuarial issues and would communicate with plan members, but it did not control the terms of the OMERS plan. OMERS was built top-down by the provincial government – the plan was deliberately not created in collaboration with trade unions.

Not surprisingly, OMERS members and their unions never accepted these serious limitations on their voice or control within the plan. From day one, unions wanted a greater say, and they continued to agitate for change and the ability to bargain the terms of OMERS. Unions argued that it made little sense that while they collectively bargained (in increasing detail) over the other terms and conditions of their employment, their "voice" concerning their pension plan—a critically important part of their compensation package—was largely determined behind closed provincial doors, with the union control amounting to little more than a practice of being consulted. Just a few years after OMERS was launched, a major confrontation was provoked when the Ontario government proposed unilaterally reducing OMERS benefits in response to the creation of the Canada Pension Plan. Unions decried the proposed reductions as a dictatorial attack on bargaining rights, but Premier John Robarts promised workers their opposition to these cuts "would be duly considered."[4] However, Robarts had already made his decision behind closed doors, and the cuts were implemented as planned.

The Development of the Jointly-Sponsored Pension Plan Model

With their role in plan design limited to consultation, unions continued to agitate for a genuine bargaining process at OMERS. They frequently noted that it was curious that most public sector unions had won collective bargaining rights by the 1980s but that pensions remained subject to unilateral governmental control. The Ontario Federation of Labour convened a series of multi-union meetings in the 1980s to discuss OMERS. Together, the gathered unions formed the "Council of OMERS Participating Unions." The group maintained its view that the established system of OMERS governance was "paternalistic" and that "unions wanted to have greater control over changes to OMERS. Negotiability was seen as high on the

[4] Letter from OFL President Hamilton to Premier Robarts, December 15, 1965, Premier John P. Robarts general correspondence, RG 3-26, container B292479, file "Pensions, Mun.-Integration C.P.P. MUNICIPAL AFFAIRS (Nov.61-Dec.65)," Archives of Ontario, Toronto, accessed under the *Freedom of Information and Protection of Privacy Act*; Canadian Union of Public Employees, "Pension Injustice for Public Employees," undated, Municipal Pension Advisor's Files, RG 19-118, box 7, Archives of Ontario, Toronto; Letter from R.S. Chambers to J.W. Spooner, January 9, 1966, Premier John P. Robarts general correspondence, RG 3-26, container B292479, file "Pensions, Mun.-Integration C.P.P. MUNICIPAL AFFAIRS (Jan.66 – Feb.66)," Archives of Ontario, Toronto, accessed under the *Freedom of Information and Protection of Privacy Act*; Letter from D.R. Latten to Premier Robarts, May 25, 1966, Premier John P. Robarts general correspondence, RG 3-26, container B292479, file "Pensions, Mun.-Integration C.P.P. MUNICIPAL AFFAIRS (Mar. 66-)," Archives of Ontario, Toronto, accessed under the *Freedom of Information and Protection of Privacy Act*.

agenda." [5] The unions said, "the time is ripe to press for major changes to OMERS." Similar pressure was seen concerning other public sector pension plans in the province as well.[6]

In response to this pressure and debates over issues of control and surpluses at other plans, the province initiated a lengthy process that led to the creation of the jointly sponsored pension plan (JSPP) model. A series of major reports and commissions in the 1980s laid the policy groundwork for the JSPP model. While these reports had different approaches, they each discussed disputed aspects of the pension "deals" for various public sector plans. They concluded that a compromise position, aligning pension risk and control, was possible and even desirable. Pensions did not have to be so one-sided. Instead of governments bearing plan risks, controlling surpluses and exerting unilateral control, a compromise framework on all of these items was possible. The 1980 Royal "Haley Commission" report noted the desire of unions to bargain pensions and discussed practical challenges of multi-union pension bargaining but noted that bargaining could be possible via "a council of unions and an employers' council."[7] And while it recognized challenges in bargaining pensions, the 1987 "Rowan Report" concluded that "whoever bears the risk or liability should control pension fund decision-making."[8] And the following year, the "Slater Report" recommended what it called a "full partnership" model which included joint trusteeship and pension terms that would be negotiable. Slater argued that "it is hard to see how, or why, pension matters can be excluded from negotiation and bargaining in the future."[9]

In the 1990s, several key public sector bargaining tables ultimately adopted the compromise framework developed in the 1980s. The Ontario Teachers Pension Plan was converted to a JSPP in 1991, followed by HOOPP in 1993, OPTrust in 1994 and CAAT in 1995.[10] Broadly, the terms of these joint sponsorship deals conformed to the principles set out in the Slater Report: pension plans were restructured to allow for a formal joint sharing of pension deficits, surpluses, governance and control.

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[5] The Canadian Union of Public Employees, the Ontario Professional Firefighters Association, the Ontario Public Service Employees Union, the Service Employees International Union, the Amalgamated Transit Union, the Canadian Brotherhood of Railway Transportation and General Workers, "Benefit Improvements and Structural Changes: A Submission to the OMERS Board," November 1988, CUPE Archives.

[6] Royal Commission on the Status of Pensions in Ontario, *Report of the Royal Commission on the Status of Pensions in Ontario, Volume 6: Pensions for Ontario Public Sector Employees* (Toronto: Queen's Printer, 1981), 192-198.

[7] *Report of the Royal Commission on the Status of Pensions in Ontario, Volume 6*, 196.

[8] Task Force on the Investment of Public Sector Pension Funds, *In Whose Interest? Rowan Task Force Report on the Investment of Public Sector Pension Funds* (Toronto: Queen's Printer for Ontario, 1987), 55.

[9] David Slater, *A Fresh Start: Report to the Treasurer of Ontario the Chairman of Management Board of Cabinet and the Minister of Education on Teachers' and Public Servants' Pensions* (Toronto: Queen's Printer for Canada, 1988), 58.

[10] Ontario Ministry of Education and Ontario Teachers Federation News release, "Education Minister, OTF President Sign Pension Agreement," August 21, 1991, https://collections.ola.org/newsrel/ont/1991/08/126423.pdf; Ontario Public Service Employees Union v. Ontario (Attorney General), 1995 CanLII 10637 (ON SC), <https://canlii.ca/t/g1gn9>; "OPSEU to share management of $4B pension plan," *Financial Post*, April 14, 1994, 55.

The Ontario government formally recognized the JSPP model in the *Pension Benefits Act* in 2005.[11] In doing so, it said that, in a JSPP, "plan members and the employer share responsibility for plan governance, plan administration and plan terms."[12] The alignment of risk and control which is the key first principle of the model, has been repeatedly recognized.[13] The 2008 Ontario Government's Expert Commission on Pensions, chaired by Harry Arthurs, argued that in a JSPP, "plan members bear significant risks and should therefore have a considerable say in the governance of their pension plan."[14]

OMERS Transition to Joint Sponsorship

By 1995, OMERS was the last of the large Ontario public sector plans that had not yet converted to the JSPP model. Unions representing OMERS members were well aware of the development of the JSPP model in these other plans and continued to agitate for similar reforms at OMERS.

Between 1995 and 2002, OMERS conducted three rounds of consultation that culminated in a proposal to transition the plan to joint sponsorship. This began with a simple survey to plan members about governance that was not premised on a move to full autonomy. Nevertheless, the survey results showed a very clear desire among plan members for a change.[15]

In 1996, the Mike Harris Government's "Who Does What?" Panel reported on ways to "disentangle" provincial and municipal government responsibilities. The panel reviewed the modest 1995 OMERS recommendations and saw them "as only the first step." The panel argued that "in the spirit of the Who does What themes, the ultimate goal should be to hand over full control of OMERS to its membership without provincial involvement. However, this should be done in such a manner as to ensure that employer interests are protected."[16]

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[11] Statutes of Ontario, 2005, Chapter 31, Schedule 18; R.R.O. 1990, REGULATION 909, Amended to O. Reg. 116/06

[12] Ontario Ministry of Finance, "The Funding of Jointly-Sponsored Defined Benefit Pension Plans: A Consultation Paper," August 2005, https://collections.ola.org/mon/11000/255170.pdf

[13] The Association of Canadian Pension Management, "Governance of Pension Plans," November 4, 1997, 7, https://www.acpm.com/ACPM/media/media/resources/7/pdf/ACPM-Governance-of-Pension-Plans_1997.pdf; Expert Commission on Pensions, *A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules* (Toronto: Queen's Printer for Ontario, 2008); Elizabeth Shilton, *Empty Promises: Why Workplace Pension Law Doesn't Deliver Pensions* (Montreal: McGill-Queen's University Press, 2016), 163.

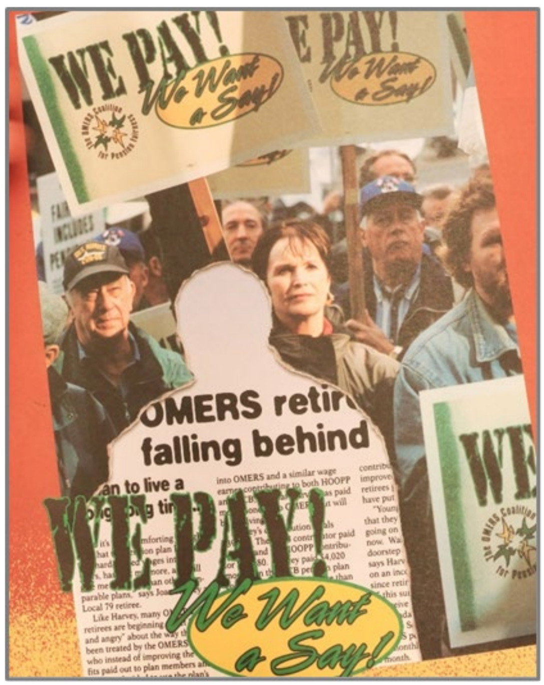
[14] Expert Commission on Pensions, *A Fine Balance,* 159.

[15] OMERS, "Governing OMERS: Issues for Discussion," May 1995, Library and Archives Canada, 2; OMERS, "Governing OMERS: Governance Survey Results," undated, Library and Archives Canada.

[16] Memorandum to the Honourable Al Leach, Minister of Municipal Affairs and Housing, From David Crombie, Chair, Who Does What Panel, "Recommendations of the Sub-panel on Municipal Administration," August 14, 1996, https://muskoka.civicweb.net/document/22339/

The OMERS Board responded to the province's request with a larger proposal for "full autonomy for OMERS." Under the proposal, the OMERS Board would be reformed, and the plan governed under a **unicameral model** (a single board to oversee both plan design and administrative issues). The proposal would have seen the removal of the province from the Board, which would have comprised six employer representatives and six employee representatives. The Board would control OMERS plan design and required a three-quarters vote to change. Responding to the prompt of the "Who Does What Panel," the Board stated that "taxpayer interests would be represented by employer representatives, both management and elected officials." The province did not move forward with the unicameral proposal.

The reluctance to move forward with governance reform at OMERS was an increasing source of frustration for unions within OMERS. Many of the plan's principal unions and retiree associations (CUPE, OSSTF, CAW, OPSEU, MROO) formed the "Coalition for OMERS Pension Fairness" and began a campaign entitled "We Pay! We Want a Say!" The campaign argued that "members and retirees deserve better, and we are seeking joint control over OMERS to guarantee decisions are always made democratically and in the best interest of plan members and retirees."[17]



In 2000, the province wrote to the OMERS Board. This time, Progressive Conservative MPP Tony Clement directed OMERS to conduct a further consultation to recommend governance changes.[18] Notably, this time, Clement insisted on a bicameral model intended to separate the sponsor and fiduciary/administrative functions of the plan. The sponsor function would be "transferred from Cabinet to a Joint Sponsors' Committee," with the OMERS Board continuing to play its fiduciary/administrative role.

[17] Coalition for OMERS Pension Fairness, flyer, "We Pay! We Want a Say!" 2002.

[18] Letter from Tony Clement to Peter Leiss, August 31, 2000 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.

The separation of these functions was deliberate and intended to serve a clear governance purpose. Canadian pension law has generally recognized two levels of pension plan decision-making and governance. First, a plan is established and later amended by a pension plan sponsor. The sponsor then designates a plan administrator to manage the pension plan that the sponsor has established. Pension law generally permits a plan sponsor to act in its self-interest when carrying out sponsor functions, such as creating or amending a plan. However, the administrative function of a plan must, by law, be carried out in accordance with a fiduciary duty to act in the best interests of pension plan members.

Difficult issues and conflicts can arise if a single entity or governing board performs both functions. Government was concerned that a single board structure at OMERS may have resulted in employer board members (whom they saw as the representatives of taxpayer interests) being bound by fiduciary duties to act in plan members' best interests when making plan design decisions. Canadian courts continue to wrestle with the complex issues that arise when sponsor and fiduciary functions are intertwined.[19]

This is why most of the largest JSPPs in Canada have separated these functions through a bicameral structure where decisions about plan design are first made by a "sponsor body," with the "administrative body" or trustee board then tasked with implementing the deal the sponsors reached. A clean separation of these roles ensures that on plan sponsor issues regarding plan design (an area where interests will commonly diverge), employers can advocate for changes employers favour, and unions can advocate for changes their members favour, free of any potentially overlapping and confusing notions of fiduciary duty.

In the lead-up to the move to joint sponsorship, it was clear that OMERS itself and its sponsors and stakeholders, strongly supported the government's direction for a bicameral governance model.

The OMERS Board's views were set out following an internal consultation in a major 2002 report entitled "Changing OMERS Relationship with Government: A Report on Governance." A guiding principle of this OMERS proposal was that sponsor and administrative functions would be strictly separated through a bicameral model. Plan design would be controlled by a "Sponsor Committee" which "would be a forum for negotiation based on the sponsors' interests."[20] OMERS proposed permanent equal votes for employers and employees on the sponsor body, demonstrating a recognition that those seat holders would be representing their constituencies. If sponsor committee members were seen as "neutrals," there would have been no need to structure the board on this 50/50 basis. The report proposed that the fiduciary/administrative function would be carried out by a reworking of the longstanding OMERS Board into a newly formed OMERS Administration Corporation.

OMERS agreed with Tony Clement and the province that a separation of fiduciary and sponsor functions was essential to allow a proper debate at the sponsor level. Were these functions not kept separate, the report argued it "may not be possible to separate role as fiduciary (legal responsibility to make decisions for beneficiaries only) and role as representative of stakeholder group, including taxpayers."[21] OMERS believed that the "separation of the two roles is important to reduce conflicts of interest arising from fiduciaries making self-interested decisions as sponsors, or sponsors being required to make fiduciary

[19] Sun Indalex Finance, LLC v. United Steelworkers, 2013 SCC 6, [2013] 1 S.C.R. 271.
[20] OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, 42.
[21] OMERS, "Forging a New Relationship with Government: A Consultation Paper on OMERS Autonomy Options," March, 2001 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.

decisions."[22] With fiduciary and sponsor functions separated, OMERS argued that employer sponsors would have a "duty of the employer Sponsor Committee member to represent taxpayer interests."

Unions agreed that OMERS should become jointly sponsored under a bicameral model. The multi-union "Coalition for OMERS Pension Fairness" argued for a "joint sponsor committee" that would be responsible for "negotiating the terms and conditions of the pension plan text."[23] CUPE argued that "there would be an explicit recognition that each of the sponsors acts in its own self-interest."[24] OSSTF argued that employee sides of the sponsor's committee would "represent the interests of their constituents."[25] Police and Fire unions pushed for a bicameral model with a separate sponsor body for their members, based on their view that their uniformed members, subject to different early retirement rules under the plan and different contribution rates, had their own interests that needed to be directly represented.[26] Retiree groups agreed as well. MROO argued that retirees had unique interests that required direct representation under a bicameral system: "In the present 'tough' society ethic direct negotiations are required."[27]

Employer groups within OMERS also agreed. The Association of Municipalities of Ontario (AMO) supported the "effective separation of the administrator and sponsor roles."[28] AMO wrote that "fiduciary decisions to do not attach to decisions regarding the use of surplus, wind up of a pension plan, or benefit level changes." AMO argued that OMERS would receive member viewpoints through "direct stakeholder appointments" to the sponsor body, which would operate under a "negotiation framework." The Ontario Association of Police Services Boards, in a joint submission with police and fire unions, preferred a two-tier model, with a separation of sponsor and fiduciary functions. They called the sponsor body the "Sponsors Bargaining Committee."[29] The Electricity Distributors Association, the Ontario Association of Children's Aid Societies and the Ontario Public School Boards Association also supported a bicameral structure because their unique perspectives needed to be represented at the plan design negotiation tables.

All sides and major actors within OMERS (the province, OMERS itself, unions, retirees, and employers) supported a bicameral governance model, understanding that it would allow self-interested, representative negotiations at the sponsor table. The clear understanding was that the sponsor body

[22] OMERS, *Changing OMERS Relationship with Government: A Report on Governance* March 2002, 37.
[23] Coalition for Pension Fairness, "A New Governance Structure for OMERS: Coalition for Pension Fairness submission to OMERS Executive Board," February, 2001 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.
[24] Letter from Sid Ryan to Walter Borthwick, May 6, 2002.
[25] Letter from Earl Manners to Walter Borthwick, September 12, 2001 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.
[26] Letter from Henry Watson to Walter Borthwick, September 12, 2001, Letter from Police Association of Ontario to Walter J. Borthwick, September 14, 2001, Letter from Bob Baltin, Craig Bromell, Henry Watson and Ted Johnson to Rick Miller, February 15, 2002, Letter from Craig Bromell to Walter Borthwick, September 10, 2001 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.
[27] Letter from Don MacLeod to Walter J. Borthwick, October 4, 2001 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.
[28] Memo from Pat Moyle to AMO Board of Directors, February 14, 2002 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.
[29] Letter from Chris Moran to Debbie Oakley, February 15, 2002 in OMERS, *Changing OMERS Relationship with Government: A Report on Governance*, Appendices, March 2002.

would be a bargaining board. The 2002 OMERS proposal was submitted to government but due to a change in government it did not proceed politically until 2005-6.

In 2005, after a decade of direct pressure and several major rounds of consultations, the government finally moved ahead with what it called "OMERS Devolution." Bill 206, *An Act to revise the Ontario Municipal Employees Retirement System Act,* was introduced to the legislature on June 1, 2005.[30] The legislation received 11 days of study over two rounds of committee hearings and multiple days of debate in the legislature from the end of 2005 to the beginning of 2006. When the Bill was introduced, the government said, "It's time that the employees and employers who contribute to the plan have full control over OMERS."[31]

Bill 206 closely followed the 2002 OMERS recommendations by instituting a bicameral governance structure with a separation of sponsor and fiduciary functions. The sponsor function, which had previously been held solely by the government, was devolved to the newly created "OMERS Sponsors Corporation" (SC), which was, as proposed, to be equally composed of representatives from both the member and employer sides. Structuring the SC as equally split between employer and employee seats, in government's view, "offers a balance between the interest of the employers who pay into the plan and the employees who pay into the plan and benefit from the plan."[32] The corporate "objects" of the SC were set out in Bill 206: "to make decisions about the design of benefits to be provided by, and contributions to be made to, the OMERS pension plans." The statute empowered the SC to make its own decisions and bylaws by a majority vote, subject to the constraints outlined in the statute. Any decision to change an OMERS plan benefit or contribution rule, however, would, by statute, require a 2/3 vote. Government argued that "we would want to ensure that there is significant support from both employers and employees for any major changes to this plan."[33]

Government's comments on Bill 206 demonstrate again that the separation of the sponsor and fiduciary functions is a key goal shared by government, OMERS and its stakeholders, facilitating a genuine bargaining process. The government said the legislation followed a "best practice" by "clearly separating the role of the Sponsors, who negotiate benefits and contribution rates, from the role of the Administration Corporation, which has a legal responsibility to manage the assets of the plan in the best interests of all plan members."[34] The legislation prevented the same individual from simultaneously holding both an AC and SC seat to prevent any overlapping duties. "Really, the responsibilities must be separate. There's a fiduciary responsibility and then there's the sponsors role" said the government's main

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[30] Ontario Municipal Employees Retirement System Act, 2006, SO 2006, c 2.

[31] Ontario Government Press Release, "Ontario Government Proposes New OMERS Governance Model," June 1, 2005, https://news.ontario.ca/en/release/90532/ontario-government-proposes-new-omers-governance-model

[32] Legislative Assembly of Ontario, Hansard, February 21, 2006, https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-2/2006-02-21/hansard

[33] Legislative Assembly of Ontario, Hansard, December 12, 2005, https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-2/2005-12-12/hansard

[34] Ontario Ministry of Municipal Affairs and Housing, "Myths and Facts about The Proposed Legislation, Bill 206: An Act to Revise the Ontario Municipal Employees Retirement System Act," February 16, 2006, https://collections.ola.org/mon/13000/259675.pdf, Emphasis added

spokesperson on the file.[35] Government argued that SC members "are representatives of the various constituencies that are responsible to appoint them."[36]

OMERS and its stakeholders remained in agreement. OMERS itself argued that, at the SC, "the sponsors can act in their own interest, within a defined legal framework. The plan administrator, on the other hand, is responsible for administering the Plan and overseeing investments and is legally required to act in the best interest of all plan members."[37] Unions and employers continued to support the position as well and were more focused on winning seats on both boards to allow them to represent the interests of their constituencies. For example, OSSTF did not have a dedicated seat on the SC in the original version of Bill 206. The union said it needed a seat on the SC to "represent our members' pension interests."[38] When it successfully secured this seat, OSSTF told their members, "OSSTF will now have a direct say in pension matters. This will better serve the interests of OSSTF/ FEÉSO contributors."[39] Municipal retirees cited their unique interests as justification for a retiree seat at the SC.[40] The City of Toronto (which was not a member of AMO) argued that "Toronto cannot be represented by members chosen by AMO."[41]

The consensus from all sides was that the SC would be a representational, collective bargaining body. All sides repeatedly spoke the words *control, representation, interests, bargaining and negotiation* about the SC during the debates on Bill 206.

After a first round of committee hearings, Bill 206 was amended to include a representative of the Association of Municipal Managers, Clerks and Treasurers of Ontario on both the SC and the AC. This seat was 1 of 11 proposed seats on the "plan member" half of the SC table. Government initially argued that non-union members also "need representation at the table."[42] The unions strongly objected to this, with one leader arguing, "How can you in good conscience sit down and say that the CEOs that we negotiate with every day of the week in our municipalities and our school boards somehow have now been magically transformed into union members?"[43] Government subsequently agreed with this principle and amended the Bill to remove the manager from the plan member side of the SC table but allowed them to remain on the plan member side of the AC. The SC seat was instead given to OSSTF. The government lead on the file explained the government's thinking:

[35] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," November 30, 2005, p. G-120.
[36] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," November 30, 2005, p. G-110.
[37] OMERS "A Submission to the General Government Committee Regarding Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act, 2005," undated.
[38] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," January 25, 2006, p. G-269.
[39] Ontario Secondary School Teachers' Federation, "Special Issue: Update: OSSTF gets a seat in OMERS new partnership deal," March 2006.
[40] MROO, "Submission to Hon. John Gerretson, Minister of Municipal Affairs and Housing on Bill 206, An Act to Revise the Ontario Municipal Employees Retirement System Act, Sep 2005."
[41] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," November 21, 2005, p. G-55.
[42] Letter from Dalton McGuinty to Sid Ryan, March 10, 2006.
[43] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," Jan 25, 2006, p. G-289.

> We elected to take AMCTO off the sponsors committee, but we still felt that they represent a great deal of employees, and given the fact that when you get to the administration corporation, you're there to perform a fiduciary duty, and your allegiances in terms of your representation are to be left, really, at the door when it comes to performing that duty, they still have a role to play, and those employees should have some representation in there.[44]

Here government again acknowledged a fundamental difference between the representative functions of the AC and the SC. In government's view, managers could sit on the member side of the AC, where it was expected they would serve with a fiduciary duty to act exclusively in the interests of plan members. This allowed government to argue that it wasn't a real conflict for a management organization to take a "member" seat. However, by dropping the proposed manager seat from the SC, government essentially conceded that the same principle could not hold in the SC, where there is an expectation of representation and serving the interests of the appointing party. Note that the AMCTO AC member-side seat was later removed.

Government clearly stated its desired fiduciary-sponsor separation in a revealing discussion in response to an amendment proposed by Ontario New Democratic Party Committee member Andrea Horwath. The proposed amendment would have directly imposed a fiduciary duty to *plan members* to be fulfilled by members of the Sponsors Corporation. The government rejected this amendment, as its spokesperson remarked:

> We'll be opposing this. What it would do is create a fiduciary responsibility for the sponsors corporation in relation to members, former members and others entitled to the pension benefits. We believe it's a fundamental principle that we're trying to uphold here, separating the fiduciary responsibilities from the political or bargaining responsibilities of the sponsors. We don't think that would be in keeping with the role that we have in mind for both these separate corporations.[45]

Progressive Conservative Committee member Tim Hudak responded by asking:

> "Is the role of the individuals who are sent to the sponsors corp, those who come from the various employer and employee groups to sit on the sponsors corp, to do what's in the best interests of the plan as a whole or are they there to represent the interests of the groups that nominate them?"

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[44] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government,", Feb 1, 2006, p. G-359.

[45] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government,", November 30, 2005, p. G-109.

Government staff responded:

> "The members are representatives of the various constituencies that are responsible to appoint them in the transition provisions and presumably would come together and decide about making decisions from time to time with respect to the pension plan…on the sponsors corporation, I think the role of the member essentially is to—well, they presumably also have some duty to the sponsors corporation and its purpose is, from time to time, to make changes to the pension plan. Presumably, the member who represents a particular constituency will keep the interests of that constituency in mind. I can't say that it would extend to being a duty. They were appointed by that constituency and I think they would probably keep it in mind in acting on the board of the sponsors corporation."

Government responded to this point of tension with a particular focus on the representative nature of the proposed SC:

> To make sponsor reps responsible to the OMERS corporation with fiduciary duty almost places them in a bit of personal quandary, in that they're on the sponsors committee representing other groups. To give them that fiduciary responsibility, I think, would be an unwise thing to do and an unfair thing to do to them. The sponsors committee will work, but as a group that represents other interests. While we hope that sponsors members will be able, from time to time, to consider the best interests of the fund ahead of those who may have sent them there, they also have a role of representing those groups. **From time to time, there could be conflicts between a fiduciary duty to OMERS and the particular group that may have sent them to the sponsors corporation, so we don't want to place them in that position**.[46]

The government lead told the legislature that employers and members "must be able to make decisions that other pension plan sponsors can make as well. They are most affected by those decisions, so they should have representatives at the table going to bat for them."[47]

While there was some limited discussion about the technicality of corporate fiduciary duties owed by SC members to the Corporation itself, there was no public contemplation that these duties would somehow supersede the clear consensus that the SC was to be a representative, bargaining body or that the representational role of sponsors would be fettered or limited in any way at the SC table.

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[46] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," February 1, 2006, p. G-344, Emphasis added.
[47] Legislative Assembly of Ontario, Hansard, December 12, 2005, https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-2/2005-12-12/hansard

Bill 206 was passed on February 23, 2006, and the legislation came into effect on June 30, 2006. "OMERS is now controlled by its members," the government said on passage of the law.[48]

Early Functioning of the SC

For its early years, the SC seemed to function largely as all parties had intended: as a representative bargaining body.

The original SC bylaws recognized the two "sides" of the pension bargaining table through provisions around plan member and employer "member groups." The SC was structured to have one co-chair from the member side and one co-chair from the employer side. These co-chairs served as *de facto* spokespeople for the member and employer sides, which would often caucus separately to discuss common bargaining positions. The SC constituted audit, corporate governance, HR/compensation and plan design sub-committees. SC bylaws required that membership on these committees would be evenly delegated between employee and employer SC members. This structure implicitly reflected the consensus that employers and employees were interested "sides" of a bargaining table and that their different interests would be expected to be debated at the SC.[49] The SC continued to acknowledge a need to maintain an equal balance between employer and employee seats and votes, arguing that "both perspectives are important and neither group should have more influence than the other."[50]

The SC had a minimal Confidentiality Policy that did not inherently constrain SC members from discussing SC issues with their appointing parties. The policy stated that "the SC strives for transparency where appropriate" and that it "will mandate confidentiality with respect to a relatively small group of documents."[51] Material circulated to all SC members would generally be considered non-confidential (unless deemed confidential by a pro-active majority vote of the SC) and could be shared with sponsor organizations. SC policy stated that "a Member shall be entitled to share and discuss Information with the OMERS pension plan sponsor or association of OMERS Plan sponsors with which such member is associated."[52]

Clearly, if plan sponsors were to exercise their voice through their representative, they would need to have a detailed and clear understanding of the issues under debate at the SC and access to all of the financial and actuarial information needed to take a position. If appointing sponsors did not receive this information from their seat-holders, it would be impossible for the sponsor's interests to be articulated and represented by their SC representative.

[48] Ontario Ministry of Municipal Affairs and Housing Press Release, "Province Gives Control Of Pension Plan To Members," February 23, 2006, https://collections.ola.org/newsrel/ont/2006/02/259890.pdf
[49] OMERS Sponsors Corporation, "Amendment and Restatement of By-Law No. 4," February 16, 2010.
[50] OMERS Sponsors Corporation, "OMERS Board Composition By-law Review," May 25, 2016.
[51] OMERS Sponsors Corporation, "Confidentiality Policy," January 1, 2012.
[52] OMERS Sponsors Corporation, By-law No. 2, "General By-law," 5.14, Dec 13, 2017.

The 2012 Dean Review

In 2012, the province appointed Tony Dean, the former head of the Ontario civil service to conduct a statutory review of the effectiveness, fairness and efficiency of the OMERS governance model. OMERS stakeholders held meetings with Dean and made formal submissions in regard to plan governance. Dean issued his report in 2013.

Most of the issues discussed in the review concerned the OMERS Administration Corporation. However, the stakeholders did make comments about SC governance issues that largely reaffirmed the common position taken in 2006, namely that OMERS should have bicameral governance and that the SC was intended to be a representational, adversarial bargaining body. The OMERS AC itself again argued for a separation of sponsor and fiduciary functions and argued that the SC "does not have fiduciary duties to plan members."[53]

Dean's report very clearly reinforced the broad consensus from 2006 that the SC was intended to be a representational, collective bargaining body. Dean said that "it was anticipated that sponsor bodies would place 'political' or representative actors at the SC board table in view of its partial role in fulfilling a "collective bargaining" role."[54] He placed a very high priority on maintaining the separation between the sponsor and fiduciary functions within the plan's governance: "In Jointly Sponsored Plans (JSPPs), the culture of collective bargaining and the legal requirements for fiduciary responsibility are each part of the operating context but for all of the parties there is a clear line between these two worlds that must be respected."[55] For Dean "even a perception" of fiduciary/sponsor lines being crossed "is unhealthy."[56]

The Corporate Structure of the OMERS Sponsor Function

In CUPE's view, the corporate nature of the SC has provided a rationale for the remaking of the SC into a body of "neutrals," even though this contradicts the entire purpose for creating the SC. We reject the argument that a corporate structure is inherently incompatible with a representative structure. If we understand the corporate fiduciary duty as procedural rather than substantive, we believe that real representation can occur at the SC – as it was intended and how it indeed functioned for many years.

Documents from the rounds of consultations leading up to "OMERS Devolution" show that all parties envisioned the sponsor body being structured as a *committee*. Access to information requests show that the Harris government had a version of the *OMERS Act* already drafted in 2002, which established the

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[53] OMERS, "Governing a Large, Complex and Global Pension-Based Enterprise: Submission by the Board of Directors of the OMERS Administration Corporation to Tony Dean OMERS 2012 Governance Reviewer," August 29, 2012, 11.
[54] Tony Dean, *Reviewer's Report: Ontario Municipal Employees Retirement System (OMERS) Governance Review 2012: Prepared by the Reviewer for the Minister of Municipal Affairs and Housing*, January 18, 2013, 45, https://collections.ola.org/mon/27004/321564.pdf
[55] Tony Dean, *Reviewer's Report,* 6.
[56] Tony Dean, *Reviewer's Report*, 44.

Sponsor body as a committee.[57] However, when the *OMERS Act* was introduced in 2006, it established the OMERS Sponsor Body as a non-share **corporation** instead of a committee. The incorporation of a sponsor body remains a unique feature of OMERS amongst other JSPPs.

While the provincial government had exempted the SC from the provisions of the general non-share corporate statutes of Ontario, it did expressly subject the SC to several sections of the Ontario *Business Corporations Act*.[58] One of these sections imposes a "standard of care" on SC directors to "act honestly and in good faith with a view to the best interests of the corporation." This is commonly understood as a corporate fiduciary duty. Directors of corporations bound by such duties are required to act in the best interests of the corporation. The provincial OMERS Act did not define the best interests of the SC.

Corporate law and the corporate fiduciary duties of directors are based on the idea that in a corporation, the interests among corporate stakeholders are generally aligned over the long term with the interests of the corporation itself. This theory posits that while there can be periods where the interests of certain stakeholders (such as shareholders and creditors) can diverge, there is an assumed broad, long-term alignment of interests across corporate stakeholders. Corporate law assumes that what is good for the corporation itself should serve the long-term interests of its constituent groups. Evolving case law has clarified that corporate directors may give "due consideration" to the interests of corporate stakeholders but still must act in the best interests of the corporation.[59] In response to a series of corporate scandals in the 1990s, a trend emerged favouring independent corporate directors, whose distance *from management* is believed to promote more objective, corporation-focused decision-making.[60]

The SC, however, is not a typical for-profit corporation. As outlined in the preceding sections, the SC was established on the understanding that *conflict*—and not a broad *alignment*—of stakeholder interests would be perennial. The SC was created to be a forum with agreed-upon rules for airing, understanding and resolving those conflicts. The province, however, chose to create the OMERS sponsor body as a corporation and must have understood that this would mean directors owed some fiduciary duties to the corporation itself. The government was equally aware that unions have statutory obligations to represent their members fairly under labour relations law. The province was also well aware of the principle of shared control in the jointly sponsored pension model, which it embedded into the *Pension Benefits Act*'s requirement that the terms of jointly sponsored pension plans be controlled by "representatives" of employers and plan members.[61]

[57] Draft Legislation, "An Act to Amend the Ontario Municipal Employees Retirement System Act," July 8, 2002, Correspondence on municipal policy development, RG 19-112, container B840236, file "3-12 OMERS," Archives of Ontario, Toronto, accessed under the *Freedom of Information and Protection of Privacy Act*.

[58] Ontario Municipal Employees Retirement System Act, 2006, SO 2006, c 2, section 22(3) and (4)

[59] Peoples Department Stores Inc. (Trustee of) v. Wise, [2004] 3 S.C.R. 461, 2004 SCC 68; BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, 2008 SCC 69.

[60] Independent directors have been called the "philosopher's stone" of good governance." See Yvan Allaire, "The Independence of Board Members: A Quest for Legitimacy," Institute for Governance of Private and Public Organizations, Policy Paper No. 3, September 2008, https://igopp.org/wp-content/uploads/2014/04/PP_IndependanceAdmin_EN_v4-2.pdf; also see Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where Were the Directors? Guidelines for Improved Corporate Governance in Canada* (Toronto: Toronto Stock Exchange, December 1994).

[61] Pension Benefits Act Regulation, R.R.O. 1990, Reg. 909: GENERAL, 3.1.

The province did not seem to believe that its choice to impose a fiduciary duty to the SC would conflict with the representational mandate of the body itself. CUPE has seen no evidence that the government believed that the duty owed to the SC would somehow trump the clear intention of the legislature and the agreement among all stakeholders that the SC would be a representative bargaining body.

The government must have believed that the confusing and potentially overlapping duties imposed by corporate law, labour relations law and the JSPP model in pension law were not in fundamental conflict, or at the very least, were reconcilable.

The only clear and logical way to reconcile these multiple duties is for the fiduciary duty to the SC to be understood as largely procedural rather than substantive in nature. This means SC bylaws could be amended to permit members to uphold their corporate law duties to the SC by engaging and negotiating in good faith at the SC table, performing these duties with due diligence and ensuring that the OMERS plan design remains in compliance with the *Pension Benefits Act* and other applicable legislation. These procedural duties do not require prescribing any specific outcome concerning debates over OMERS contributions or benefit levels. Nor do they need to generally supersede the basic representational nature and purpose of the SC itself. It is possible for SC rules to permit an SC director to act as a representative of their appointing body in pension negotiations at the SC table while simultaneously fulfilling their fiduciary duty to the SC itself. Indeed, this is the only way to reconcile the legislature's simultaneous choice to impose corporate law fiduciary duties on the SC with its clear political desire to create the SC as a representational proxy for adversarial collective bargaining. And as noted earlier, this is how the SC functioned for many years.

The Remaking of the SC

Instead of finding ways to reconcile these potentially confusing and overlapping duties, the SC has chosen to rework its internal processes such that the corporate fiduciary duty to the SC itself is effectively deemed to wholly override all other representative obligations that seat holders should hold. The SC has, therefore, completely inverted the purpose it was created to serve. The legislature, plan sponsors, and stakeholders created the SC so that its members would be free of fiduciary duties, permitting them to act as representatives advancing sponsor interests. The SC now says its members must be free of representative duties to permit them to act as fiduciaries to the SC.

The SC has reformed itself in the following ways:

- SC meetings take place behind closed doors and are not open to plan members or sponsors.
- Minutes of SC meetings are not available to plan members or sponsors. Very short summaries are posted on the SC website.
- The confidentiality policy was dramatically rewritten in 2019. The new policy has involved a "move from framework under which SC information is presumed not to be confidential to one under

which SC Board material is presumed confidential."[62] Plan sponsors now appoint members to the SC who are not permitted to share most of what happens at the SC.

- The SC Board had traditionally been led by two "co-chairs": one from the employer side and one from the employee side. In 2019, the SC adopted a chair/vice-chair structure for the board without any requirements that there be a balance between member or employer representatives in these roles. Employer representatives could fill both the chair and vice-chair roles on any given committee. The CEO of the SC said that "this change reinforces the SC Board's fiduciary responsibilities, in that both the Chair and Vice-Chair will formally focus on the best interest of OMERS as a whole – rather than being elected to represent the employee and employer groups' perspectives."[63]
- The SC's Board subcommittees had traditionally required equal representation from the employer and member sides. This requirement of equal representation has been removed in favour of a "skills-based approach" to appointing committees.
- SC Bylaws have made increasing references to the "fiduciary duties" of SC members with a specific focus on the relationships between seat-holders and their appointing parties. The SC "Board Member Role Description" says that SC Directors must "act exclusively in the best interests of SC even though they may have been appointed by a specific stakeholder group." Directors "may articulate the interests and views of the specific stakeholder group that appointed them during the decision-making process, in the end, they must place the best interests of the SC ahead of any other interest or stakeholder."

It's essential to note that the SC implemented these changes behind closed doors. This means they must have had at least some support from the employer and the plan member side. Some of the changes were disclosed to plan sponsors with very limited information and very short timelines. It should also be noted that the SC contemplated even more drastic changes, which were not made, but the fact that they were even contemplated is deeply troubling to CUPE.[64]

The SC argues that "The best interests of the SC include governance and decision-making practices which support the health and long-term viability of the jointly sponsored Plans and give due consideration to the interests of the stakeholders and other relevant circumstances."[65] Of course, merely having to give

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[62] OMERS Sponsors Corporation, "Proposed Changes to OMERS By-Laws to be voted upon at the November 2019 SC Board Meeting: Information for Sponsors," October 22, 2019.

[63] OMERS, Sponsors News, "OMERS Sponsors Corporation Unanimously Elects Chair and Vice-Chair, Following Enactment of Key Governance Enhancements," August 20, 2020, https://www.omers.com/news/omers-sponsors-corporation-unanimously-elects-chair-and-vice-chair-following-enactment-of-key-governance-enhancements#

[64] The SC also held votes on even more extreme measures which were not ultimately adopted. Consideration was actually given to removing the ability of sponsors to directly appoint or remove their Directors from the SC and moving to a system where "the SC manages its composition through the appointment of members nominated by the Sponsors." Sponsors were to nominate SC Directors who would be first vetted for their "skills and experience." A committee of the existing SC would either accept or reject the nominee. If the Sponsor failed to put forward any nominees deemed "acceptable," the committee would conduct its own search and propose a nominee to the Board as a whole. Similarly, Sponsors would also lose their ability to remove an SC Director at their discretion. The SC Board itself would be given the right to reject a Sponsor's request for such a removal. CUPE, "OMERS By-Law Changes Update," January 2020, https://cupe.on.ca/wp-content/uploads/2020/01/EN-FINAL-BylawReviewDocument-1.pdf

[65] Omers Sponsors Corporation v. Omers Administration Corporation, 2008 CanLII 3970 (ON SC). This is a 2008 joint SC court application with the OMERS Administration Corporation regarding plan expenses. The decision by Justice

"due consideration" to the interests of a stakeholder is vastly different than being permitted—and expected—to directly represent, advocate and vote based on those interests at an adversarial table. Instead, SC directors have increasingly been told they would be part of one team, sitting at a round table, free from a representational role, and bound to act only in the vague best interests of the SC itself.

The SC – a corporation created to resolve conflicts–says it is now a model of "collaborative governance."[66] OMERS Annual Reports, which had traditionally listed SC directors *and their appointing bodies,* dropped the references to appointing bodies, instead only referencing their names. This change is consistent with the SC's reformed view of its governance.

This view sees that the only real influence a plan sponsor has over the OMERS plan design is in deciding which independent individual to appoint to the SC. Upon appointment, the substantive direct relationship between the seat-holder and sponsor effectively ends for pension purposes. That individual then becomes a neutral "Director" of the SC and is told their fiduciary duty requires that they can only act in the best interests of the SC (which, however, remains not clearly defined or understood). This has been interpreted as effectively avoiding even the pretense of acting in a representative capacity of particular stakeholder interests at the SC table. Directors, therefore, cannot inform sponsors about most SC matters. Virtually all substantive documents are now captured by SC confidentiality rules. Plan sponsors cannot even know how their appointees voted on governance or benefits issues. Sponsors no longer receive any information about the SC directly from their appointees. All information is now mediated through the CEO of the SC. In CUPE's view, this information tends to be high-level, and is slanted towards a specific, pre-determined outcome. Important legal and financial background information is often not provided to sponsors, nor are source documents. SC engagement with sponsors occurs not through sponsor SC seat-holders (as intended), but through the SC CEO and official, heavily slanted SC communications.

Instead of feeling listened to or informed, important plan sponsors feel that these consultations are largely an attempt to manufacture consent for conclusions the "independent" SC has already arrived at behind closed doors. The recent "Plan Risk Assessment" that the SC initiated in 2021 and discussed at the February 2023 Sponsors Forum meeting demonstrated this. At this meeting, CUPE stated that we had no information about which plan changes were on the SC table as part of this review. We asked if the SC itself would play a neutral role in this process and not attempt its own advocacy with sponsors to convince them of the SC's view. CUPE felt this was more appropriate given the governance role the SC was supposed to play. The SC Chair responded by stating that the SC would not remain neutral. They planned to first reach a tentative internal conclusion *before* discussing any proposed changes with sponsors. And in those

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Archibald of the Ontario Superior Court, discussed the traditional sponsor and fiduciary separation in pension plans, but also noted that: "Unlike an employer, the SC has no independent corporate interests beyond fulfilling its statutory duties and ensuring the health and viability of the OMERS Pension Plans. Although the SC is composed of employer and plan member appointees, as directors of the SC Corporation, the Members owe fiduciary duties to the SC Corporation and must act in its best interests. In the context of the overall Act, the only interests of the SC would appear to be the proper governance of the OMERS Pension Plans." The reference here to "ensuring the health and viability of the OMERS Pension Plans" was new, as this language was notably not in the statutory objects of the SC as laid out in the OMERS Act. However, this obligation did not originate independently from Justice Archibald: these exact words were included in the affidavits put before the Court by the SC. This language would, not surprisingly, have not been seen as controversial by any stakeholders who all genuinely share an interest in the good stewardship of OMERS.

[66] OMERS, Sponsors News, "OMERS SC Board Conducts Board Effectiveness Review," November 14, 2019, https://www.omers.com/news/omers-sc-board-conducts-board-effectiveness-review#

discussions, the SC planned to take on an advocacy role with sponsors about the plan changes the SC had tentatively agreed to.

This was a deeply revealing comment. Since SC bylaws and policies now say that directors cannot be swayed by the views of sponsors, and since the SC's plan was to reach a tentative backroom conclusion before even discussing the proposed plan changes with sponsors, the tentative conclusion would, in all likelihood, have been the final conclusion. Changing a vote based on sponsor feedback would likely have been seen to be offside of the SC's new internal rules, which say that sponsor views cannot determine votes. This means that before CUPE members even knew what changes were being considered for their pension plan, the decision would have likely already effectively been made. CUPE and other sponsors no longer have a real voice at the OMERS SC. The SC is no longer a forum to air, debate and resolve sponsor interests. It now exists as a corporation intended to manufacture consent to plan design decisions independently reached by the SC in rooms closed to plan members.

As a result of the remaking of the SC, CUPE now publicly argues that "we feel that we are a plan sponsor in name only."[67]

Why the Reformed SC is a Problem

CUPE believes the reformed SC poses a significant governance issue at OMERS for several reasons outlined below.

Risk and Control Are No Longer Aligned

As stated earlier, the longstanding first principle of the JSPP model is that there should be an alignment of risk and control. Plan members and employers are legal risk-bearing parties to the OMERS pension plan. As a JSPP, provincial pension laws require that should OMERS fall into deficit, absent any offsetting changes to the plan's terms, both employers and plan members would be required to contribute more to make up for the shortfall.[68] In a downturn, there would likely also be pressure to offset some of these costs by lowering the OMERS benefit levels on a go-forward basis. There would also be pressure to reduce (or eliminate) the cost-of-living increases paid to retiree pensions earned after 2022 under "Shared Risk Indexation."

Furthermore, although employers would be equally responsible for their share of any increases to contributions, plan members could surely expect employers to use those increased pension costs as a rationale to push for lower wage increases at the collective bargaining table. The fact that employers and (even more so) plan members bear these risks was the key driver in why gaining control of the plan was so important to unions for so long. Plan members are bearing more risks in OMERS, and at the same time,

[67] CUPE Ontario, "Not Just One "Tough Year": The Need for a Review of OMERS Investment Performance," May 2021, 11, https://cupe.on.ca/wp-content/uploads/2021/05/OMERS-Report_ENG_Final-002-LB.pdf
[68] Pension Benefits Act, R.S.O. 1990, Chapter P.8, Section 2.

they have effectively lost any real control over the terms of OMERS. The alignment of risk and control has wholly broken down.

Members Have No Voice and Cannot Exit

The *OMERS Act* makes OMERS the only pension option available to Ontario municipalities and boards. These employers and their workers cannot, under this law, join a different pension plan. For many workers, OMERS is a mandatory condition of employment, for which they forgo a significant portion of their current compensation. Given these restrictions, workers deserve more voice than merely being given "due consideration." When appealing to borrowers in the financial markets, OMERS refers to its plan members a "captive membership."[69] With no practical option for "exit" and their "voice" historically constrained, workers are left in a very difficult place.[70]

The SC Risks Being Offside of the Ontario *Pension Benefits Act* and the Purpose of a JSPP

The *Pension Benefits Act* requires that JSPPs be controlled by workers or by "**representatives"** (a significant word choice) of employers and plan members. As discussed above, sharing of control of plan terms was always considered a key provision of the JSPP model. The SC's reformed bylaws are clearly designed to prevent a representative function for SC members.

Workers Have a *Charter* Right to Collective Bargaining

The terms of a worker's pension plan are central to the total compensation "deal" under which workers trade their labour. Canada has signed international commitments pledging to uphold the right to collective bargaining, and our Supreme Court has held that collective bargaining falls under the *Charter*-protected right to freedom of association. Collective bargaining, including the ability to strike, is now a constitutional right in Canada. The Court has ruled that real collective bargaining cannot involve a "non-adversarial" process that effectively suppresses members' interests. The SC bylaws state that the SC is a non-adversarial body where member interests are merely given due consideration. A right to normal adversarial labour relations is incompatible with (or at the very least, seriously threatened by) a non-adversarial corporate governance structure. The law requires more.

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[69] OMERS, "Debt Issuance Information Sheet," December 31, 2020, https://assets.ctfassets.net/iifcbkds7nke/HYaTjsEqVNoFYasgYj9fo/2d0c8edc032a162693aca5bacd9ab168/Overview-OFT-OMERS.pdf

[70] Albert O. Hirschman's exit-voice-loyalty-voice paradigm in labour relations has been discussed by Richard Freeman, "The Exit-Voice Tradeoff in the Labor Market: Unionism, Job Tenure, Quits, and Separations," *The Quarterly Journal of Economics* 94, no. 4 (June 1980): 643-673.

Sponsor Frustration with the SC is Growing

Both employers and unions have constituencies they are legally obligated to represent. The SC openly states that their interests are only to be given "due consideration" in plan decision-making. The responses of different sponsors to the 2019 governance changes, specifically Shared Risk Indexation and the recent Contribution Rate Policy, demonstrate a deep dissatisfaction with the SC's new governance approach. Pension plan decision-making will always involve difficult decisions and hard trade-offs. If plan sponsors, who bear the plan risks, continue to be practically left out of these decisions, this frustration will continue to grow and compound. This will not serve the interests of plan members, sponsors, or the SC itself.

The following episodes over a short period illustrate the problems with SC governance:

- In 2018, the SC was conducting a "Comprehensive Plan Review" that contemplated changes to plan benefits. In June of that year, SC representatives appeared before a City of Toronto Government Management Committee.[71] At that point, the Review itself had been announced, but the specific plan change proposals the SC was considering had yet to be communicated to plan sponsors, but it was clear the changes would be voted on in November. City Councillor Janet Davis said, "I'm disappointed that if there has been consultation going on for months that we haven't had any opportunity, formally, as elected officials to make a contribution to that discussion and here we are one month before the end of term being asked to somehow provide a reasonable to such significant – potentially significant – change in our pension plans that may have impacts for both us as an employer and of course for our employees."[72]
- In the fall of 2019, the SC notified Sponsor organizations that the SC Board had developed a detailed package of governance changes that were scheduled for an SC vote in November. The proposed changes had arisen from a "board effectiveness review" that had been ongoing for some time behind closed doors at the SC. Employer and union plan sponsors were informed about these dramatic changes just three weeks before they were to be voted on by the Board. All the employee-side Sponsors asked the SC to delay the vote, arguing that the changes "would significantly alter the way in which Sponsors engage with the Sponsors Corporation and dramatically impair our rights as Sponsors."[73] The sponsor request to delay was denied. Sponsor organizations were only provided with a non-exhaustive, high-level summary of the proposed changes. Plan member sponsor unions and organizations requested the text of the proposed amendments ahead of the vote. Still, the SC did not immediately respond to these requests by sending the textual changes. It was not until the evening before the vote that CUPE received the text of the proposed changes. The small print included several important items that the high-level SC communications had not discussed.[74]

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[71] Toronto City Council Records, Government Management Committee, June 5, 2018, City Council Meeting, June 26, 2018, Motion GM28.2, June 27, 2018, http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM28.2

[72] Toronto City Council, Government Management Committee, archived webcast, June 5, 2018, 1:33:05, https://youtu.be/IcXqk4xtCSE.

[73] Letter from Bruce Chapman, Fred Hahn, William J. Harford, Dave Mitchell, Warren (Smokey) Thomas, Harvey Bishof and Rob Hyndman to Frank Ramagnano and Barry Brown, November 7, 2019.

[74] Email from Kareena Kawall, CUPE to Kara McAulay, OMERS, November 6, 2019; Letter from Barry Brown and Frank Ramagnano to Bruce Chapman, PAO, Fred Hahn, CUPE, William J. Harford, OMERS Retirees Group, Dave

- In 2020, the SC conducted what can only be called a campaign to remove guaranteed indexation from the plan. This was the third such campaign in recent years and the first following the governance changes described above. The SC created a website (omersfuture.ca)[75] promoting the change and worked to sell its preferred solution to plan sponsors and stakeholders. However, to properly and fully understand the implications of replacing a guaranteed benefit with a non-guaranteed benefit, plan sponsors would, at the very least, need to understand what the non-guaranteed benefit was expected to deliver. Did the SC's projections show that non-guaranteed indexation would be delivered in full or in part? How confident was the SC that it would be able to provide full indexation? How were sponsors supposed to take positions in the absence of this information? Despite repeated requests, the SC refused to provide details on indexation modelling to plan sponsors.[76] "OMERS will not explain what eliminating guaranteed indexation could mean for your future," CUPE told its members.[77]
- The current review stemmed from dissatisfaction from certain sponsors with the SC's June 2024 announcement that contribution rates within the plan would be adjusted beginning in 2027. By the time the details were shared with sponsors, the decision had already been made. Rates were changing between lower and higher income earners, as well as uniformed and non-uniformed members of the plan. These changes will impact different unions and employers differently Sponsors were deeply troubled that this decision had been made without sufficient consultation in their view. CUPE requested a copy of the actuarial study that justified the proposed changes, but this request was denied. Presumably this document would likely show that there were contribution inequities between groups of members, but without access to it we do not know. We are also left unsure whether any inequities have been resolved, or how long any inequitable contribution allocation was in effect. This tense episode led certain sponsors to ask the province to conduct the present review and resulted in media stories discussing the "perceived lack of transparency from one of the pension plan's two boards of directors."[78]

CUPE believes it is significant that there has been a considerable decrease in sponsor confidence in OMERS since the SC's governance underwent its self-imposed internal reform. This is a clear indication that these changes do not lead to "good governance."

Mitchell, CUPE Local 79, Warren (Smokey) Thomas, OPSEU, Harvey Bischof, OSSTF and Rob Hyndman, OPFFA, November 8, 2019; Email from Barry Brown and Frank Ramagnano to Kareena Kawall, November 8, 2019.

[75] See archived version at https://web.archive.org/web/20200527174543/https://omersfuture.ca/sri.html

[76] Letter from Fred Hahn, CUPE Ontario to Michael Rolland, CEO OMERS Sponsors Corporation, April 22, 2020; Letter from Fred Hahn, CUPE Ontario to Michael Rolland, CEO OMERS Sponsors Corporation April 24, 2020; Email from Michael Rolland, CEO OMERS Sponsors Corporation to Fred Hahn, CUPE Ontario, June 1, 2020; Letter from Fred Hahn, CUPE Ontario to Michael Rolland, CEO OMERS Sponsors Corporation, June 8, 2020.

[77] CUPE, "Mythbuster: Defend Your OMERS Pension," May 31, 2020.

[78] Globe and Mail, "Ontario government plans governance review at pension fund manager OMERS," October 16, 2024.

The problems outlined above detail deep and serious concerns with an SC that has strayed from its mission. These changes effectively silence plan members from exercising their voice regarding pensions. CUPE is hopeful that these issues can be remedied as part of this review. Failing a proper resolution to these issues, CUPE is fully prepared to explore all of our legal options to ensure that our members' *Charter* rights to collective bargaining are respected.

More of the Same Will Not Solve These Problems

These SC issues were raised at the last OMERS Annual Meeting on April 9, 2025. In response, the SC stated, "We've heard loud and clear that we need to improve on transparency and communication," and that "we'll have to take a look at what our processes are and how we enhance them."[79] The SC recently announced to sponsors that it will be having more "touchpoint" meetings "for exchanging information, providing updates, and hearing the views of our Sponsors and Stakeholders."[80] CUPE views this as an effort to address the concerns raised in the present review without fundamentally changing the operation of the SC as a body of independent neutrals. CUPE's issues with the SC are not that there is an insufficient number of meetings. Our issue is that the very existence of these meetings and how they are conducted are by-products of the unjustified governance reforms the SC has carried out over the years. The SC would not need more expensive individual meetings to "hear the views" of sponsors if our SC representatives were permitted to bring CUPE's voice directly to the SC table, as all sides clearly originally intended. Unions do not accept a mere ability to be consulted (more) as anywhere close to a proper substitute for real bargaining rights. And we will not be satisfied with more of the same.

CUPE Proposals – Issue #1

PROPOSED SOLUTIONS:

The SC was created to be a bargaining board. For OMERS to function properly as a JSPP, this function must be restored by clear direction to the SC to:

1. Amend SC bylaws to ensure that SC reps are appointed by, able to act on, represent the views of, and fully communicate with their sponsor organization.

2. Amend the confidentiality bylaw to ensure that plan sponsors are given access to SC documents to support sponsor decision-making on SC issues. SC directors must be able to communicate freely with their sponsoring organization.

[79] OMERS Annual General Meeting Transcript, April 9, 2025, https://www.omers.com/omers-2025-annual-meeting-transcript
[80] Email from Laurie Hutchison to Fred Hahn, June 5, 2025.

3. Restore the bylaws to clarify that the SC Board is equally made up of employer and union (employee) representatives. This includes, but is not limited to, bringing back the co-chair model and reconstitute employer and union caucuses.

4. Introduce funding for legal and actuarial support for each caucus, which can reduce and replace corporation-wide expenses and would better align with the representative bargaining function the SC is supposed to play.

Issue #2 – Board Composition

Overview

Since the inception of the Sponsors Corporation, SC seats have been allocated to unions, retiree groups, and employers in a rough proportion to the OMERS members they represent or employ. Given that there are more than 100 employers and 40 stakeholder unions and organizations with members in OMERS, it has never been possible for each of these organizations to hold seats on the OMERS boards. Allocating seats on the SC has, therefore, always been an exercise in striking a balance between achieving a representative, democratic structure with a board that remains an efficient and functional size. OMERS itself has traditionally been concerned that a larger board would run much less efficiently. The OMERS Boards are already among the largest of the other JSPPs.

On the member side, CUPE represents by far the most active plan members, and has therefore been given more seats with more votes on the SC (through "weighted voting"). This idea, often referred to as "representation by population," has been an accepted governance principle of OMERS since joint sponsorship was adopted. The government's lead spokesperson in 2006 stated: "we've made changes to the representation on the sponsors committee to ensure that it fits closer with representation by population. We've listened very closely to the concerns brought forward in that respect by CUPE and ensured that they in fact will have greater representation on the sponsors committee to better reflect the number of employees they represent who are impacted by the fund."[81] The SC later called representation by population a "first principle" leading up to the Dean Review.[82]

Smaller unions, although they do not have seats on the OMERS boards, can share their views directly through the OMERS boards, and through the sponsor unions that hold seats. The Dean review suggested that these groups should receive more and better consultations, and OMERS has made efforts in this regard. As CUPE is not in this position, we are unable to say whether this mechanism is working well. However, we believe the Reviewer should make every effort to hear the views of these stakeholder groups on how this system could work better for them. We have also proposed what we believe is a better path forward on that issue, which the Reviewer could discuss with the relevant stakeholder unions and groups.

Broadly, CUPE believes that the existing board composition at both corporations strikes a fair balance between representation and efficiency and should be maintained. No changes should diminish the seats, weighted vote and proportional voice of CUPE within OMERS.

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[81] Legislative Assembly of Ontario, Hansard, December 12, 2005, https://www.ola.org/en/legislative-business/house-documents/parliament-38/session-2/2005-12-12/hansard

[82] Letter from Marianne Love and Brian O'Keefe, Chairs OMERS Sponsors Corporation to Bill Blackie, Executive Director, OASBO, November 14, 2011, accessed under the *Freedom of Information and Protection of Privacy Act*.

Seats for Non-Union or Management Associations

The SC and AC do not afford sponsor status or appointment rights on the member-side of the table to non-union or management associations. This issue has been thoroughly examined, both internally and externally, at OMERS. None of these examinations have recommended a change on this issue. CUPE is aware that these groups continue to advocate for this change in the present review. However, we consider this issue to be well-examined and fully settled.

- In the debates leading up to the establishment of joint governance in 2006, there was pressure for non-union associations to be given seats on the OMERS Boards.[83] As discussed earlier, Government considered the issue and did not give seats on the SC. AMCTO was granted one seat on the initial AC, but this was later removed.
- In the 2012 Dean review process, OMAA, AMCTO, COTAPSA, OASBO, and OMHRA again argued that they should be given seats.[84] Dean did not agree:

> *"It is not difficult to understand the concern that the unions may have that an employee representative from the management ranks may feel pressure from their employer to support the position of employers causing a threat to the balance between employers and employee groups. This very point was raised during the review as a real possibility and this opinion came from an employer group and not a union.*
>
> *The strongest argument for not providing unaffiliated employees with a seat at either corporation's table, however, is that no one association can claim to represent all the employees. COTAPSA could claim to be the largest, but their 3,500 members falls significantly short of the Ontario Public Service Employees Union (OPSEU) with just under 9,000 members. OPSEU represents the smallest number of active members among the employee groups on the boards.*
>
> *In some cases, employees are members of one or more associations. Others are not represented by any association. Notable as well is the absence of discussion of a protocol amongst the associations for choosing a representative or communicating with each other on board directions or decision-making. There also remains the very large issue of how to communicate with employees who are not aligned with an association."*[85]

[83] Legislative Assembly of Ontario, "Official Reports of Debates (Hansard) Standing Committee on General Government," November 16, 2005.

[84] Letter from Daniel Gatien, AMCTO to Deb Preston, OMERS Sponsors Corporation, February 24, 2012; Letter from Richard Majkot to Tony Dean, November 21, 2012; Letter from Bill Blackie, OASBO to Tony Dean, July 26, 2012; Letter from Kandy A. Webb, OMHRA to Tony Dean, August 30, 2012; Letter from Jim Green, OMAA to Tony Dean, August 2, 2012; all accessed under the *Freedom of Information and Protection of Privacy Act*.

[85] Tony Dean, *Reviewer's Report*, 39.

- The SC reviewed seat allocations in 2013, 2016, and 2020 and did not recommend any changes.[86] The SC's 2013 report argued that the existing composition represented a "reasonable balancing of the principles and practical limitations."[87] The 2020 SC review noted that adding additional seats would be counterproductive. The SC also argued that the various management associations represent a very small number of non-union OMERS members and that these associations generally do not have legal status to represent their members concerning working conditions and may not be accountable to those members.[88]

There are several reasons why non-union and management associations have not been given seats on the SC (or on the vast majority of JSPPs):

- Typically, non-union associations lack a formal organization that legally represents an entire constituency according to binding, democratic principles. This means that in a non-union setting, there is no appropriate body to appoint, direct, monitor, and terminate the appointment of a board representative. This of course stands in strong contrast to a certified trade union structure, where the organization legally represents all members of the bargaining unit and has a statutory obligation to represent their interests fairly. Unions have strong universal and democratic structures and accountability processes that a non-union association simply cannot replicate. Without these structures, we do not believe an association can appropriately serve in a representative role. We note that the SC itself held this same doubt in its 2020 effectiveness review. CUPE has held this view for many years. We told Tony Dean "With respect to management and non-union employees, it is really impossible to deal with their representation in the absence of a recognized and legitimate organization that claims their allegiance through recognized democratic procedures."[89]
- No single non-union group has membership numbers that even approach a majority of non-union OMERS members. The largest of these organizations does not even have 10 per cent of non-union OMERS members. Even combined, the membership of these associations does not come close to half of the non-union active members in OMERS. Moreover, it is likely that some individuals belong to more than one of these organizations (and possibly also to one of the retiree group associations), suggesting that the numbers above are likely overestimates if they were combined. There are stakeholder unions that do not have seats at OMERS, representing more members than the largest non-union association.
- Members in management associations are, in their employment roles, expected to advance the interests of the employer. As discussed earlier in this paper, these interests can and do conflict with those of workers at times on pension issues. These management members are exposed to a distinct "two-hat" problem that would fundamentally undermine the 50/50 employer/member

[86] OMERS Sponsors Corporation, "Review of OMERS Governance By-Laws," May 9, 2013; OMERS Sponsors Corporation, "OMERS Board Composition By-Law Review," May 25, 2016; OMERS Sponsors Corporation, "OMERS Boards 2020 Composition Review and SC Board Effectiveness Review," March 23, 2021.
[87] OMERS Sponsors Corporation, "Review of OMERS Governance By-Laws," May 9, 2013, 2.
[88] OMERS Sponsors Corporation, "OMERS Boards 2020 Composition Review and SC Board Effectiveness Review," March 31, 2021.
[89] CUPE, "Submission by CUPE (Canadian Union of Public Employees) Ontario for the 2012 OMERS Review," August 30, 2012.

balance of the Board (a balance the SC says is a "core principle" of our jointly-sponsored plan).[90] As plan members, managers will have a perspective and interests that may clash with their directives as management employees to reduce compensation costs, including pension costs. This inherent conflict is exacerbated by the fact that without just cause protection for discharge from their jobs, these members may have a serious incentive to represent employer—not member—interests at the board level. Having these members on the SC would give a permanent, structural appearance of conflict of interest and possibly even lead to conflicting votes. The voice of management is already represented on the employer side of the SC.

CUPE is not aware of any evidence that SC decision-making has resulted in decisions that were detrimental to the specific interests of manager-members while serving the interests of non-manager members. CUPE believes that, in the vast majority, if not all, plan design issues at the SC, the interests of managers (as plan members) should be aligned with the interests of other OMERS members. The SC noted a similar point in its 2016 review.[91]

The rationale outlined above has been reiterated by CUPE and various parties each time this issue has been discussed over the past two decades. The conclusions reached by these different parties (government, OMERS itself repeatedly, and Dean) have not changed. The serious potential downsides and challenges of including non-union or management associations on the OMERS Boards are fundamental and unlikely to change. These associations have not been given SC seats for good reasons. CUPE submits that this issue has already been settled and suggests that this reviewer reach the same conclusion. The reasons also apply to other major pension plans, which have reached similar conclusions to OMERS:

Plan	Do Managers or Non-Union Groups Have a Sponsor Body Seat or Vote?
OTPP	No
HOOPP	No
BC MPP	No
LAPP	1 of 6 Member-Side Seats However, LAPP needs a 2/3 vote on each "side" to pass a resolution. The 1 non-union seat was originally a union seat but was changed unilaterally by the Jason Kenney government in 2019.
OPTrust	No
CAAT	OCASA has 1 seat on 4/4 board (a central bargaining agent)
NSHEPP	No
SHEPP	No
NL PSPP	1 seat on 10-14 member board, with no vote
BC Public Service	No
BC Teachers	No
AB Public Service	No
UPP	No

[90] OMERS Sponsors Corporation, "OMERS Boards 2020 Composition Review and SC Board Effectiveness Review," March 23, 2021, 5.
[91] OMERS Sponsors Corporation, "OMERS Board Composition and By-Law Review," May 25, 2016, 5.

Headcount / Liability Amounts

Some unions have raised a related issue, arguing that seats on the OMERS boards should be allocated based on the proportion of total contribution or liability amounts that a union's members represent under OMERS rather than focusing on headcount. Traditionally, OMERS focused on absolute headcount, but in its 2020 governance review, the SC also permitted giving "due recognition to liability exposure."[92]

On basic democratic grounds, CUPE is strongly opposed to any proposal that would apportion members' voice differently based on how much money they earn or how many hours they work. Looking at the value of contributions or assets instead of headcount undermines the concept of "representation by population" which has been a first principle in OMERS for decades. This structure was, after extensive stakeholder discussion, embedded into the seat allocations of the original *OMERS Act* and has been reviewed several times subsequently, with no recommendations for changes. It has endured because it is fundamentally fair: a plan member's voice in OMERS should not be determined by their salary.

Considering this factor would disadvantage and systematically discriminate against lower-paid and early-career workers, who will have lower levels of plan liabilities or contributions by reducing their representation and, thus, their ability to influence decision-making. We know that these groups will be disproportionately made up of women, racialized and younger workers. Beyond the serious ethical concerns here, this could lead to human rights law challenges and problems. Indeed, the complete absence of any supporting rationale for improving the position of better-paid and typically male workers at the expense of traditionally marginalized workers is akin to shining a neon light on the underlying gendered aspect of this proposed change, and therefore, virtually certain to attract the attention of a reviewing human rights tribunal and/or court.

CUPE also rejects any argument that non-full-time members should have their votes "weighted" differently from full-time members.

The notion that a citizen's vote would be somehow weighted proportionally by their income, or their age is offensive and unacceptable. It is no less offensive here. If an OMERS reviewer were unwilling to inform plan members in plain terms that a higher-paid member should have more voice in determining the terms of the OMERS plan than a lower-paid member, then levels of liabilities and contributions should not be considered when determining representation structures.

CUPE notes that no other pension plan in the country considers liability measurements in determining member voice, likely for the reasons cited above.

[92] OMERS Sponsors Corporation, "OMERS Boards 2020 Composition Review and SC Board Effectiveness Review," March 23, 2021.

Other Employer Seats

At our request, we obtained a letter from Metrolinx regarding this review, in which they request seats on the boards of OMERS. Without a formal process for sharing submissions to this review, we also note the possibility that other employers have made similar requests.

CUPE's position is that no new seats should be awarded on either the SC or the AC for employer groups.

Adding new seats will increase an already large and increasingly costly governance system. We note that Tony Dean believed that "a larger board is likely to be more unwieldy."[93]

New employer seats would also require new member-side seats to ensure the balance is maintained. It will be difficult to add seats without diminishing the proportional voice of current sponsors. Ultimately, CUPE's voice and vote share must be maintained.

The Retiree Network

Originally, the *OMERS Act* required that the retiree seats be open to all retiree organizations, which would be allocated cyclically in order by membership size. A 2007 mediated agreement between the Municipal Retirees Organization of Ontario (MROO), the Police Pensioners Association of Ontario, the Police Retirees of Ontario and the Association of Retired Fire Fighters of Ontario detailed how these organizations would make appointments to the OMERS boards.[94] The reference in the *OMERS Act* was then removed, and the issue was to be determined by the SC itself. The SC's current bylaw #3 states that the Retiree Group "shall consist of Ontario Retired Fire Fighters Association, the Municipal Retirees Organization of Ontario, The Police Pensioners Association of Ontario, and/or such other Ontario municipal employee retiree organizations as may be designated by majority vote of the Members from time to time".[95]

It has never been the intention to permanently restrict the retiree seat to the 3 organizations currently listed. The *OMERS Act* as originally drafted, and the current SC bylaw contemplate that new retiree groups could be formed that should have the ability to pursue representation on the OMERS boards.

CUPE Ontario's Retiree Network was formed in 2015. Its mandate is to be a vehicle for voice and ongoing advocacy for retired members of CUPE in Ontario.

CUPE's Retiree Network should be added to the list of organizations in the definition of "Retiree Group."

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[93] Tony Dean, *Reviewer's Report*, 40.
[94] Tony Dean, *Reviewer's Report*, 39.
[95] OMERS Sponsors Corporation, "Amended and Restated By-Law No. 3 ("SC Board Composition")," January 1, 2025, 1.1(i).

The currently listed retiree groups do not represent all sectors of OMERS members. With their focus on the municipal, fire, and police sectors, we note that key OMERS membership sectors, such as school boards, children's aid, and electricity, are not captured. These members of these organizations comprise only a small portion of the total OMERS retiree population. Due to the sectors we represent, adding the CUPE Retiree Network can enhance the representativeness of the OMERS Retiree Group.

Stakeholder Voices at the SC

As stated above, allocating votes at the SC has historically – and properly – been an effort to strike a balance between representation and the functional size of the boards. Given that there are more than 40 stakeholder groups within OMERS, it is not feasible to have everyone proportionally represented on a reasonably sized board. Thus, there are several unions, employers, and associations that do not have seats on the governing boards. This was a central issue discussed in the Dean Review process. Dean concluded that, given the need for boards of functional and effective sizes, it would not be possible to award seats to these stakeholders. He did, however, propose that "improved communication and engagement mechanisms" be extended from the OMERS corporations to these groups.

As CUPE is not a stakeholder union, we do not have first-hand experience with how this system works. We strongly suggest that the reviewer engage in serious discussions with those groups to understand how the system is working for them.

Through our own discussions with stakeholder unions, however, CUPE does have a sense that the status quo is also not working for these groups. Their issues are similar to ours: feeling that input is only sought after SC decisions are made, that communications are designed to shape stakeholder views rather than hear them, and frustration with excessive confidentiality from the SC.

We can imagine a better system. Instead of having SC staff be tasked with soliciting stakeholder views, this could be delegated to the re-established caucuses discussed in the previous section. An SC member-side caucus would likely be better positioned to understand the issues raised by stakeholder unions. The same principle would also apply to the employer-side caucus and employer stakeholders. CUPE believes such a system would be more efficient and better aligned with the representational bargaining function the SC was created to serve. We note that this is how non-sponsor stakeholder relations function at the University Pension Plan in Ontario (UPP). These groups formally meet under an "Advisory Committee of Employee Sponsors," which "serves as a forum for collaboration, consultation, and information exchange between the Employee Sponsor Committee (ESC) and all participating employee groups in the UPP."[96]

[96] Employee Sponsor Committee, "Advisory Committee of Employee Sponsors," undated.

AC Board Composition

For similar reasons as above, CUPE believes that there is no reason to change the current seat allocations at the AC. CUPE's size is reflected in the fact that we hold more AC seats than other sponsors. This should be maintained as well.

CUPE Proposals – Issue #2

PROPOSED SOLUTIONS:

5. *"Representation by population" at the SC must be maintained.*
6. *No new seats on the member side of the SC for non-union or management associations.*
7. *No new seats on the SC for Metrolinx or other employers.*
8. *If any changes are made, they should not dilute CUPE's voice and vote share in any way on either board.*
9. *Engage with stakeholder groups on how processes can be improved for non-sponsor groups. Consider using SC caucuses for these discussions rather than SC staff.*
10. *Add CUPE Retiree Network to the Definition of the Retiree Group.*
11. *No changes to the composition or voting at the AC.*

Issue #3 - OMERS Administration Corporation (AC) Professionalization

> *It would be better to have a board member with good, general knowledge than to have an expert member who is unwilling to consider the opinions of others. It has happened, on some boards, that people who have been brought in as experts try to prove themselves by refusing to accept other opinions. That is not good board governance.*[97]
>
> -Tom Gunn, Chief Financial Officer, OMERS before the Standing Senate Committee on Banking, Trade and Commerce, February 17, 1998

Overview and History

Following the Dean Report in 2013, the AC has been transformed into a fully professionalized, expert board. While the SC formally makes the AC appointments based on nominations from sponsors, they are made in accordance with the AC's "Board and Director Competencies" document. This document outlines the general attributes that all AC directors must possess, along with a list of more specific competencies that the board as a whole must possess. Each board member is also required to be deemed to satisfy a certain number of these competencies. The competencies are clearly focused on the corporate finance sector.

This means that when CUPE is asked to make an appointment, we receive a letter highlighting the "skills gap" that currently exists on the AC, which could further limit the scope of our possible appointments. Our nominee is then evaluated, interviewed, and a background check is performed. For many decades, both before and after JSPP status, CUPE appointed OMERS members to board seats. Following the institution of the new rules, we have been appointing retired pension staff who can meet the tests and pass the interviews.

The shift to an expert board occurred after the Dean report was issued.[98] But it is notable that OMERS sponsors and stakeholders, on both sides of the table, did not actually recommend this shift to Dean. Most unions opposed the issue, while some (along with most employers) were silent. CUPE argued that "an expert board would be a grave mistake for OMERS."[99] The one body that argued for this shift was the AC

[97] Senate of Canada, "Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, Issue 8 - Evidence - Afternoon meeting, Toronto, Tuesday, February 17, 1998," https://sencanada.ca/en/Content/SEN/Committee/361/bank/08evb-e

[98] OMERS Sponsors Corporation, "Review of OMERS Governance By-Laws," May 9, 2013.

[99] CUPE, "Submission by CUPE (Canadian Union of Public Employees) Ontario for the 2012 OMERS Review," August 30, 2012, 6.

itself.[100] The AC also essentially knew that a shift to an expert board would be paired with an increase in AC director compensation, which was instituted during this reform.[101]

CUPE has reviewed the submissions made to Dean and does not find any evidence that was presented to Dean showing that expert boards outperform lay boards.[102] Nevertheless, Dean argued that "there is a widely held view on the part of experts, competitor plans and the broader financial community" that the OMERS board of the day was weak because it was not comprised of those deemed experts by the financial community.[103] Dean believed that a "best-in-class fiduciary board" would provide "a healthy check on the performance of the management team and holds it accountable."

Notably, however, Dean did not recommend a move to a full expert board. Neither had the AC favoured a full expert board. Both the AC and Dean advocated for a "hybrid" board that would comprise some experts and some lay members. Dean stated that "some degree of representation on the AC board is important given that OMERS is a jointly sponsored pension plan." The AC and Dean's proposal to move to a hybrid board was then seemingly ignored as the AC moved to *fully* professionalize its board as described above.

Why CUPE Does Not Support Fully Professionalized Board Requirements

For many decades, CUPE has believed that lay board members bring highly relevant skills and experience to their Board responsibilities. We believe they can be excellent board members. Lay trustees, due to their roles within their unions and workplaces, are well-versed in important board skills, including dialogue, negotiations, and consensus building, and often have considerable experience in areas such as human relations, compensation, and oversight. They possess considerable expertise in key areas beyond traditional corporate finance. Perhaps most importantly, union appointees have "skin in the game" – they are members of the plan or are democratically accountable, through their unions, to plan members. This is crucial to the motivation and accountability of board members and gives plan members confidence that lay trustees are protecting their interests. The same principle applies on the employer side. It is a measure of good governance for the plan to be governed by the risk-bearing parties – plan members and employers.

It is also important to remember that lay trustees can take advantage of numerous internal and external educational and training opportunities, as well as access to a full range of third-party expertise. OMERS

[100] OMERS, "Governing a Large, Complex and Global Pension-Based Enterprise: Submission by the Board of Directors of the OMERS Administration Corporation to Tony Dean OMERS 2012 Governance Reviewer," August 29, 2012.

[101] OMERS, "Governing a Large, Complex and Global Pension-Based Enterprise: Submission by the Board of Directors of the OMERS Administration Corporation to Tony Dean OMERS 2012 Governance Reviewer," August 29, 2012; OMERS Sponsors Corporation, "Review of OMERS Governance By-Laws," May 9, 2013; Also see discussion of AC director compensation in the next section.

[102] *Freedom of Information and Protection of Privacy Act* Request, File #: MMAH 2022-62, December 8, 2022. The AC submission to Dean mentioned some bodies supportive of "best governance practices" but provided no details or data.

[103] Tony Dean, *Reviewer's Report*, 44.

retains highly specialized financial, legal, and technical staff, and external advisors, to address the complex expert issues that arise with respect to specific investment strategies. This is the right way to deal with questions of expertise – the very specific, current, and up-to-date expertise required to make particular decisions should be hired or deployed from within staff on an as needed basis at the time and in the context where the expertise is needed Attempting to stock a largely static board with the expertise necessary to make the multiplicity of decisions OMERS is required to make would be a serious mistake and one that would likely result in the appointment of board members wholly from the finance sector.

We are not aware of any evidence that demonstrates that pension boards of professional directors are higher-performing or lead to better outcomes for members than lay boards. We note that these suggestions are seemingly never backed up with evidence that these boards are better performing and lead to better outcomes for plan members. We also note that these suggestions often come from professionals or experts themselves.

Some of the best-performing plans in the country are governed by boards **not** subject to expert criteria, like OMERS. CUPE members in CAAT, NSHEPP, and HOOPP – all plans that have achieved significantly better investment returns than OMERS – have recently seen their benefit levels improve, sometimes substantially. These plans are not subject to the same expert criteria that OMERS is. CUPE members at OMERS, on the other hand, remain in an underfunded, underperforming plan, facing a seemingly perennial threat of benefit reductions.

Even if we accept the argument that only expert board members can evaluate board-level issues, the types of expertise required for decision-making at OMERS are tremendously varied. Even on the investment side, decisions will be made about asset classes as diverse as private equity, public equities, real estate, infrastructure, currencies, derivatives (of many different types), fixed- income securities, and investments in emerging or politically challenging markets. Each of these broad asset classes consists, in turn, of highly differentiated sub-asset classes that vary by geography, industry, size and other considerations. Decisions regarding each of these asset and sub-asset classes require discrete and specialized expertise. It is simply not possible to populate a fourteen-person board with individuals possessing the range of expertise required for OMERS decisions.

Moreover, the AC would address a very wide range of administrative issues, for which we believe plan member representatives would have a much better perspective than external, unconnected professionals.

The SC argues that "many governance studies have shown that boards whose directors provide a diverse perspective make better decisions and have better outcomes". Still, the AC continues to offer a narrow set of required competencies.[104] The 13 competencies listed in the AC's "Board and Director Competencies" document are narrowly targeted toward those who have played leadership or executive roles in the finance or pension industries.

Professional Boards also attract complications. If the person appointed for their expertise becomes outdated or is not sufficiently specialized for the investment under consideration, they can be a hindrance rather than a help in the decision-making process. An outdated expert whose sensitivity to market conditions is stale or whose understanding of industry dynamics is out-of-date may be a much greater

[104] Letter from Frank Ramagnano and Barry Brown to Fred Hahn, September 29, 2020.

danger to the investment decision-making process than a layperson who relies on current expert advice from an up-to-date third party.

We are also concerned that professional boards, comprised of private-sector financial industry executives, can bring a permissive attitude toward risk-taking and executive compensation. In many cases, management advocates for professional boards not for greater oversight but for greater deference. In this regard, private sector corporate boards, and especially those of financial institutions, have been singular failures in controlling either executive compensation or appropriate risk-taking. Our concerns with OMERS compensation are detailed in the next section.

Before the conversion to joint sponsorship and before the push towards a professional board, OMERS appeared before the Senate of Canada to "defend vigorously" the benefits of a lay board. The Senate Committee ultimately agreed "that an educated lay board may bring fresh insight to professional staff who may take a more narrow focus in their decision-making processes."[105]

Bill Morneau agreed with this sentiment when he issued his report regarding a proposal for pension asset consolidation for smaller public plans in Ontario. While Morneau preferred that the new asset manager would be governed by a board primarily composed of experts, Morneau did advocate that the board have several lay trustees, writing, "I also recognize the benefits of active stakeholder involvement in strategic decision making, as well as the constructive role representative directors would play in managing stakeholder relationships."[106] A 2013 governance study for the government of Alberta concluded that:

> "Board composition and director characteristics have received extensive theoretical and empirical attention from corporate governance researchers over the past few decades. However, early and more recent reviews of the relevant literatures and findings of 'meta-analyses' which aggregate results across empirical studies provide mixed or equivocal results regarding the impact of composition/characteristics on performance. There is large and growing recognition that these relationships are distal, indirect and potentially non-linear."[107]

A recent academic literature review reached a similar conclusion. It found that "there is no indication that one type of trustee is seen in the literature as any more competent than another generally." It found that lay trustees are effective board members when provided with educational and training opportunities. The authors write, "A trustee's effectiveness has much more to do with being an effective leader…than with bare expertise in finance."[108]

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[105] Senate of Canada, "The Governance Practices of Institutional Investors," November 1998, https://sencanada.ca/en/content/sen/committee/361/bank/rep/rep16nov98-e

[106] William Morneau, "Facilitating Pooled Asset Management for Ontario's Public-Sector Institutions: Report from the Pension Investment Advisor to the Deputy Premier and Minister of Finance," October 2012,

[107] Christopher Eaton, Norma Nielson, Laurie Milton, "Alberta Pension Governance Research Project: Final Report," October 31, 2013, 8-9.

[108] Susan Ursel and Paloma Alaminos, "Review of the Academic Literature on Lay versus "Professional" Pension Board Trustees: Prepared for the Ontario Public Service Employees Union," 2025.

The OMERS Professional Board Has Not Delivered

Proponents of a professionalized board argue that expert board members, though they may require more individual remuneration from the plan, will deliver better investment returns for plan members.

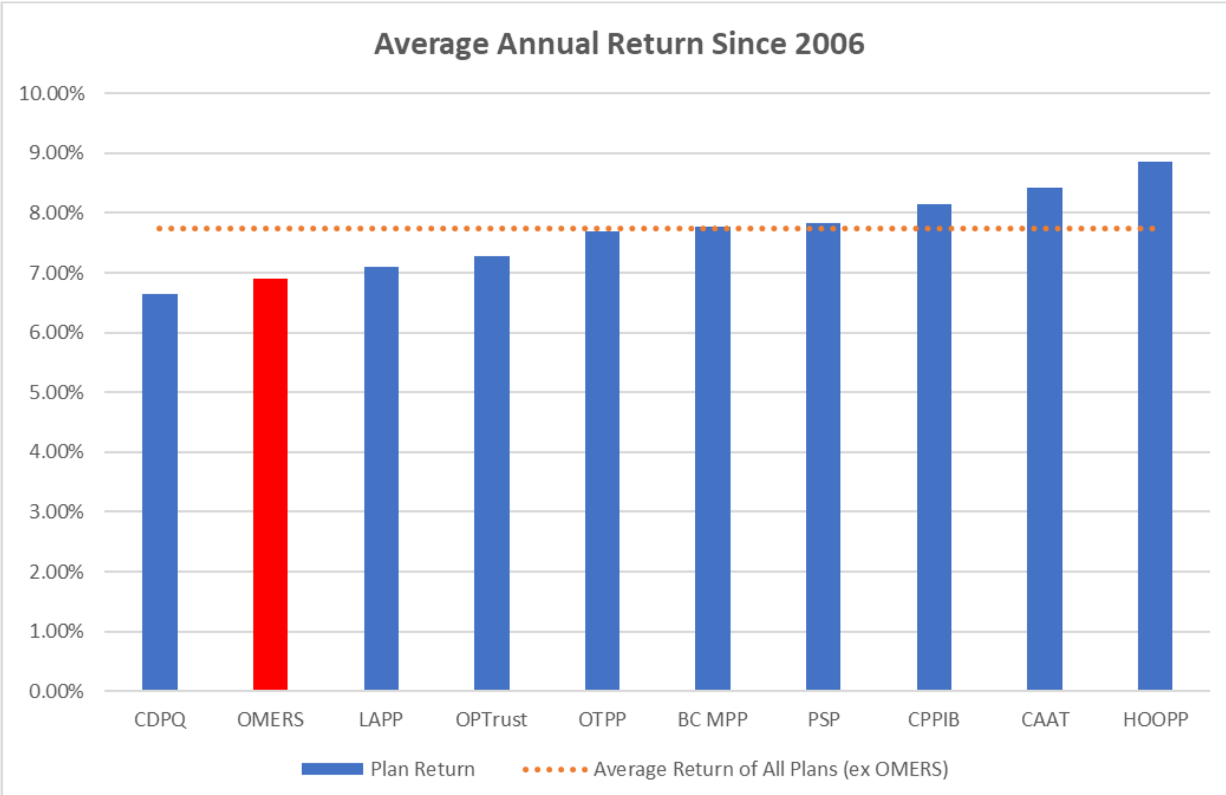
This strategy has not worked at OMERS. OMERS returns have lagged other major plans over this period.

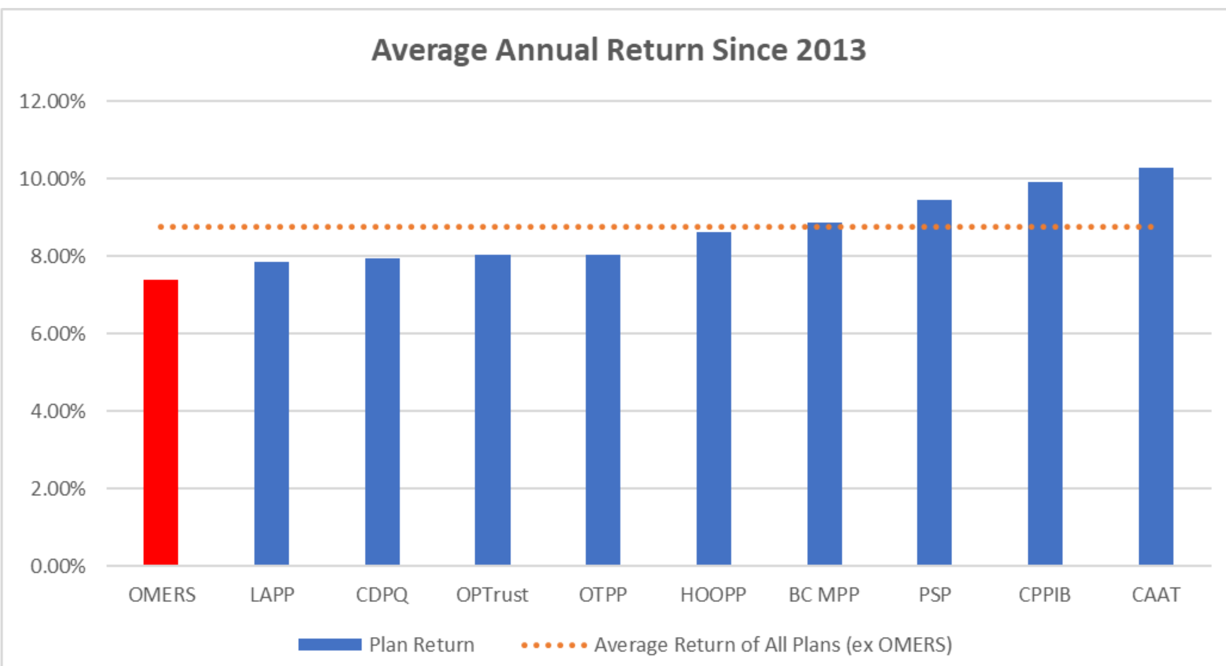
CUPE raised these issues in a 2021 report entitled “Not Just One ‘Tough Year’: The Need for a Review of OMERS Investment Performance” [attached as Appendix B]. The report argued that OMERS’ long-term investment returns had lagged behind those of other major plans and those of OMERS’ long-term investment benchmarks (which were not otherwise reported in OMERS annual report). CUPE called for an independent review of OMERS investment performance as a result of these findings. OMERS rejected these calls. Other reports and studies have reached similar conclusions.[109]

Despite these efforts, CUPE remains deeply concerned with OMERS’ investment performance. While the plan may have short periods of strong returns, we continue to see a plan suffering from sub-standard long-term investment returns. Since investment returns typically fund approximately 75 per cent of a pension that is eventually collected, returns are incredibly important to plan members. Low returns have meant persistent plan deficits and upward pressure on contributions. We know that this means pressure to reduce pension benefit levels – an experience that has been common at OMERS.

The charts below show that OMERS’ average annual long-term returns have remained below industry standards since joint sponsorship was achieved in 2006 and also since the move to an expert board began in 2013. Note that in the charts below, CPPIB and PSP report on a fiscal year basis, while others report on a calendar year basis. CDPQ returns have been adjusted from the gross reported values to compare with the net returns reported by other plans.

[109] Toronto Star, “How does your pension stack up? Look up the returns and expenses of Canada’s largest public-sector pension funds,” April 28, 2022; PWL Capital, “Twelve Observations About the Big Canadian Pension Managers and Eight Takeaways for Individual Investors,” Nov 10, 2023, https://pwlcapital.com/twelve-observations-about-the-big-canadian-pension-managers-and-eight-takeaways-for-individual-investors/; Morningstar, “Commentary: Weakness in Real Estate Assets Persists as Canadian Pension Funds Deliver Weak Returns in H1 2024,” August 27, 2024.

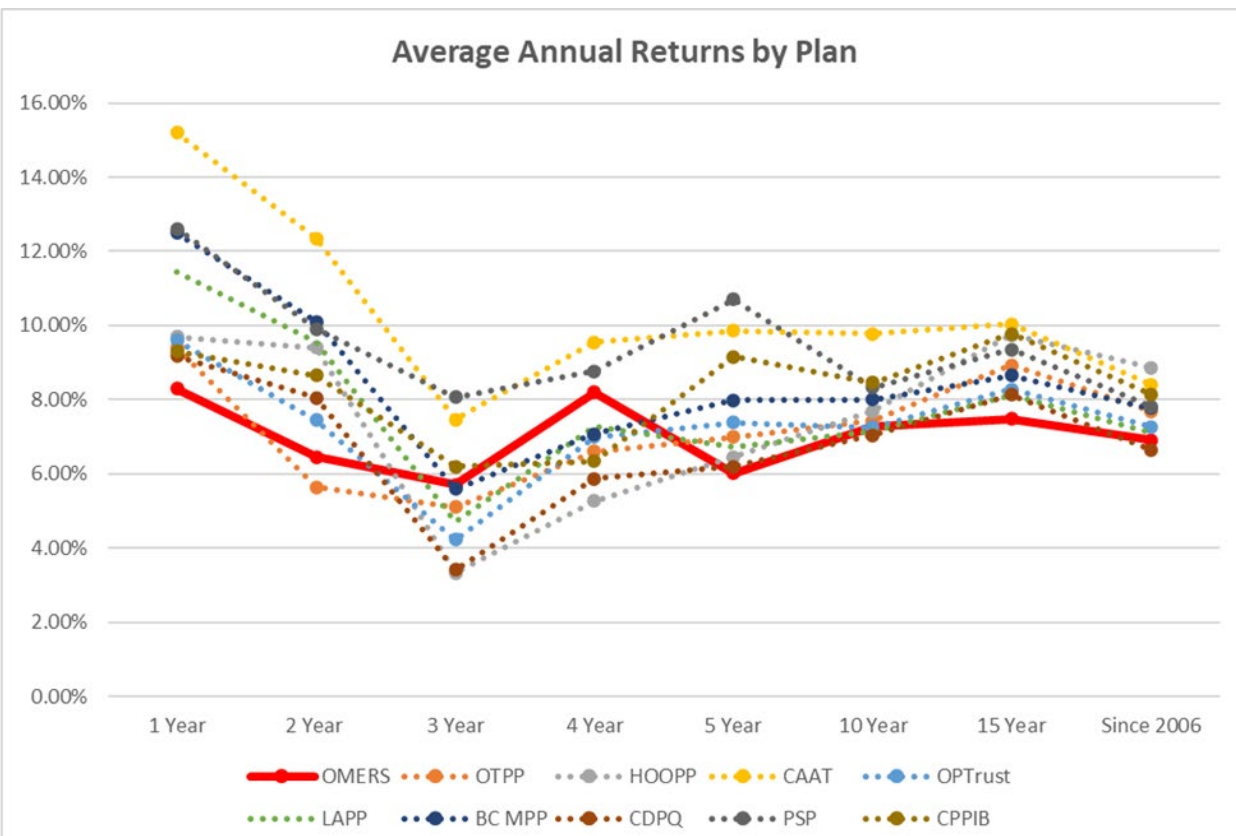

Average Annual Return Since 2006
10.00%
9.00%
8.00%
7.00%
6.00%
5.00%
4.00%
3.00%
2.00%
1.00%
0.00%
CDPQ
OMERS
LAPP
OPTrust
OTPP
BC MPP
PSP
CPPIB
CAAT
HOOPP
Plan Return
Average Return of All Plans (ex OMERS)


Average Annual Return Since 2013
12.00%
10.00%
8.00%
6.00%
4.00%
2.00%
0.00%
OMERS
LAPP
CDPQ
OPTrust
OTPP
HOOPP
BC MPP
PSP
CPPIB
CAAT
Plan Return
Average Return of All Plans (ex OMERS)

The difference between, for example, a 7% and an 8% long-term return may not seem very significant. However, there is a very material difference in the long-term value created when those returns are compounded over time. The table below shows what $1 invested at the end of 2006 would be worth today at the rates of return earned by the funds above.

	OMERS	CDPQ	LAPP	OPTrust	OTPP	PSP	BC MPP	CPPIB	CAAT	HOOPP
2025 VALUE OF $1 INVESTED AT END OF 2006	$2.92	$2.75	$3.09	$3.18	$3.44	$3.47	$3.47	$3.69	$3.81	$4.23
DIFFERENCES VS. OMERS	-	-6%	+6%	+9%	+18%	+19%	+19%	+26%	+30%	+45%

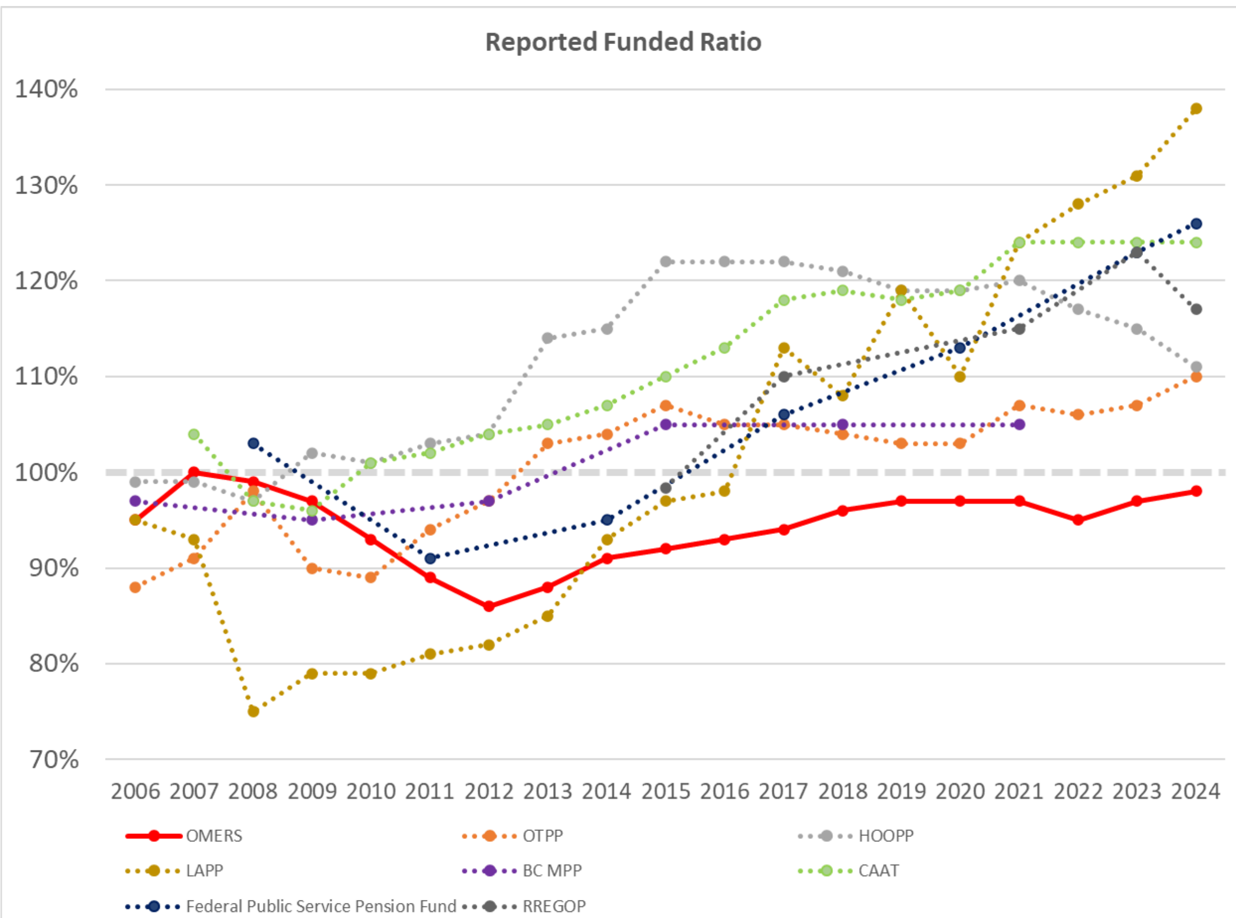
OMERS does have shorter periods where their investment returns compare well to other plans. But these have yet to compensate for the longer-term issues.



OMERS often argues that it focuses on the long term as opposed to the noise of the short term. "At OMERS, we measure time not in quarters, but in quarter centuries," said an executive at the last OMERS

AGM.[110] CUPE agrees that more focus should be on long-term rather than shorter-term returns. However, that same executive went on to focus on returns from one of these shorter periods of decent returns for the plan. He presented data comparing OMERS' 4-year return against that of other plans, arguing that OMERS' performance was "solidly in the top part of the first quarter" among comparator plans. He also argued that OMERS 1-year return was above benchmark and that it is "always good to see when OMERS is exceeding the benchmark." He neglected to mention that OMERS is trailing its longer-term benchmarks. Based on the chart above, the choice of comparing OMERS' 4-year return against other plans appears to have been made for public relations purposes.

Subpar investment returns have been a key reason why OMERS remains in a deficit. OMERS is approaching two decades of being underfunded. Other plans have largely returned to surpluses within a decade of the 2008 global financial crisis, but the OMERS deficit persists. The problem is not with high levels of benefits, as OMERS benefit levels generally trail those of other plans. OMERS contribution rates have been compliant with pension law and do not trail those of other plans. Lower levels of investment returns have been a major driver of the persistent deficits at OMERS. The chart below shows the reported funded ratios of major plans since 2006. Note that plans use varying methodologies in their reported funded ratios.



[110] OMERS Annual General Meeting Transcript, April 9, 2025, https://www.omers.com/omers-2025-annual-meeting-transcript

AC Accountability to Sponsors

CUPE has serious concerns about the AC's accountability to plan sponsors.

In 2021, we raised the issue of OMERS sub-par investment performance through internal channels, which did not resolve our concerns. After our 2021 report was made public, OMERS worked hard to quickly dismiss CUPE's concerns about their investment performance. CUPE issued its OMERS report at 10 AM on May 19th. Before the end of that business day, The Globe and Mail ran a story that included a quote from the Chair of the AC, stating that an independent review was not necessary.[111] OMERS began reporting mid-year investment results following the report, which we saw as an attempt to create a new narrative about their investment returns. The CEO of the plan later spoke in the media and remarked, "There are a few people that criticize OMERS every year, anything we do, no matter what. And that's their prerogative…we're focused on 540,000 people (plan members), not the opinion of a few individuals."[112] At the 2024 AGM, in response to a question about the present review, the chair of the AC replied, "no disrespect to the sponsors or others, you guys are amusing, but my focus, (laughs) my focus is to those plan members."[113]

Valid concerns from the plan's biggest sponsor about AC issues deserve more respect and real dialogue. We view these responses as symptoms of the long effort at both boards to distance unions and manage our views – rather than genuinely engaging with plan sponsors. The AC's accountability to sponsors must be improved.

CUPE Proposals – Issue #3

PROPOSED SOLUTIONS:

12. *Fully empower plan sponsors to have a choice about who to appoint to the AC—the decision of whether or not to appoint an expert should be up to individual plan sponsors.*
13. *The AC "Board and Director Competencies" document should be amended to allow for a balanced board inclusive of lay members.*
14. *The AC must be made more accountable to plan sponsor organizations.*

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[111] Globe and Mail, "CUPE report calls for third-party review, alleges underperformance by pension fund manager OMERS," May 19, 2021, https://www.theglobeandmail.com/business/article-cupe-report-calls-for-third-party-review-alleges-underperformance-by/

[112] Toronto Star, "How do you lose $3 billion in a booming market? A massive Ontario pension comes clean on what happened," April 29, 2022.

[113] OMERS Annual General Meeting Transcript, April 9, 2025, https://www.omers.com/omers-2025-annual-meeting-transcript

Issue #4 – Compensation @ OMERS

Overview

OMERS executives and board members manage and oversee OMERS on behalf of OMERS plan members. CUPE strongly believes that the compensation, remuneration and various expenses for executives and board members – who are paid from the OMERS pension fund – should not generally, over a long and sustained period, grow faster than the compensation received by OMERS members (which could be measured as wage increases of active members or indexation improvements for retirees), or the size of the OMERS fund itself.

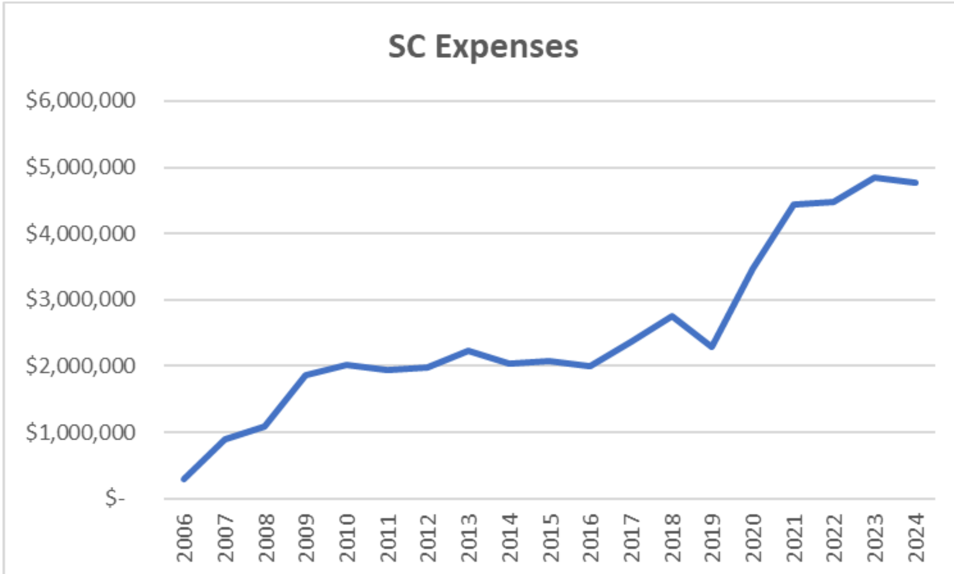
OMERS typically reports details on executive compensation of the top 5 executive positions in its annual report. There are also line items for total salaries, incentives and benefits for both administrative and investment staff in the plan's financial statements, which form part of these reports. In 2024, OMERS allocated $576 million of plan funds to these administrative and investment expenses. CUPE notes that OMERS compensation was reported on the provincial "sunshine list" until 2008 but that this reporting ended in 2009. Plan members had more detailed information about compensation paid within OMERS before we became a joint sponsor of the pension plan. This makes little sense, as plan members should have access to more information when assuming the governance responsibilities and plan risks associated with joint sponsorship.

Compensation and remuneration for executives and board members within OMERS have increased steadily and significantly since joint sponsorship was won in 2006. These increases have dramatically outpaced the growth of OMERS assets under management, as well as the wage increases obtained by CUPE's school board workers in OMERS, for example, and the cumulative indexation awarded to retirees under the plan.

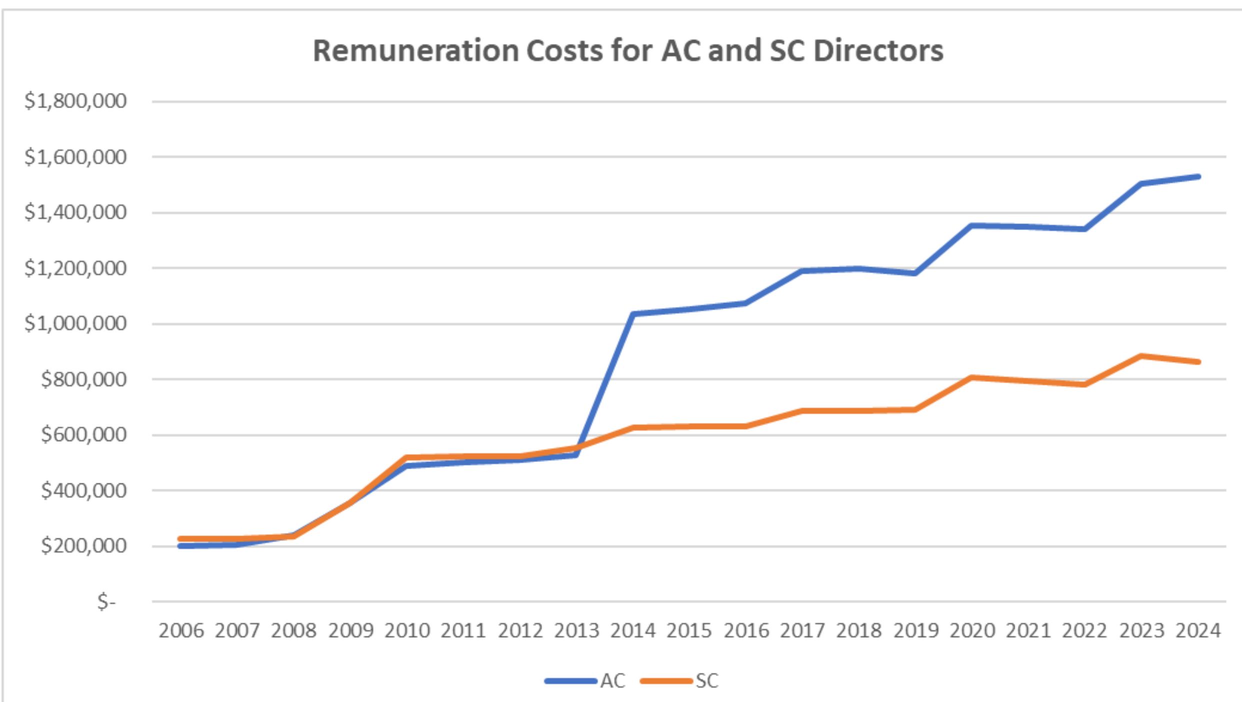
It is not a good or politically sustainable governance practice to have OMERS executives and board members being consistently awarded larger increases than active OMERS members have received in their jobs or OMERS retirees have received through indexation.

Board Remuneration and Expenses

SC expenses have grown significantly since 2006. As discussed above, the SC's internal reforms have resulted in the hiring of more staff and increased "one-on-one" meetings with sponsors and stakeholders.



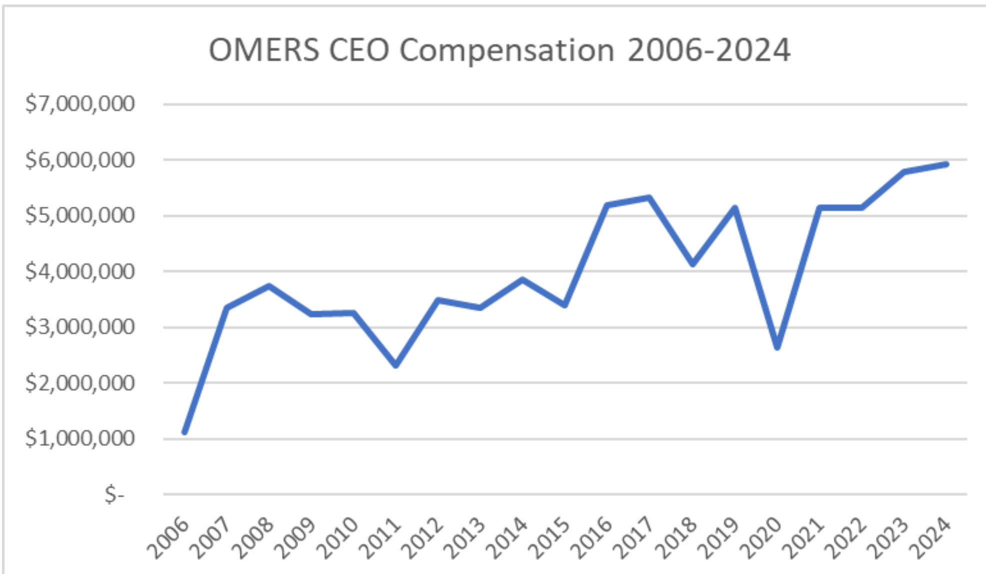
Total remuneration costs for AC and SC directors have increased significantly since joint sponsorship was won. Note that there was a sharp increase in AC directors' remuneration costs following the shift to a professional board following Dean report.



Executive Compensation

The AC argues that "OMERS compensation plans are aligned to the interests of Plan members and sponsors" and that it promotes a "pay-for-performance" approach.[114]

The AC has awarded significant compensation increases for the OMERS CEO since joint sponsorship was won in 2006.



Similar to the financial sector elsewhere, the compensation received by OMERS executives is largely based on various bonus programs. Of the CEO's $5.9M 2024 compensation, "only" $624K was salary; most of the compensation came from 3 bonus programs. To establish what those bonuses will be, the AC's HR Committee first establishes a "target total compensation" at the beginning of the year. This is based on an analysis of a "competitive market" described as "Canadian pension peers, large financial services organizations, and global investment management firms, where applicable."[115] But the AC's target is not just to pay the average of this market. AC policy is to set the target at the "60th percentile of the competitive market."[116] This means even the initial, unadjusted target set by the AC is for **above-median compensation**. But there are further adjustments. Then, at the end of the year, the HR Committee evaluates the year's performance against a "balanced scorecard." The score is presented as a percentage between 0 and 200 per cent, and the bonus targets are multiplied by this percentage. Scores from 0 to 100 per cent would result in a below-target payout, while scores between 100 per cent and 200 per cent would result in an above-target payout. Last year, the score was 155 per cent, so the CEO received a bonus that was 155 per cent of the original target (which itself was, again, above market).

[114] OMERS 2024 Annual Report, 156-157.
[115] OMERS 2024 Annual Report, 163.
[116] OMERS 2024 Annual Report, 160.

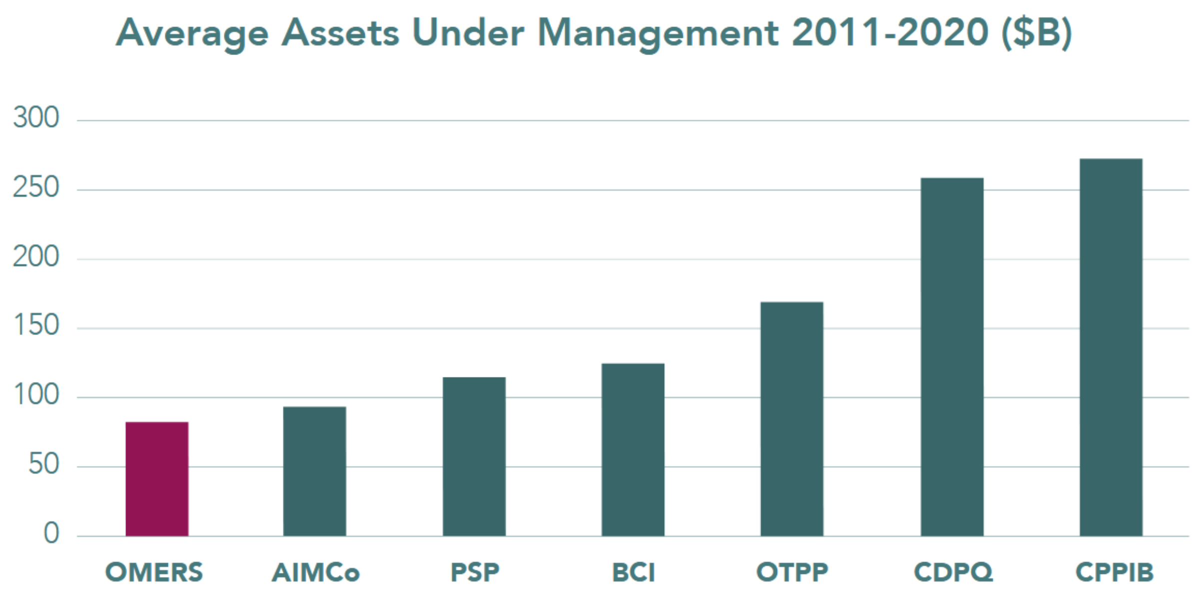
OMERS has a long history of paying out more than 100% of the “target” compensation. Before 2011, OMERS annual reports did not disclose the exact percentage paid. Between 2011 and 2015, OMERS reported percentage adjustments to both short and long-term incentive programs. Since 2016, OMERS reports the percentage as a “variable compensation performance factor.” In nearly all the years reported, the percentage has been more than 100 per cent, with an average factor of 159 per cent. In 2017 the CEO received 190 per cent of the target bonus.

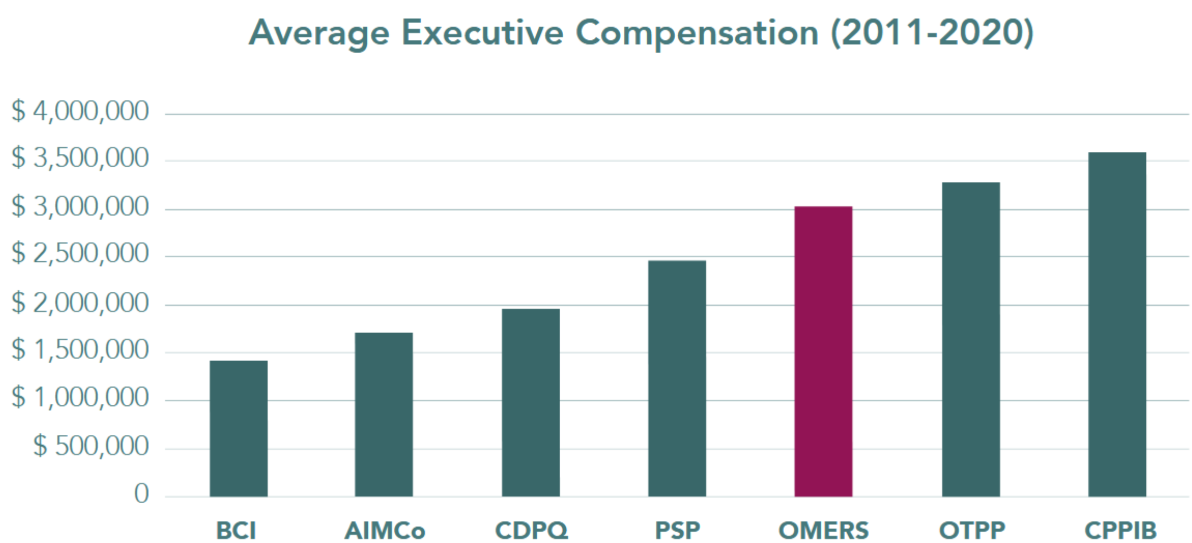
CUPE questions why successive OMERS CEOs have been paid dramatically higher-than-market rates over this long period. We note that there has not been a below-target payout since the transition to a professional board at the AC. As demonstrated in the previous section, OMERS’ long-term returns have lagged behind those of other plans and OMERS’ benchmarks. We acknowledge that returns are intended to account for only 40 per cent of the CEO’s scorecard and that other issues are also considered when setting a bonus level. However, we also see serious non-return problems at OMERS. There is significant sponsor dissatisfaction at OMERS, as evidenced by CUPE’s advocacy over the years and the recent issues that have led to the present review.

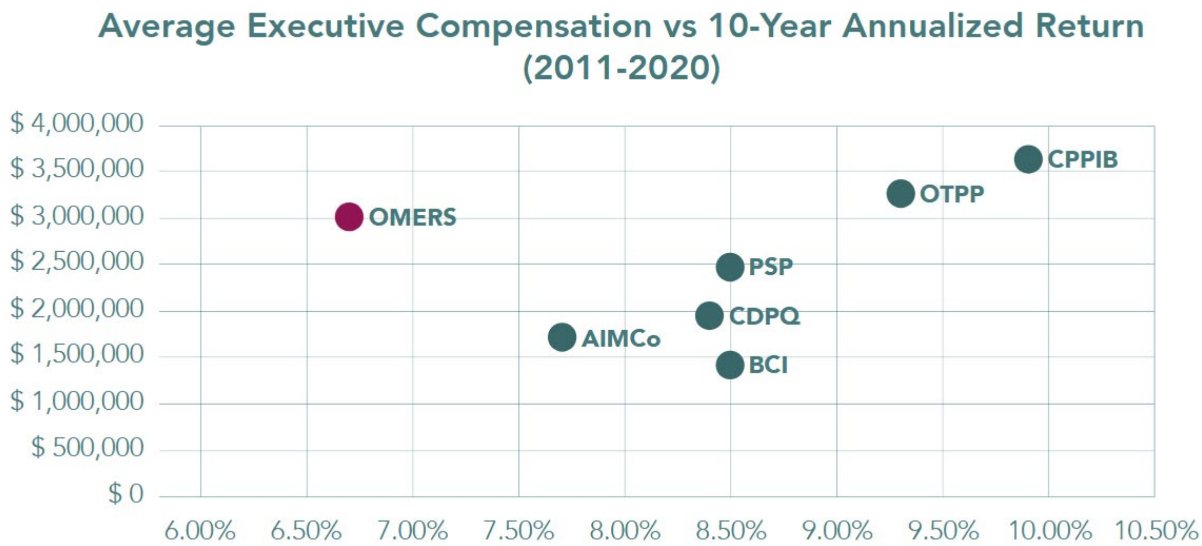
Despite raising these concerns internally, CUPE saw no changes. In 2022, CUPE released a report on OMERS executive compensation entitled “High Pay, Low Returns: Why Are OMERS’ Executives Paid So Much?” The report is attached as APPENDIX C. The report compared executive compensation across major pension plans over a decade. It demonstrated that OMERS compensation levels are dramatically out of line, comparing the size of the fund under management and the investment returns achieved. OMERS executives earned significantly more than executives at much larger, better-performing pension plans and funds. The report argued:

> *“The risks in OMERS are not borne by OMERS executives. Risks are borne by the plan members in the form of potentially lower future benefits, and by the employers and active plan members in the form of potentially higher contribution rates. Investment costs and investment performance are part of this equation. It therefore is incumbent on OMERS to clearly explain the reason for such a stark divergence from other plans in terms of performance and executive compensation. This pattern of investment underperformance and excessive compensation cannot continue if the plan is to fulfill its obligations – a strong, defined benefit pension plan that ensures income security in retirement – to its hard working, active plan members serving on the front lines of Ontario’s municipalities, school boards and child welfare agencies.”*

The following charts come from this 2022 report.







We are not aware of OMERS making any changes as a result of the report. On the contrary, OMERS created a new additional compensation category for the plan CEO in 2023 through a "Fund Reserve Unit" program. The CEO's $5.9M in 2024 compensation above includes a $400K "Fund Reserve Unit" award. A footnote states, however, that "Based on the valuation methodology employed, the underlying notional investment that the 2024 award represents is $3,439,381." The award payout is "conditional on the achievement of a pre-determined Performance Hurdle."[117]

These trends appear to have continued since the publication of this report in 2022. Below is a table with the most recently available key metrics (as originally reported) for various large plans and funds.[118]

PLAN / FUND	MOST RECENT YEAR END REPORTED	CEO COMPENSATION	TOP 5 EXECUTIVES TOTAL COMPENSATION	TOP 5 EXECUTIVES AVERAGE COMPENSATION	ASSETS UNDER MANAGEMENT	1-YEAR RETURN	10-YEAR RETURN	10-YEAR BENCHMARK
OMERS	31-Dec-24	$5.9M	$20.6M	$4.1M	$138B	8.3%	7.1%	7.3%
BCI	31-Mar-25	$5.6M	$22.0M	$4.4M	$252B	10.0%	7.4%	7.1%
AIMCo	31-Dec-24	$1.6M	$15.7M	$3.2M	$180B	12.6%	7.4%	7.0%
OTPP	31-Dec-24	$5.8M	$15.9M	$3.2M	$266B	9.4%	7.4%	7.7%
PSP	31-Mar-25	$5.7M	$21.3M	$4.3M	$300B	12.6%	8.2%	7.1%
CDPQ	31-Dec-24	$4.9M	$14.1M	$2.8M	$473B	9.4%	7.1%	6.5%
CPPIB	31-Mar-25	$6.4M	$25.1M	$5.0M	$714B	9.3%	8.3%	6.9%

[117] OMERS 2024 Annual Report, 168-9.

[118] Note that the reporting periods do not line up, as some plans report on a fiscal year, and others report on a calendar year. Where pension plan funds are managed by a consolidated asset manager (such as AIMCo, BCI and PSP), we have referenced the compensation to the asset manager. Also note that AIMCo CEO compensation was lower last year than was typical in previous years due to turnover and other issues at the asset manager. Further note that the CDPQ returns are unadjusted in this table. HOOPP and CAAT do not report executive compensation.

The OMERS CEO was the highest-paid pension CEO in the country in 2023 and the second-highest last year. OMERS is far from the largest or best-performing pension fund in the country. We note that CAAT – the plan with the highest long-term returns, as referenced in the previous section – pays its executives a straight salary without any bonuses.

Absolute Return Benchmarking

Like most plans, OMERS compares their returns to a "benchmark." OMERS previously described a benchmark as "a point of reference against which the performance of an investment is measured."[119] OMERS annual reporting measures performance vs. benchmark for the fund as a whole, as well as for each asset class.

Since 2013-2014, OMERS has used a unique approach to benchmarking compared to other plans. At the end of the year, most plans compare their performance for public market asset classes against indices, showing what comparable markets actually achieved that year. OMERS instead employs "absolute return benchmarking" for all asset classes. This method of benchmarking does not involve a retrospective comparison against what markets did achieve. Instead, it uses a prospective goal for what markets are expected to deliver in the coming year. OMERS argues that "we set absolute return benchmarks because we believe that it is important to annually grow our assets, irrespective of market volatility and economic conditions."[120] These benchmarks have important compensation implications since "short- and long-term variable incentive compensation is tied to actual Canadian dollar performance against these benchmarks."[121]

"Absolute return" benchmarks are sometimes used by other plans, but only for certain asset classes like infrastructure or other real assets where there is no broad public index to compare performance against. However, where comparable public markets do exist, the standard practice is to use traditional benchmarking. For instance, OMERS uses a prospective "absolute return" benchmark for public equities, while most plans use traditional market-based relative benchmarking for this and other asset classes.[122]

Since prospective market expectations are less volatile than retrospective market realities, OMERS benchmarks have been more stable than those of other plans since 2013-2014, when this system was implemented. OMERS annual reports or regular meeting summaries do not give much detail about how these benchmarks are set. The reports speak to benchmarks that are "approved by the AC board, generally in December of the prior year."[123] The short, published meeting summaries indicate that investment return ranges are "approved" by the AC at the committee and board levels. This language suggests that OMERS staff may be involved in developing and proposing these absolute return benchmarks to the AC for approval.

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[119] OMERS 2015 Annual Report, p 131.
[120] OMERS 2024 Annual Report, p 62.
[121] OMERS 2024 Annual Report, p 62.
[122] Leo Kolivakis, "OMERS Gains 6.7% in 2015," Pension Pulse Blog, March 8, 2016, https://pensionpulse.blogspot.com/2016/03/omers-gains-67-in-2015.html
[123] OMERS 2024 Annual Report, p 62.

CUPE is concerned that benchmarking in this way may not be in the best interests of plan members. We fail to see how it is better to compare performance against a prospective aspiration (which involves some subjectivity and assumption-making) than to compare performance against what the market has achieved. We also question whether it is best practice to allow staff to influence (if this is indeed what is happening) the benchmarks against which their performance will be measured (the differential between return and benchmark being an important driver of executive bonuses). OMERS benchmarking is out of step with other pension plans, and we do not believe the plan has provided a sufficient explanation of why or how this methodology better serves the interests of plan members' .

CUPE Proposals – Issue #4

15. *Reduce OMERS executive compensation to be in line with other plans of similar size and performance*
16. *Change "Absolute Return" benchmarking to actual market-based benchmarking for public equity / fixed-income*
17. *Reduce AC and SC director compensation to be in line with other plans of similar size and performance*

Note on Sources and Data

Most of the archival sources for this paper were available at the Public Archives of Ontario in Toronto and at the Federal Library and Archives Canada in Ottawa. Certain sets of documents from the Archives of Ontario were not yet available in the open archives. They were obtained under requests pursuant to the *Freedom of Information and Protection of Privacy Act*. Such cases are noted where applicable.

Official OMERS documents were generally sourced and archived from the OMERS websites since their inception and from the various archival sources noted above.

Where archival repositories are not mentioned in the notes, the documents were sourced from various archives of the Canadian Union of Public Employees.

Data on returns, costs, and compensation for OMERS and other pension plans are generally sourced from publicly available annual or member reports of each plan. For longer-term return periods, for the sake of simplicity, this paper generally uses average annual returns rather than annualized returns unless otherwise noted. This means that the averages here may differ slightly from the annualized longer-term numbers reported by the plans. These annual returns are as reported and are net. CDPQ returns were originally reported gross of most expenses, so adjustments were made to compensate. Plan data is generally reported on a calendar year basis, but CPPIB and PSP report on a fiscal year basis, and the most comparable year has been used for purposes of this paper.

Appendix A

Over 16,000 CUPE Members, who are in the OMERS pension plan, from across Ontario have signed the submission.

Hard copies with full names and local numbers of all 16,000 + signatories we sent to the OMERS Reviewer.

For the purposes of electronic copies, we are not posting all of this information but summarizing signatories' information in a scrolling list on our website.

Every member who signed will also be sent links to the submission.

Link Here Save our OMERS

Appendix B

NOT JUST ONE "TOUGH YEAR":

THE NEED FOR A REVIEW OF OMERS INVESTMENT PERFORMANCE

May 2021

CUPE SCFP Ontario

Executive Summary

CUPE Ontario represents nearly half of the 289,000 active members of the Ontario Municipal Employees Retirement System (OMERS) – the province's Defined Benefit (DB) pension plan for municipal, school board and certain other public sector workers.

While most pension plans had strong returns in 2020, OMERS recently reported billions of dollars of losses over the year. This has prompted CUPE Ontario to examine how OMERS investments have performed compared to other large pension plans and funds. We have also looked at how OMERS has performed against its own internal benchmarks.

We find that OMERS underperformance is not a new or a short-term problem. Specifically, we find that:

1) OMERS longer-term performance has significantly lagged behind other large pension funds and plans, in periods both before and after 2020 results were in.

2) OMERS has now fallen behind even some of its own internal longer-term return benchmarks – a troubling fact that, contrary to industry standards, is not disclosed in OMERS Annual Report.

Since investment returns fund the vast majority of pensions paid from the plan, returns are incredibly important to DB plan members. Lower investment returns may lead to members being asked to pay more into the plan, or could result in additional pressure for more benefit cuts.

Despite requests, OMERS has not committed to an independent, transparent review of its investment decisions.

CUPE Ontario feels these issues are so serious that a fully transparent expert review of OMERS investment strategies, returns, and internal performance assessment is urgently needed. This review should be conducted by the plan sponsors and stakeholders themselves (the risk-bearing parties to OMERS) and should be fully independent of OMERS staff, who have a clear conflict of interest in conducting a review of their own performance. We invite the other sponsors of OMERS, including our employer counterparts and the broader community of the plan's organizational stakeholders, to support this proposal and to work with us to conduct this review.

Introduction

CUPE Ontario represents 125,000 plan members of the Ontario Municipal Employees Retirement System (OMERS). We are the largest sponsor in this defined benefit (DB) pension plan that is – at least in theory – jointly-controlled by plan sponsors like CUPE Ontario and other unions and employers.

We continue to strongly believe that DB plans are a model worth not only defending, but extending to all workers.

CUPE Ontario strongly believes that DB pension plans are the best way to provide a decent and secure retirement for our hard-working members. Large public sector DB plans like OMERS allow for an efficient pooling and sharing of costs and risks between employers and plan members. DB plans allow members to know what their pensions will be in retirement. This security is incredibly important for plan members. However, it is not only retirees who benefit from good, secure pension benefits. DB pension plans have been shown to have positive macroeconomic effects on the economy as a whole.[1] The concerns we raise in this report are not concerns with the DB model itself; we continue to strongly believe that DB plans are a model worth not only defending, but extending to all workers.

For a number of years, we have been concerned with the lower level of OMERS pension fund investment returns in comparison to those of other similar plans. OMERS recently reported that the plan had a very bad year in 2020. This has led CUPE Ontario to perform a more in-depth examination of publicly-available annual reporting documents to determine how, in our view, OMERS is performing compared to the seven other large ($50 billion+) pension plans and funds in Canada.[2] OMERS themselves refer to this club of large plans and funds as the "eight leading Canadian pension plan investment managers," and occasionally takes coordinated activity with them.[3]

1 Conference Board of Canada, "Economic Impact of British Columbia's Public Sector Pension Plans," October 2013; Boston Consulting Group, "Measuring Impact of Canadian Pension Funds," October 2015; Ontario Teachers Pension Plan News Release, "New analysis confirms that defined benefit pensions provide significant benefits to Canadian economy," October 22, 2013.

2 Unless otherwise specified, the data in this document has been compiled from publicly-available annual reporting of the respective plans. With the exception of CDPQ, returns are as reported in these documents, and are net. CDPQ results were reported gross of some expenses, and have been reduced by 0.2% to best approximate a net return. Longer-term periods are annualized, and are as reported by the respective plans.

3 OMERS News Release, "CEOs of Eight Leading Canadian Pension Plan Investment Managers Call on Companies and Investors to Help Drive Sustainable and Inclusive Economic Growth," November 25, 2020.

As bad as OMERS performance was in 2020, this is not a new or a short-term problem

Due to their scale, these large pension plans and funds are able to invest in asset classes that are typically not available to smaller investors or individuals. At the same time, we acknowledge that these eight plans are not completely similar: they have their own governance structures, asset mixes, risk appetites, and reporting periods, all of which are described in the public documents of the respective plans. However, we also acknowledge that many of these differences are the result of specific investment decisions made by the respective plans and funds. We therefore believe that there is value in comparing the performance of this small set of large funds, particularly over longer-term periods.

Acronym	Name	Assets Under Management ($ Billion)	Funded Status in Most Recent Annual Report	Most Recent Annual Reporting Date
CPPIB	Canada Pension Plan Investment Board	410	N/A	March 31, 2020
CDPQ	Caisse de dépôt et placement du Québec	366	108% (RREGOP)	Dec 31, 2020
OTPP	Ontario Teachers Pension Plan	221	103%	Dec 31, 2020
PSP	Public Sector Pension Investment Board	170	111% (Public Service Plan)	March 31, 2020
OMERS	Ontario Municipal Employees Retirement System	105	97%	Dec 31, 2020
HOOPP	Healthcare of Ontario Pension Plan	104	119%	Dec 31, 2020
BC MPP	BC Municipal Pension Plan (investments managed by BCI, the BC Investment Management Corporation)	59 (MPP) 171 (BCI)	105%	Dec 31, 2019 (MPP) March 31, 2020 (BCI)
LAPP	Alberta Local Authorities Pension Plan (investments managed by Alberta Investment Management Corporation)	50 (LAPP) 119 (AIMCO)	119%	Dec 31, 2019

In some cases, the pension funds above manage the investments of several pension plans (CDPQ, PSP, BCI, AIMCO are all such cases). In those cases, we look most closely at the returns at an individual plan level for the respective client plan that most closely compares to OMERS.

We have also looked at how OMERS has performed against its own internal benchmarks.

This review has resulted in some very troubling findings which suggest that, as bad as OMERS performance was in 2020, this is not a new or a short-term problem. We found evidence that OMERS longer-term return performance has significantly lagged behind

Higher investment returns would have been better for OMERS plan members, and for OMERS employers.

other large pension funds and plans. We also found that OMERS has now fallen behind even some of its own internal longer-term return benchmarks – a troubling fact that, contrary to industry standards, is not disclosed in OMERS Annual Report.

Investment results are incredibly important to DB plan members because compounded returns typically fund the vast majority of the pensions that are eventually paid. OMERS indicates that investment returns are expected to fund approximately 70% of the pensions paid by the plan.[4] When investment returns are insufficient, it can put upward pressure on required contribution rates for both members and employers. Most other plans have now returned to pension surpluses since the global financial crisis more than a decade ago, but OMERS continues its long climb out of deficit. Contribution levels were a central talking point from OMERS when plan decision-makers removed guaranteed indexation in 2020. And we expect that, in the months to come, OMERS will once again be looking to plan members to bear the burden of plan funding issues that are, in part, a result of these investment returns. Meanwhile other pension plans, who have had better returns, are currently holding significant surpluses, many have lower contribution rates and some are even improving pension benefits.[5] Higher investment returns would have been better for OMERS plan members, and for OMERS employers.

Despite requests[6], OMERS has not committed to an independent, transparent review of its investment decisions. Any reviews that have taken place have been behind closed doors at OMERS and have not been shared with sponsors or described in any detail. While OMERS has outlined several investment policy changes it plans to make, its overriding message remains: "the fundamentals of our long-term strategy remain sound, and we will continue to advance that strategy."[7]

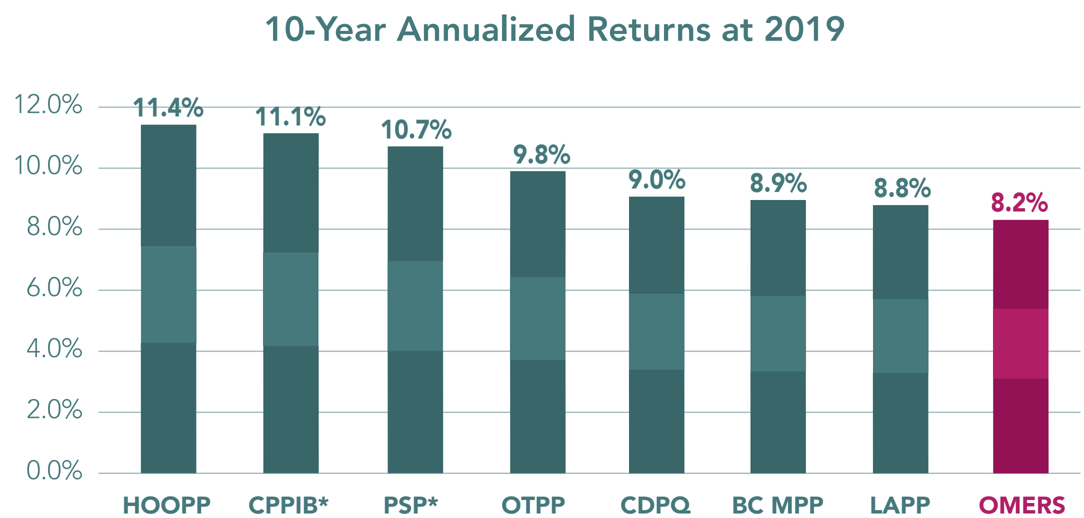
A fully transparent expert review of OMERS investment strategies, returns, and internal performance assessment is urgently needed.

CUPE Ontario feels these issues are so serious that a fully transparent expert review of OMERS investment strategies, returns, and internal performance assessment is urgently needed. This review should be conducted by the plan sponsors and stakeholders themselves (the risk-bearing parties to OMERS) and should be fully independent of OMERS staff, who have a clear conflict of interest in conducting a review of their own performance. We invite the other sponsors of OMERS, including our employer counterparts and the broader community of the plan's organizational stakeholders, to support this proposal and to work with us to conduct this review.

4 OMERS 2020 Annual Report, p. 2.
5 HOOPP News Release, "HOOPP posts 11.42% return in 2020, surpasses $100 billion in assets," March 31, 2021.
6 CUPE Ontario Press Release, "We won't pay for the mistakes of OMERS executives," February 25, 2021.
7 OMERS 2020 Annual Report, p. 23.

Our five principal findings are as follows:

1. **CUPE Ontario's concerns go beyond one "difficult" year in 2020. OMERS 10-year annualized returns trailed those of the other major funds and plans *before* the COVID crisis hit.**



**To March 31, 2019, otherwise to Dec 31, 2019*
Source: Respective Annual Reports

THIS WAS A HISTORIC ANNUAL UNDER-PERFORMANCE COMPARED TO BENCHMARKS.

2. **OMERS 2020 investment performance was especially poor**

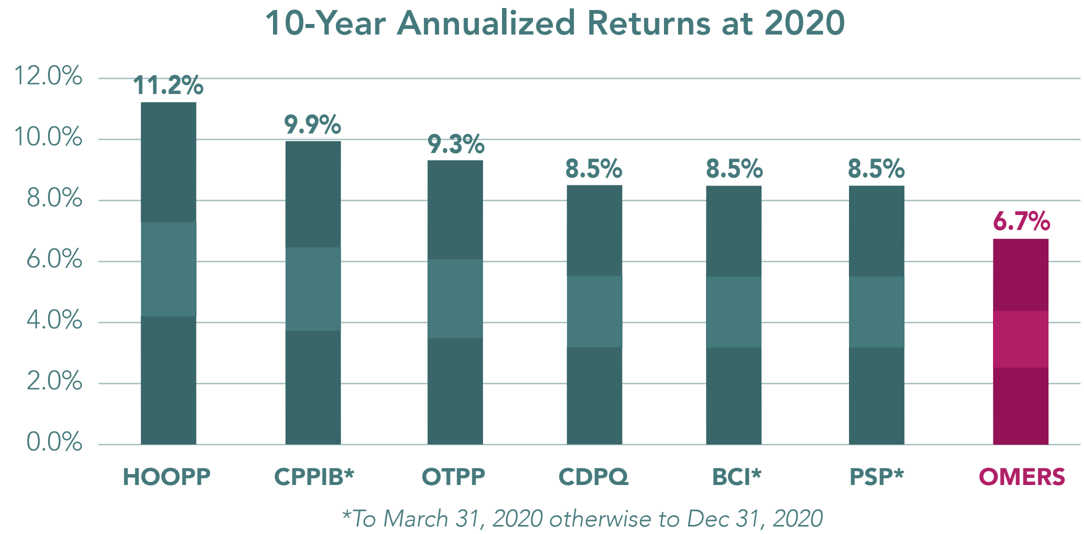
OMERS 2020 annual return (-2.7%) fell far short of the plan's own benchmark for the year of +6.9%. This was a historic annual underperformance compared to benchmarks.

Other plans, however, have reported very strong annual returns for calendar year 2020:

2020 ANNUAL RETURNS	
HOOPP	+ 11.4%
RBC Pension Plan Universe[8]	+ 9.2%
OTPP	+ 8.6%
CDPQ	+ 7.5%
OMERS	- 2.7%

[8] RBC Investor & Treasury Services, "Canadian DB pensions post near-double-digit returns despite historic, turbulent year," January 29, 2021.

This negative result led OMERS 10-year annualized return to fall from 8.2% to 6.7%.



The chart above reports the most recent available return information for the respective funds and plans as disclosed in their annual reports. LAPP and BC MPP have yet to report their December 31, 2020 results. AIMCO has also not fully reported its 2020 results. However, BCI (the investment agent for BC MPP and other BC public sector plans) has reported its March 31, 2020 results and has been included here. The chart can be updated as more plans report their 2020 investment returns.

OMERS DOES NOT REPORT CLEAR COMPARISONS OF THE PLAN'S LONG-TERM ANNUALIZED RETURNS TO ITS CORRESPONDING LONG-TERM BENCHMARKS.

3. OMERS does not report comparisons of its annualized long-term returns to its own benchmarks.

Benchmarking is a common practice where an investment *standard or goal* is set, against which *actual plan returns* are compared for ongoing assessment of investment performance. OMERS itself describes a benchmark as "a point of reference against which the performance of an investment is measured."[9] Comparisons of returns vs. benchmarks are typically done on a 1-year basis, but it is very common for long-term annualized comparisons to also be disclosed. Reporting these benchmarks is standard practice for pension plans and third-party investment managers. Even individual investment vehicles like mutual funds and ETFs typically provide details on how their performance compares to both annual and long-term benchmarks.

The OMERS Administration Corporation (AC) sets OMERS benchmarks each year, as described in the "Performance Management" section of the OMERS investment policy document.[10] OMERS Annual Reports describe how these benchmarks are constructed for each asset class. For many years, these reports stated that "Our goal is to earn stable returns that meet or exceed our benchmarks." OMERS Annual Reports compare OMERS single-year returns to the plan's single-year benchmarks. However, in sections describing investment performance, **OMERS does not report clear comparisons of the plan's long-term annualized returns to its corresponding long-term benchmarks**. While the Annual Report does compare performance to the plan's discount rate and a long-term return expectation set by the AC Board, it omits comparisons of the plan's long-term performance against their own long-term benchmarks.

[9] OMERS 2015 Annual Report, p. 131.
[10] OMERS "Statement of Investment Policies and Procedures – Primary Plan," January 1, 2021.

In the absence of longer-term comparative data, stake-holders face serious obstacles in evaluating performance

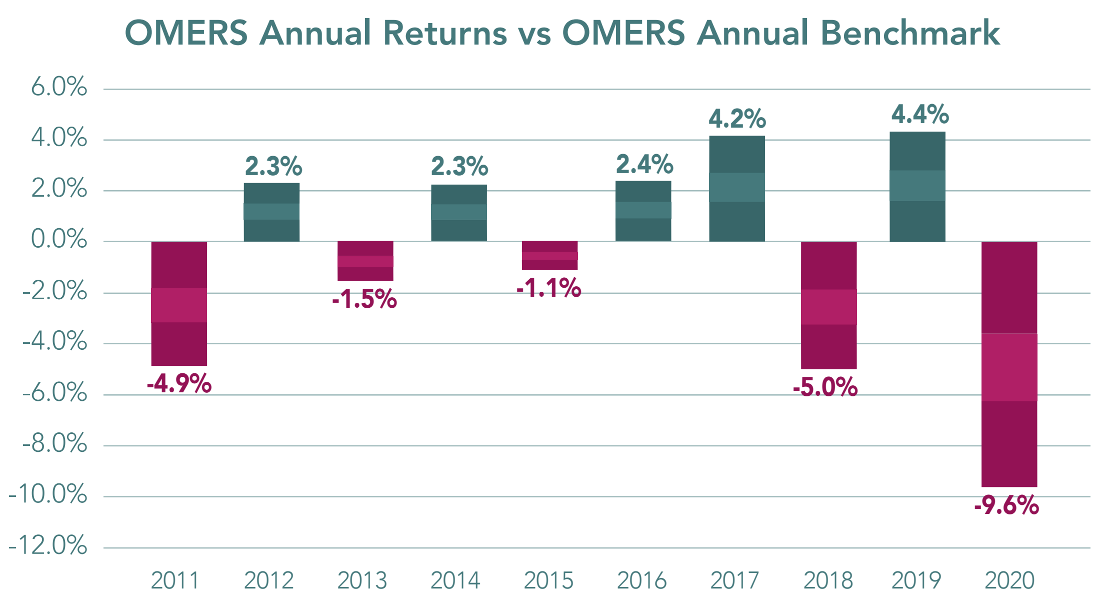
OMERS believes that "paying pensions over decades means a long-term approach."[11] But in the absence of longer-term comparative data, stakeholders face serious obstacles in evaluating performance. A review of historical Annual Reports shows that OMERS had a longstanding practice of reporting these long-term comparisons, but OMERS stopped this reporting, without explanation, in 2013. **This is dramatically out of step with other pension plans and is, in our view, a serious lack of transparency from OMERS**.

	HOOPP	CPPIB	PSP	OTPP	CDPQ	BC MPP	LAPP	OMERS
Does annual report compare annualized longer-term returns to corresponding benchmarks?	YES	YES	YES	YES	YES	YES	YES	NO

This is dramatically out of step with other pension plans and is, in our view, a serious lack of transparency from OMERS.

The OMERS Statement of Investment Policies and Procedures states that "performance reporting is consistent with industry recognized practices."[12] The OMERS Statement of Investment Beliefs says that "articulating our investment goals and performance measures helps ensure clear accountability."[13] We do not believe OMERS is meeting these standards of reporting and accountability on this point.

4. OMERS 5 and 10-Year Returns are now below OMERS own benchmarks for these periods.



Source: OMERS 2020 Annual Report, Ten-Year Financial Review, p. 142.

[11] OMERS News Release, "OMERS Reports 2020 Financial Results: paying pensions over decades means a long-term approach," February 25, 2021.

[12] OMERS "Statement of Investment Policies and Procedures," January 1, 2021. www.omers.com/governance-manual-policies-and-guidelines

[13] OMERS "Statement of Investment Beliefs," January 1, 2020. www.omers.com/governance-manual-policies-and-guidelines

	OMERS Return	OMERS Benchmark	Difference
5-Year Annualized	6.5%	7.4%	-0.9%
10-Year Annualized	6.7%	7.3%	-0.6%

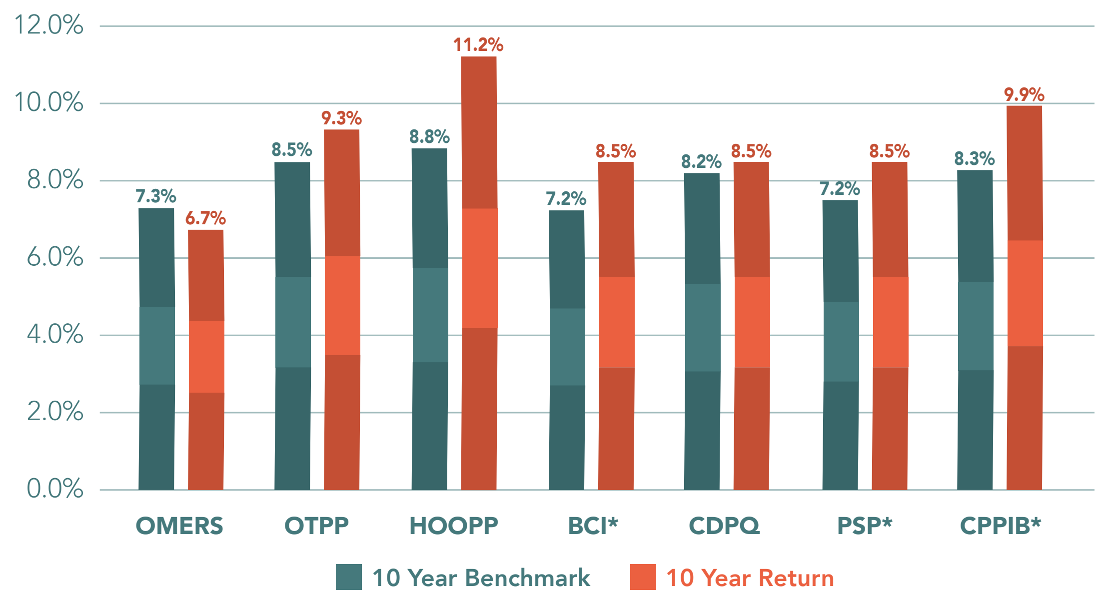
Source: Returns from OMERS 2020 Annual Report
Annualized Long-Term benchmarks not referenced in Annual Report and were reported verbally to CUPE by OMERS on our request.

The 5 and 10-year annualized benchmark figures above were not disclosed in the OMERS 2020 Annual Report. OMERS provided these numbers verbally to CUPE Ontario upon our request. Previous OMERS Annual Reports normally included a statement that "Our goal is to earn stable returns that meet or exceed our benchmarks."[14] This statement appears to have been struck from the 2020 Annual Report.

We also note that, OMERS benchmarks are comparatively low over this period when examined alongside other plans. We believe this is due to a different benchmarking methodology for certain investments at OMERS compared to industry standards. The other major plans and funds that have reported 2020 results, however, are all ahead of their 10-year benchmarks as of their most recent annual reports.

The other major plans and funds that have reported 2020 results, however, are all ahead of their 10-year benchmarks as of their most recent annual reports.

10-Year Returns vs 10 Year Benchmarks to 2020



**To March 31, 2020 otherwise to Dec 31, 2020*

14 2010 Annual Report p. 27; 2011 Annual Report p. 25; 2012 Annual Report p. 23; 2013 Annual Report p. 22; 2014 Annual Report p. 12; 2015 Annual Report p. 9; 2016 Annual Report p. 33; 2017 Annual Report p. 33; 2018 Annual Report p. 33; 2019 Annual Report p. 42; 2020 Annual Report N/A.

Had OMERS achieved these better results, the plan would now hold a very substantial surplus.

The impact on OMERS of these longer-term below-benchmark returns has been significant. The difference of 0.6% between OMERS actual annualized 10-year investment returns of 6.7% and its benchmark of 7.3% has meant an absolute return outcome that would have been roughly 6% higher after these 10 years (all other factors being equal). Even achieving just this benchmark return on an annualized 10 year basis would have resulted in an asset base of roughly $6 billion higher current plan assets.[15] This better result would have brought OMERS reported funding level into surplus.

This difference is even greater if we were to compare the impact of OMERS investment performance to that of any of these other large plans. For example, had OMERS achieved the actual 10-year annualized returns of the OTPP of 9.3% (just below the average of the other six plans listed above), the OMERS asset base would now be (all other factors being equal) approximately 27% higher than OMERS actual asset level. In dollar-value terms, this difference represents roughly $28 billion more in assets after the 10-year period from 2011 to 2020. Had OMERS achieved these better results, the plan would now hold a very substantial surplus.

5. OMERS 20-year return is not above its 20-year benchmark.

Upon request from CUPE Ontario, OMERS also verbally disclosed that its 20-year return is equal to its 20-year benchmark of 6%. In our view, it is troubling that the plan has not outperformed its benchmark over this long period, and that this comparison is also not disclosed in OMERS annual reporting.

15 The alternative scenarios for investment performance results outlined in this section are necessarily approximate as they are based on data that is made publicly available by OMERS, and were generated using the reported OMERS asset base as at December 31, 2010 of $53.3 billion.

Conclusion

CUPE Ontario has serious concerns with OMERS investment performance, and with what we believe is a troubling lack of transparency about these issues. In our view, these issues cannot be dismissed as a one-year problem.

These issues cannot be dismissed as a one-year problem.

We anticipate that these long-term, below-benchmark investment returns are very likely to lead directly to yet another round of proposals to reduce pension benefits payable to current actives and future retirees. OMERS has already eliminated the guarantee of indexation of pension benefits for service after 2022, and OMERS management has indicated it will be examining further changes in plan design. OMERS has recently stated in writing to CUPE that "the OMERS pension plan has been facing sustainability issues for some time now and the investment results of 2020 have amplified the need to address those issues." At the recent 2021 OMERS AGM, OMERS Sponsors Corporation CEO Michael Rolland stated that "There are no guarantees as to what decisions we will have to make based on our performance…it's a long term performance we need to look at…the results of 2020 did have an impact…and that's why we're taking a look at it."

We anticipate that these long-term, below-benchmark investment returns are very likely to lead directly to yet another round of proposals to reduce pension benefits payable to current actives and future retirees.

CUPE Ontario is the largest sponsor representing plan members in OMERS, with over 125,000 active members in the plan. It is true that CUPE Ontario appoints representatives to both the OMERS Administrative Corporation and the OMERS Sponsors Corporation. However, because of restrictive confidentiality rules at both boards, our representatives are unable to keep CUPE Ontario fully-informed about what is really happening at OMERS governing boards, and the decisions that are being made about our members' hard-earned retirement savings. We do not believe this is how well-governed jointly-sponsored pension plans are supposed to function. The result is that we feel that we are a plan sponsor in name only. Our members are not being well-served by a structure that effectively cuts them out of playing the oversight function they should over their pension plan.

We are not confident that OMERS management itself has taken, or is planning to take, sufficient steps to critically examine its own performance.

These barriers will not stop CUPE Ontario from doing everything we can to ensure these concerns about OMERS investment performance are addressed. Based on their public comments to date, we are not confident that OMERS management itself has taken, or is planning to take, sufficient steps to critically examine its own performance, nor are we confident that plan members or sponsors and organizational stakeholders will receive a transparent reporting of any such review.

Therefore, CUPE Ontario is calling on other plan sponsors from both sides of the table to work with us to commission a fully transparent and independent expert review of the investment program at OMERS. This review should be conducted in the open by the sponsors and stakeholders themselves, and not behind closed doors at OMERS. Ensuring our pension returns are as strong as they can be is not a partisan issue, nor is it an issue that the member and employer side of the table should have a difference of opinion on. We want to work with other OMERS sponsors and stakeholders to address these issues for the good of all OMERS members.

Ensuring our pension returns are as strong as they can be is not a partisan issue, nor is it an issue that the member and employer side of the table should have a difference of opinion on. We want to work with other OMERS sponsors and stakeholders to address these issues for the good of all OMERS members.

Appendix C

HIGH PAY, LOW RETURNS:

WHY ARE OMERS' EXECUTIVES PAID SO MUCH?

February 2022

CUPE SCFP Ontario

The Ontario Municipal Employees' Retirement System (OMERS) is the province's defined benefit (DB) pension plan for municipal, school board and child welfare workers. CUPE Ontario represents 125,000 of 289,000 OMERS plan members – just under half of OMERS active membership.

CUPE Ontario strongly believes that DB pension plans are the best way to provide a decent and secure retirement for our hard-working members. Large public sector DB plans, like OMERS, allow for an efficient pooling and sharing of costs and risks between employers and plan members. DB plans allow members to know what their pensions will be in retirement. This retirement income security is incredibly important for plan members and their communities.

How OMERS operates, performs, and provides pension benefits is of the utmost importance to CUPE because it directly impacts a large portion of our Ontario membership. As a jointly sponsored pension plan, our members share in risks associated with poor performance returns and high costs.

CUPE Ontario has raised concerns with the administration of OMERS in the past. Last year, we published, "Not Just One Tough Year" which clearly showed that over the past decade, OMERS investment returns have underperformed its own investment benchmarks and the investment returns of comparable defined benefit pension plans and funds.

A second related issue that has consistently concerned CUPE members in OMERS is the high levels of compensation provided to executives at OMERS; especially in light of their history of investment underperformance. OMERS executives each earn millions of dollars annually. OMERS executives receive a generous base salary, attractive bonus compensation and an additional non-registered pension which is rich enough to exceed the regulated pension limits under the *Income Tax Act*.

Like most large Canadian pension plans, OMERS posts the annual compensation provided to its top five executives. When we compare this remuneration, OMERS appears to provide a more generous compensation packages to their top brass than what is provided to the top executives of other large Canadian pension plans. When we control for the size of the plan, its performance, and its success in achieving benchmarks, the compensation paid to OMERS' executives are even more excessive.

This is particularly concerning given that the average OMERS pensioner received just over $24,000 per year in pension in 2020[1] with many receiving pensions well below that average, particularly lower-waged workers who are disproportionately female and racialized, Also, OMERS is currently conducting a risk review which

[1] OMERS Report on the Actuarial Valuation as at December 31, 2020, page 29

CUPE Ontario fears could lead to proposals to reduce pension benefits for plan members in the future. Given this context and the dismal underperformance of OMERS investments over the past decade, the pension plan's executive compensation bears scrutiny.

In this paper we compare OMERS executive compensation to its own investment performance and to other large ($50 billion+) pension plans and funds in Canada. OMERS themselves refer to this club of large plans and funds as the "eight leading Canadian pension plan investment managers" and occasionally undertakes coordinated activity with them.

Because compensation varies with performance, we looked at the compensation for the top five executive positions over a ten-year period from 2011 until 2020.

The pension plans we looked at are:[2]

Canada Pension Plan Investment Board (CPPIB)*

Caisse de dépôt et placement du Québec (CDPQ)

Ontario Teachers Pension Plan (OTPP)

Public Sector Pension Investment Board (PSP)*

BC Municipal Pension Plan BCMPP*

Alberta Investment Management Corporation (AIMCO)

Ontario Municipal Employee's Retirement Savings Plan (OMERS)

The numbers we pulled were from the top five reported executives from each pension plan. We acknowledge that each of the plans cited here uses somewhat different methods to determine and report executive compensation. However, we believe that they are still comparable, especially when looked at over a ten-year time frame.

The eighth pension plan in this group is the Health Care of Ontario Pension Plan (HOOPP). We were unable to get compensation information for HOOPP because that plan does not publicly report executive compensation.

[2] The numbers are for a ten-year period from January 1, 2011 until December 31, 2020. Those Pension Plans with an asteriks "*" beside them report on a fiscal basis with a year end of March 31st. The ten-year period for those pension plans is April 1, 2010 until March 31, 2020. Unless otherwise specified, the data in this document has been compiled from publicly available annual reporting of the respective plans. With the exception of CDPQ, returns are as reported in these documents, and are net. CDPQ results were reported gross of some expenses, and have been reduced by 0.2% to best approximate a net return. Longer-term periods are annualized, and are as reported by the respective plans.

How is Compensation Determined

Generally, executive compensation is determined by a number of factors. First, the size of the plan has an impact. Executives who are responsible for larger sums of money are, in general expected to make more than executives who are responsible for smaller sums.

Second, performance is taken into account. Executives who meet or exceed investment and other performance goals are generally remunerated at a higher rate than those who do not.

Finally, looking at the rates for compensation in similar positions will give us a sense of what is needed in order to attract skilled talent.

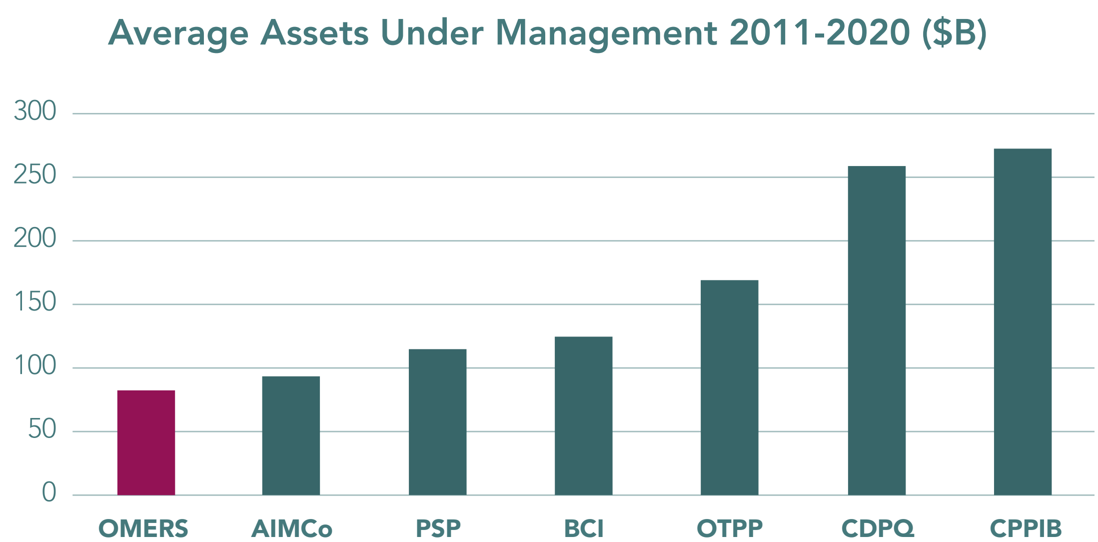
OMERS pays its executives in four envelopes: base salary, short term incentive plan, long term incentive plan and benefits. The base salary is a fixed amount. The short-term and long-term incentive plans are based on achieving certain performance goals. Long term incentives are held back for three years before being paid out. While it is not completely clear from publicly available data what is and is not included in the package to determine short and long-term incentives, investment returns are certainly a large part of the performance goals.

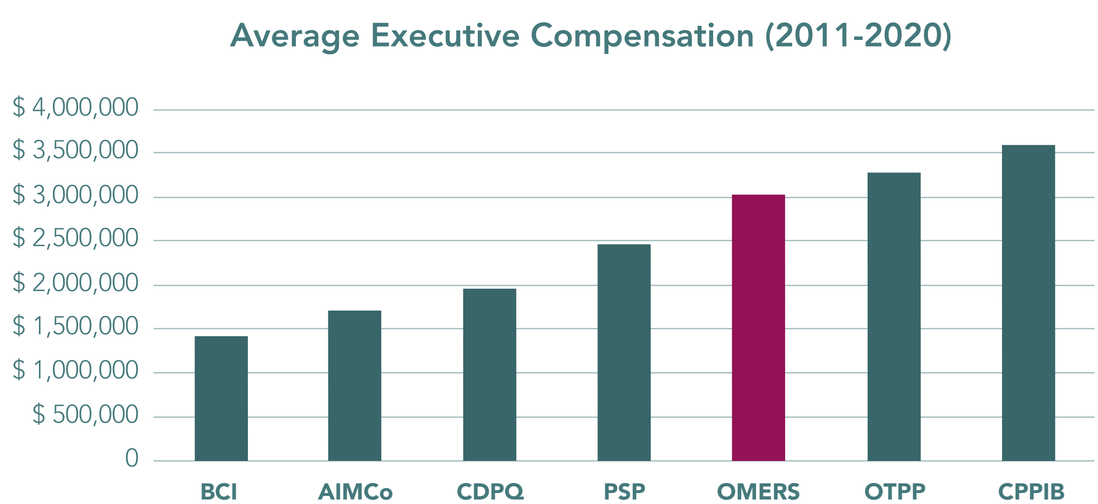
Findings

1. The size of OMERS does not explain the high earnings.

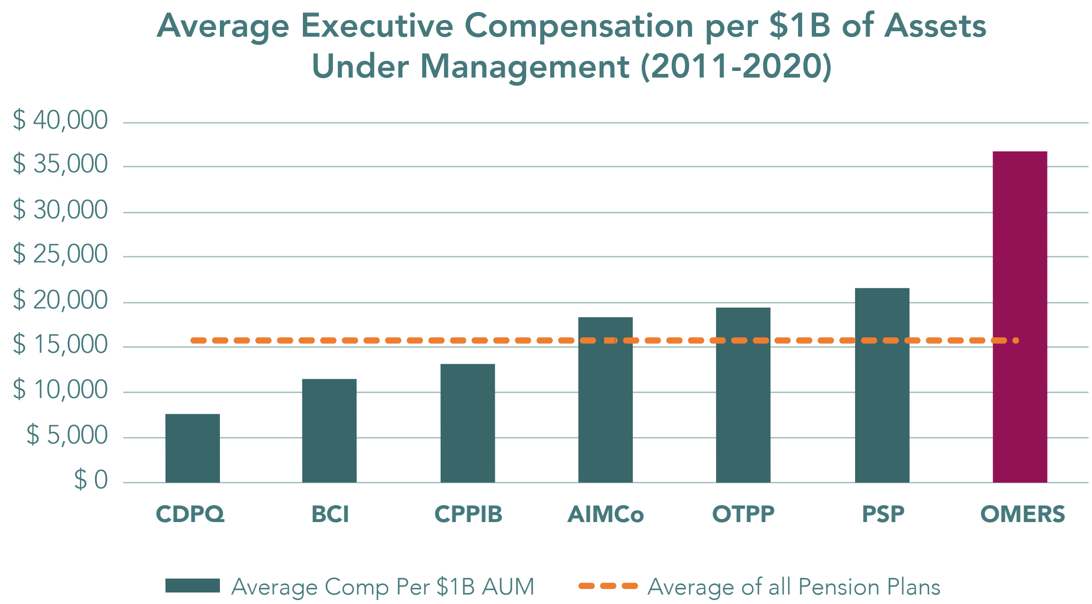
Despite being one of the smaller plans in the group, OMERS pays some of the highest absolute rates for executive compensation.

In terms of assets under management, OMERS is the smallest of the plans compared. Despite its smaller size, OMERS is the third highest in terms of absolute average compensation over the past ten years.





If we look at the amount of executive compensation per billion dollars worth of assets under management, OMERS is by far the most expensive as the table below shows.



OMERS paid significantly more in executive compensation for each one billion dollars of assets under management (AUM) than any of the other six pension plans. For each billion dollars of assets under management, OMERS gave their top executives over 70% more in compensation than the next highest cost pension plan (the Public Sector Pension Investment Board - PSP)

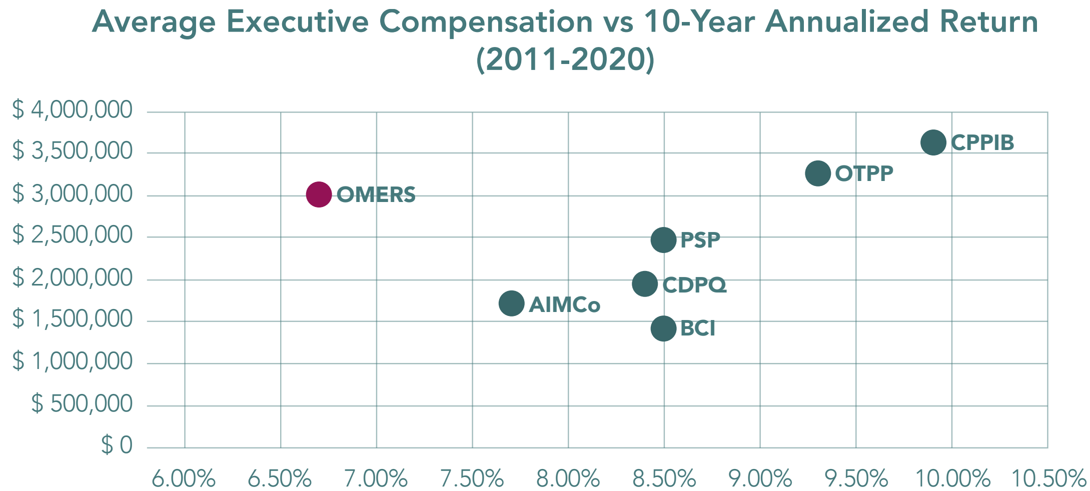
Further, if we were to take the average level of compensation per billion dollars of assets under management of all the pension plans combined, OMERS executive compensation was ***235%*** higher – more than twice the average for all seven plans.

2. OMERS performance does not explain the higher earnings

OMERS has argued that compensation for its executives must be competitive with that provided in the market. In their 2017 annual report, OMERS stated that "the compensation programs are designed to attract, engage and retain high-performing people and help ensure they are motivated to pursue OMERS investment goal of earning returns that meet or exceed the Plan's long term requirements."[3]

However, OMERS has underperformed every other pension plan in its peer group over the past ten years[4]. The higher compensation rates paid by OMERS have not translated into higher returns.

[3] OMERS 2017 Annual Report, page 89
[4] Not Just One Tough Year" CUPE Ontario, May 2021

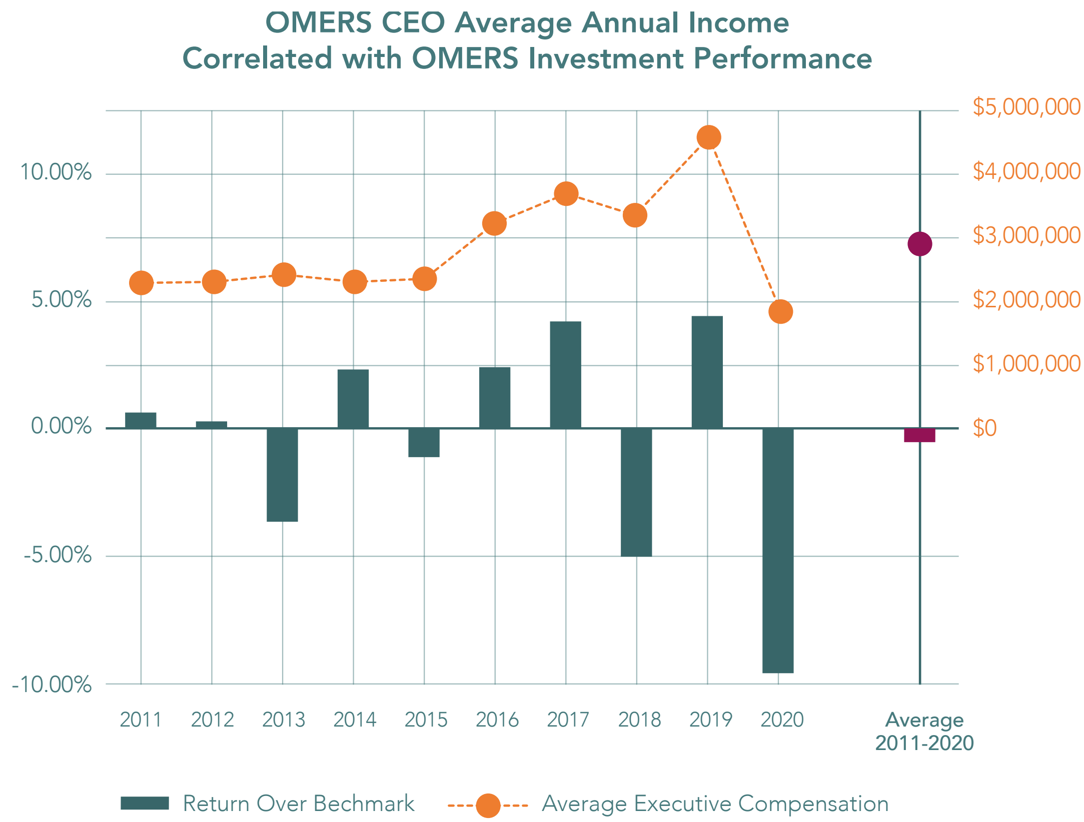


It also begs the question of OMERS performance bonuses. How is it that OMERS executives make so much more for so much less? For every one percent return on investment, OMERS ,on average, has paid almost sixty-eight percent more than the average of the other six plans over the ten-year period.

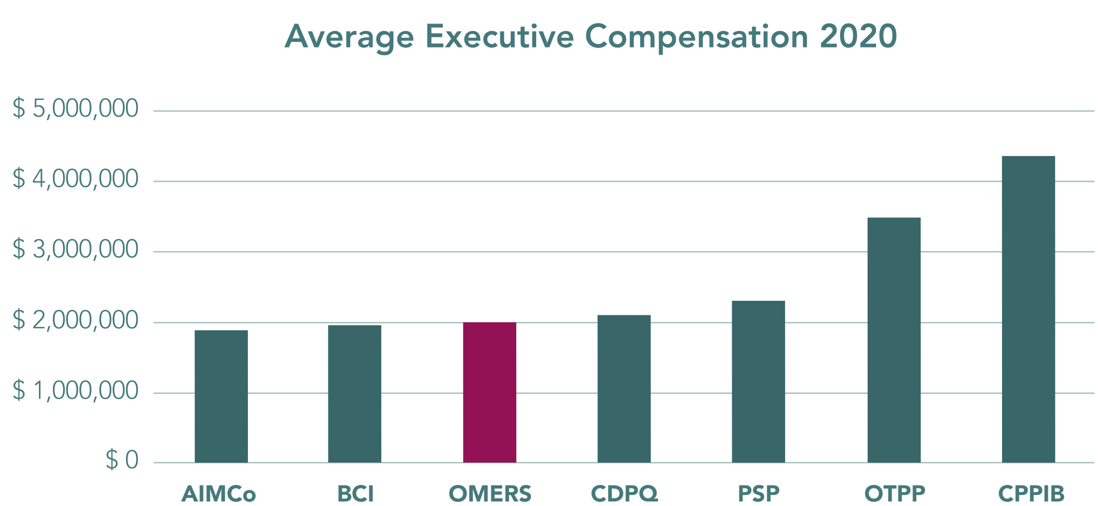
Despite their claim that compensation is based on performance, the data shows that OMERS compensation over the past ten years has increased at a far greater rate than performance.

In 2016, for example, compensation spiked. The combined overall compensation costs for the top five OMERS executives increased from $12.8 million in 2015 to $18.1 million the next year. That was a 41% increase in compensation over one year. While income and returns dropped in 2015, they did not drop so low and 2016 returns were not so high as to justify the magnitude of the salary increase. Between 2011 to 2015, total executive compensation did not exceed $13.4 million in any given year. The 2016 annual report does not provide any explanation for this massive jump in compensation, but a new salary benchmark was apparently set.

The table below charts the average income increases paid to OMERS top five executives as compared with the amount that OMERS exceeded or failed to reach the plan's established investment benchmarks. Only during the catastrophic 2020 calendar year did the top five OMERS executives see a marked decline in compensation.



Despite the fact that OMERS showed a ***net loss*** of almost three billion dollars in 2020 and despite the fact that total executive compensation reduced significantly, the compensation for OMERS executives was still in the middle of the pack when compared to their peers, all of which, unlike OMERS, had excellent investment returns in 2020.



3. Internally Established Performance Benchmarks versus Universal Benchmarks

It is important to note that OMERS investment benchmarks are set differently than in the other plans cited above. OMERS uses "absolute return" pre-set benchmarks for all their asset classes. Although all plans use this method for asset classes such as private equity, infrastructure and real estate, OMERS is the only one to do so for public equity markets. This means that stock market performances as measured by indices like the TSX, S&P or MSCI at the end of the year are not incorporated into OMERS benchmarks or their measure of their executive performance. OMERS is unique in using this method for setting their public markets benchmarks.

Also notable is that OMERS benchmarks are among the lowest of the plans compared here[5]. Although there are other factors at play, meeting these benchmarks would, presumably, be easier than meeting the higher benchmarks set by the other plans. Despite this, OMERS executives failed over ten years to meet even these lower benchmarks.

It is also worth noting that at the same time as we see exorbitant compensation and low investment returns, we also see OMERS is actively pursuing a reduced discount rate. These planned discount rate reductions appear to be unrelated to any change in asset mix but are usually characterized as a "buffer" against future down markets. However, given the interplay between anticipated investment returns and plan liabilities, a reduced discount rate inevitably puts downward pressure on future benefit levels, which is of great concern to CUPE plan members in OMERS.

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Conclusions

The high executive compensation at OMERS, especially in light of its documented pattern of investment underperformance as compared to other large defined benefit pension plans and funds is deeply troubling for CUPE plan members. This is especially the case as OMERS has increasingly made governance changes, particularly at its Sponsors Board, that lessen the plan's transparency and accountability to its plan members.

For CUPE Ontario members looking at this and the previous report "Not Just One Tough Year", it appear that over the past decade, OMERS has rewarded its executives' lacklustre investment performance with exceedingly high executive compensation.

The risks in OMERS are not borne by OMERS executives. Risks are borne by the plan members in the form of potentially lower future benefits, and by the employers and active plan members in the form of potentially higher contribution rates. Investment costs and investment performance are part of this equation. It therefore is incumbent on OMERS to clearly explain the reason for such a stark divergence from other plans in terms of performance and executive compensation. This pattern of investment underperformance and excessive compensation cannot continue if the plan is to fulfill its obligations – a strong, defined benefit pension plan that ensures income security in retirement – to its hard working, active plan members serving on the front lines of Ontario's municipalities, school boards and child welfare agencies.

Accordingly, CUPE Ontario reiterates our call for OMERS to cooperate fully with an independent and transparent third-party review of its investment performance and operations.