

REGION OF OTTAWA-CARLETON  
RÉGION D'OTTAWA-CARLETON

REPORT  
RAPPORT

Our File/N/Réf.  
 Your File/V/Réf.

DATE 26 April 1999

TO/DEST. Co-ordinator  
 Corporate Services and Economic Development Committee

FROM/EXP. A/Human Resources Commissioner

SUBJECT/OBJET **SAME-SEX SPOUSE DEFINITION AND ITS  
 RELATION TO THE PENSION PACKAGE  
 (RESPONSE TO OUTSTANDING INQUIRY NO. C&E-4(98))**

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### **DEPARTMENTAL RECOMMENDATION**

**That the Corporate Services and Economic Development Committee and Council receive this report for information.**

### **BACKGROUND**

Recent court decisions have challenged and changed the meaning of “spouse” in the *Income Tax Act and Pension Benefits Act*.

In the Rosenberg case, the Ontario Court of Appeal was asked to rule as to whether the definition of spouse contained in the *Income Tax Act* was contrary to the Canadian Charter of Rights and Freedoms. The court decided that instead of striking down the provisions of the Act, it would extend the definition of “spouse” to include same-sex spouses by ‘reading in’ the appropriate language. Similarly, Dwyer vs. Metropolitan Toronto in the Ontario Court of Justice challenged the definition of “spouse” in the *Pension Benefits Act*. The Dwyer case resulted in a court decision to change the meaning of “spouse” in that Act.

### **ISSUE**

The Region participates in the Ontario Municipal Employees Retirement System (OMERS) which dictates the benefits of the plan. No unilateral decision can be made by an employer with respect to plan benefits.

OMERS recently decided to provide survivor benefits to eligible same-sex spouses of OMERS members. For a same-sex spouse to be eligible, the OMERS member must have died on or after December 8, 1998. This effective date results from a decision by the Ontario Court of Justice, which is now being appealed. If the appeal is successful, OMERS will stop paying all same-sex spousal benefits until the OMERS Act can be changed to provide for same-sex spouses.

### CONCLUSION

OMERS has now communicated its decision to all pension plan members.

*Approved by  
A.D. Boettger*