

**FEDERAL COURT**

**BETWEEN:**

**MARCUS BRAUER**

**Applicant**

- and -

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**AFFIDAVIT OF MARCUS BRAUER**

I, Major Marcus Brauer, of Dartmouth, Nova Scotia, do make oath and say:

1. I have personal knowledge of the matters deposed to in this affidavit except as otherwise stated as being based on information and belief.

**Introduction**

2. I am a major in the Canadian Forces.
3. I have served in the Canadian Forces since 1988 and I continue to serve.
4. During those 24 years, I have been posted to Sault Ste. Marie (ON), Ottawa (ON), St-Jean sur-Richelieu (QC), Petawawa (ON), Afghanistan, Borden (ON), Edmonton (AB) and Halifax (NS).
5. I am married to Juanita Brauer. We have 5 children, who currently range in age from 4 to 13.

### Significant Financial Loss as a Result of Canadian Forces Posting

6. In 2007, I was stationed at CFB (Canadian Forces Base) Borden. My family and I lived in Angus, ON.
7. In 2007, I was posted to CFB Edmonton. I was advised that if I did not move to Alberta that I would not be able to keep my rank as a major and I would likely be posted to CFB Edmonton as a Captain regardless. At the time, we had three children and my wife was pregnant. On March 21, 2007, I wrote my career manager, Major Arseneau, requesting a posting in Ontario or the East Coast based on the fact, among others, that housing in Edmonton was extremely expensive. Attached as **Exhibit "A"** is a true copy of my March 21, 2007 email to Major Arseneau. Despite my request, I was posted to Edmonton.
8. During the planning of our move, I consulted the booklet, *Planning Your Move*, which was created by Royal LePage at the request of the Department of National Defence, specifically for posted members. Attached as **Exhibit "B"** is a true copy of its description of types of communities: urban, suburban and rural.
9. We applied for rental accommodations. However, due to a shortage in affordable housing, there was a two year waiting list for private married quarters. Civilian rentals were more costly per month than a mortgage at the time and deemed unaffordable. The only viable option was to purchase one of the 12 available houses.
10. We purchased a modest family house in Bon Accord, Alberta for \$405,000, on 5 June 2007. Bon Accord is a town in Northern Alberta located 40 kilometres north of Edmonton. Bon Accord has a population of approximately 1,500 and has its own municipal town council and mayor.
11. In 2010, I was posted to CFB Halifax, Nova Scotia. I was advised by my career manager that if I did not move to Halifax that I would be posted to another location regardless.
12. On 26 April, 2010, we listed our Bon Accord house with a real estate agent Doug Donnelly's team, Royal LePage, for the suggested list price of \$349,000. The list price was further reduced on 4 May, 2010 to \$329,000.

13. We based our listing price on local media reports that the real estate market in Bon Accord had crashed since 2008 based on the announcements that the fledgling multi-billion dollar industrial projects (Fort Hills Energy Limited Partnership, Petro Canada Bitumen Upgrader, Fort Hills pipeline project, Suncor Fort Hills project, Hartland transmission projects) were on hold, potentially permanently.
14. We eventually sold our house for \$317,000. We were informed by our realtor and do verily believe that we could not have sold our house for any more money.
15. This home equity loss of \$88,000 was financially devastating for me and my family.

#### **Application for Home Equity Assistance**


16. At all times, I believed that my family and I should be entitled to be fully compensated for this significant financial loss as indicated in the 2009 CFIRP manual.
17. On May 10, 2010, I made my initial application for Home Equity Assistance under the Canadian Forces Relocation Directive to compensate me and my family for our \$88,000 loss.
18. I provided considerable, evidence based documentation in accordance with the Canadian Forces Integrated Relocation Program Policy (2009) to support my request, which is attached hereto as **Exhibit "C"**. I sent this documentation to the Department of National Defence, who forwarded it to the Treasury Board Secretariat.
19. With my documentation, I included a Bon Accord market analysis prepared by a member of my realtor team, Mr. Brad Redekopp. Based on his analysis, Mr. Redekopp concluded that the Bon Accord market suffered a 23.11% decline from 2007 (average price \$305,141) to 2009 (average price \$234,625).
20. I also included an in depth analysis of the economic troubles facing Bon Accord as part of the industrial heartland of Northern Alberta.
21. Home Equity Assistance provides a benefit of 100% of the loss in communities designated as a depressed market by the Treasury Board Secretariat. If the community is not designated as a depressed market, the benefit is 80% of the loss capped at a maximum of \$15,000. A true copy of the applicable section on Home Equity Assistance

of the Canadian Forces Integrated Relocation Program Policy (2009) is attached hereto as **Exhibit "D"**.

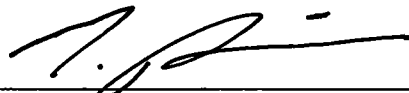
22. On July 9, 2010, I was approved for a \$15,000 payment, but my application to have the community of Bon Accord designated as a depressed market area was not even forwarded to the Treasury Board Secretariat for review by the Department of National Defence because the TBS advised the DND that there are/were no locations in Canada that qualified as a depressed market in 2010. This left \$73,000 of home equity out of pocket losses, not including other resulting costs such as increased CMHC mortgage insurance on our home.
23. On July 13, 2010, I filed a grievance with the Canadian Forces. The April 29, 2011 Findings and Recommendations in respect of my grievance is attached hereto as **Exhibit "E"**. Vice-chairperson Price found that my evidence "clearly establishes that the community of Bon Accord was a depressed market; precisely the type of depressed situation contemplated in the HEA policy."
24. On May 2011, the Canadian Forces Grievance Board issues a newsletter to advocate for an update to the HEA program. A true copy is attached hereto as **Exhibit "F"**.
25. On his September 19, 2011 letter, the Chief of Defence Staff General W.J. Natynczyk agreed that the community of Bon Accord was "precisely the type of depressed situation contemplated in the HEA Policy." General Natynczyk noted that he did not have the authority to grant my request as that can only be done by the Treasury Board Secretariat. However, General Natynczyk directed the Director General Compensation and Benefits to prepare and transmit my HEA submission to the Treasury Board Secretariat for evaluation of depressed market status. A true copy of General Natynczyk's September 19, 2011 letter is attached hereto as **Exhibit "G"**.
26. In its July 17, 2012 letter, the Treasury Board Secretariat determined that Bon Accord, Alberta shall not be designated a depressed market area. A true copy of the Treasury Board Secretariat's July 17, 2012 letter is attached hereto as **Exhibit "H"**.
27. A true copy of the Treasury Board Secretariat's August 31, 2012 letter to my Member of Parliament is attached as **Exhibit "I"**. The letter incorrectly states that "the average cost for the [*sic*] Bon Accord decreased by only 2.9% from 2007 to 2010."

- 28. Attached as **Exhibit "J"** is a true copy of the Treasury Board Secretariat's Record as provided to me in this application.
- 29. Attached as **Exhibit "K"** is a true copy of the National Defence and Canadian Forces Ombudsman's September 10, 2013 letter using my case as an example of the unfairness of the HEA Policy.
- 30. This affidavit is made in support of this application and for no other or improper purpose.

SWORN TO at Halifax, )  
Province of Nova Scotia, )  
This 22<sup>nd</sup> day of November, )  
2013, before me: )

  
A Barrister and Solicitor in and for  
the Province of Nova Scotia

**DANIEL WALLACE**  
A Barrister of the Supreme  
Court of Nova Scotia

  
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Marcus Brauer