Court File No. T-1028-13

FEDERAL COURT

BETWEEN:

MARCUS BRAUER

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

RESPONDENT'S MEMORANDUM OF FACT AND LAW

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OVERVIEW

1. This is an application for judicial review pursuant to s.18.1(1) of the Federal Courts Act.[1] The Applicant is seeking to challenge the decision of the Treasury Board Secretariat ("TBS") not to designate the town of Bon Accord, Alberta as a "depressed market area" for 2010, for purposes of the Home Equity Assistance provisions, ("HEA") of the Canadian Forces Integrated Relocation Program, ("CFIRP"). [2]

2. The Respondent opposes this motion on the grounds that it was reasonable for the TBS to not designate Bon Accord a "depressed market area". In considering whether or not to designate the town of Bon Accord as a "depressed market area", the TBS reviewed information provided by the Applicant and performed its own independent research before coming to the conclusion that Bon Accord, a satellite town 30 kilometers from Edmonton,[3] was part of the metropolitan Edmonton "community" and, as such, did not meet the criteria set out HEA provisions of the CFIRP.

3. The term "community" is not defined in the CFIRP and it is reasonable for the decision-maker not to have to rely on a small municipal breakdown in making determinations of economic depression. Small towns such as Bon Accord are not free standing and the evidence available to TBS at the time of the decision at issue, including the town's close proximity and ties to Edmonton, it is not unreasonable to consider a town "minutes"[4] away from a major urban centre as part of its suburban area and "community".

4. The decision at issue sets out the range of evidence and sources that it considered in making the holistic determination that Bon Accord was not a "depressed market

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[1] *Federal Court Act*, R.S.C., 1985, c. F-7, Respondent's Record Tab J.
[2] Canadian Forces Integrated Relocation Program, Relocation Directive - APS 2009, Respondent's Record Tab M, [hereinafter "CFIRP"].
[3] Affidavit of Claudia Zovatto, at Exhibit "F", "Bon Accord Quick Facts Snapshot", Respondent's Record Tab 1, [hereinafter "Zovatto Affidavit"].
[4] *Ibid.* at Exhibit "F", page 3 "Community Description".

area". The Applicant has raised no compelling evidence or arguments that the decision is outside the range of reasonable possible outcomes available on the facts and the law and, therefore, there is no basis for this Court to intervene. As a result, it is the Respondent's position this judicial review has no merit.

Part I – FACTS

General Background

5. The Applicant is a member of the Canadian Forces (the "CF") who, in 2007, was posted to Canadian Forces Base ("CFB") Edmonton, Alberta.[5]

6. After a house hunting trip to the "Edmonton area", in June 2007 the Applicant purchased a home a home in Bon Accord, Alberta, a town which is 30 kilometres north of Edmonton, for $405,000.[6] This figure was approximately $99,850 above the average residential sale price in 2006 in Bon Accord. [7]

7. In 2010, the Applicant was re-posted to CFB Halifax, in Nova Scotia. This move necessitated the sale of the Bon Accord home. After consulting with his realtor, the Applicant listed his home for sale on April 26, 2010 at $349,000 and then, approximately one week later, reduced the asking price to $329,000.[8]

8. Approximately two weeks later the Applicant sold his home for $317,000, sustaining a loss in equity of $88,000.[9]

Home Equity Assistance Application

9. Pursuant to the HEA provisions of the CFIRP, CF members are entitled to be compensated for 80% of their equity losses up to a total of $15,000 or, 100% of the loss "in places designated as depressed market areas by the Treasury Board Secretariat (TBS)".[10]

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[5] Affidavit of Marcus Brauer, at para 7, Applicant's Record, at Tab 4, [hereinafter "Brauer Affidavit"].
[6] *Ibid.* at para 10.
[7] Zovatto Affidavit, *supra* note 3, at Exhibit "F", page 12.
[8] Brauer Affidavit, *supra* note 5, at para 12.
[9] Brauer Affidavit, *supra* note 5 at paras 15 and 17.
[10] CFIRP, *supra* note 2 at s.8.2.13.

10. The CFIRP defines "depressed market area" as "a community where the housing market has dropped more than 20%". The term "community" is not defined. In 2010, Bon Accord, Alberta was not designated as a "depressed market area". [11]

11. Shortly after or around the time the Applicant sold his home, the Applicant applied to be reimbursed for the full amount of the $88,000 loss in equity under the HEA provisions of the CFIRP. [12]

12. As part of this application, the Applicant forwarded an opinion prepared by his realtor which showed through a simple calculation based on the average sale price of homes in Bon Accord in 2009, the average home price had dropped by 23.11% from the average in 2007. The Applicant's Realtor did not provide calculations for the time period at issue, 2010, as of the date of the Application for HEA, only the 6 homes had been sold in Bon Accord in 2010.[13]

13. In July 2010, the Applicant was approved for the maximum $15,000 HEA payment.[14]

14. The Applicant then filed a grievance with the CF based on the Department of National Defence's failure to submit the matter to the TBS for determination. In April 2011, the CF Grievance Board recommended that the grievance be partially upheld and that the Applicant's submissions regarding the Bon Accord's status as a depressed area be forwarded to the TBS with the full support of the CF.[15]

15. This recommendation was accepted by the Chief of Defence Staff in September, 2011. This acceptance was communicated to the Applicant but was not copied to TBS[16]

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[11] *Ibid.*
[12] *Ibid.*
[13] Brauer Affidavit , *supra* note 5, at para 22 and Exhibit "C" pg 30.
[14] *Ibid.*, at para 22.
[15] *Ibid.*, at para 23 and Exhibit "E".
[16] *Ibid.*, at para 25 and Exhibit "G".

Decision at Issue

16. On October 24, 2011, Lieutenant-Colonel J.M.S. Larouche, Director of Compensation and Benefits Administration, National Defence Headquarters, wrote to TBS on behalf of the Applicant, requesting that TBS consider the Applicant's residence in "Bon Accord, AB (Edmonton area)" a "depressed market" for purposes of section 8.2.13 of the CFIRP and noting that "this is deemed to be both fair, equitable and in line with current CFIRP benefits providing Edmonton is deemed to as a depressed market". This letter document attached the HEA provisions of the CFIRP and the Applicant's initial application for home equity assistance. There is no evidence that the Applicant or the Department of National Defence made TBS aware of the Applicant's Grievance Decision or the recommendation of the Chief of Defence Staff. [17]

17. Ms. Theresa Landry, a Policy Analyst with TBS was assigned to review the request and prepare a draft recommendation for consideration and decision by Michelle d'Auray, who was then the Secretary of the Treasury Board and head of TBS. This task included reviewing not only the Lieutenant-Colonel Larouche's letter and its enclosures but also Ms. Landry's own independent research. This research included information from:

    (i) the Town of Bon Accord;
    (ii) Statistics Canada figures cited by the Town of Bon Accord;
    (iii) the Canadian Mortgage and Housing Corporation (the "CMHC");
    (iv) the Multiple Soliciting Services ("MLS"); and
    (v) various media sources commenting on the real estate market in the Edmonton area.[18]

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[17] Zovatto Affidavit, *supra* note 3, at Exhibit A.
[18] *Ibid.*, at Exhibits "C", "D", "F", "G", "H", "I" and "J".

18. On the basis of this information, Ms. Landry prepared a draft memo dated May 31, 2012 indicating that while the Applicant lost more than 20% on the sale of his home, this was an anomaly and not reflective of the Edmonton area housing market. As a result, Ms. Landry's memo recommended that Bon Accord, Alberta not be declared a depressed housing market for purposes of the CFIRP.[19]

19. Ms. Landry's memo was reviewed by a number of senior Treasury Board Secretariat officials, all of whom concurred with the recommendation. Then, on June 22, 2012, Michelle d'Auray, the Secretary of the Treasury Board, reviewed the recommendation and made the final decision on behalf of the TBS, that Bon Accord, Alberta was not considered a "depressed market" for purposes of the CFIRP.[20]

20. On July 17, 2012, Ms. Kehoe communicated the TBS decision at issue to Lieutenant-Colonel J.M.S. Larouche, stating that the decision not to declare Bon Accord a "depressed market" was based on all information provided by Applicant and other independent sources of information and that the Applicant's equity loss of more than 20% was not consistent with the majority of the information that indicated housing prices had declined by 2.9% on average for the period in question.[21]

21. The Applicant ultimately filed for judicial review of the July 17, 2012 TBS decision on June 10, 2013.[22]

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[19] *Brauer* Affidavit, *supra* note 5, at Exhibit "J" at pages 156-158.
[20] Zovatto Affidavit, *supra* note 3, at para 10 and Brauer Affidavit, *supra* note 5, at Exhibit "J" at page155.
[21] Brauer Affidavit, *supra* note 5, at Exhibit "J" at page159-160.
[22] Notice of Application, Applicant's Record, at Tab 1, at pages 1-4.

Part II – POINTS IN ISSUE

22. The present application for judicial review raises the following issues:

a) Only materials that were before the decision-maker are relevant on judicial review;

b) The applicable standard of review is reasonableness;

c) The decision at issue was reasonable; and

d) In the alternative, the decision at issue was correct.

Part III – LAW AND ARGUMENT

a) The Only Relevant Material is Material that was Before the Decision-Maker

23. In judicial review applications, the record before a decision-maker at the time a decision was made is the key consideration. In the present case, however, the Applicant's affidavit and memorandum relies extensively on information that was not before TBS at the time of the decision at issue. This is contrary to the purpose of a judicial review and therefore, it would be inappropriate to rely on this information with regards to the substance of the decision at issue,

24. In *Ochapowace First Nation v. Canada (Attorney General),* this Court considered the issue of evidence in a judicial review before the Federal Court and clearly held that it would not be appropriate to consider evidence that was not before the decision-maker. On this point, Justice De Montigny stated:

> ... It is trite law that in a judicial review application, the only material that should be considered is the material that was before the decision maker... The only exceptions to this rule have been made in instances where the evidence was introduced to support an argument going to procedural fairness or jurisdiction ... or where the material is considered general background information that would assist the Court ...
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> The rationale for that rule is well known. To allow additional material to be introduced at judicial review that was not before the decision maker would in effect transform the judicial review hearing into a trial *de novo*. The purpose of a judicial review application is not to determine whether the decision of a tribunal was correct in absolute terms but rather to determine whether its decision was correct on the basis of the record before it...[23]

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[23] 2007 FC 920 at para 9 & 10, Respondent's Record Tab A, aff'd 2009 FCA 124 Respondent's Record Tab B, leave to appeal refused to S.C.C. refused [2009] S.C.C.A. No. 262 (S.C.C. Oct 22, 2009) Respondent's Record Tab C.

25. In the present case, the Applicant has not raised any jurisdictional or procedural arguments that would warrant the inclusion of evidence not before TBS at the time of the decision at issue. In addition, it is clear that the Applicant has also not raised an evidentiary basis for the inclusion of many of their Exhibits. For example, Exhibits I and K attached to his affidavit clearly post-date the decision at issue and therefore it is unreasonable to conclude that these were before TBS or provide "background".

26. In addition, the Applicant has not provided any evidence that Exhibits B, E, F and G attached his Affidavit were provided to TBS at any time prior to the decision at issue. Given the purpose of a judicial review is to review the decision on the basis of the record before the decision maker, the Respondent submits Exhibits B, E,F,G, I and K are irrelevant except to the extent they provide general background information. As a result, these Exhibits should be disregarded by this Court in its consideration of the reasonableness or correctness of the decision at issue.

b) The Applicable Standard of Review is Reasonableness

Introduction

27. Following the seminal Supreme Court of Canada case in *New Brunswick (Board of Management) v. Dunsmuir*, the appropriate standard of review in judicial review applications is determined pursuant to a two step process. First, the Court will consider whether the standard of review for the type of decision at issue has been decided in previous jurisprudence. If so, that standard will usually apply. If not, then the Court moves on to consider the appropriate standard based on contextual factors.

28. The *Dunsmuir* decision also clarified that there are two standards of review: correctness and reasonableness.[24] These standards of review are characterized by the degree of deference a reviewing Court will apply to the decision at issue. When

[24] 2008 SCC 9, at para 34, Respondent's Record at Tab D, [hereinafter "*Dunsmuir*"].

applying the correctness standard, the reviewing Court shows no deference to the decision-maker and "will undertake its own analysis of the question".[25] "Reasonableness", on the other hand, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of facts and law."[26]

29. As noted by the Applicant, to date, it does not appear that this Court has had the opportunity consider the appropriate standard of review applicable to TBS decisions regarding the CFIRP. As a result, the standard of review is to be determined by the above-noted contextual factors including: (i) the presence or absence of a privative clause; (ii) the purpose of the tribunal as determined by the enabling legislation; (iii) the nature of the question at issue and (iv) the relative expertise between the Court and decision maker. [27]

30. It is important to note however that the Supreme Court of Canada has clearly stated that "in many cases it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case". [28]

TBS' Purpose and Resulting Specialized Expertise are Worthy of Deference

31. When a decision maker is interpreting a policy with which they have particular expertise, the reviewing Court is required to show deference. The Supreme Court of Canada recently articulated this concept in *A.T.A. v. Alberta (Information and Privacy Commissioner)*as follows:

> Unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by a tribunal of "its own statute or statutes closely

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[25] *Ibid.*, at para 50.
[26] *Ibid.*, at para. 47.
[27] *Ibid.*, at para 64.
[28] *Ibid.*, at para 64.

> connected to its function, with which it will have particular familiarly" should be presumed to be a question of statutory interpretation subject to deference on judicial review".[29]

32. Furthermore, it is important to note that, an administrative decision-maker who is often called upon to "make findings of fact in a distinctive legislative context" can be found to have relative expertise on those issues.[30]

33. The Treasury Board is Canada's only statutory Cabinet Committee of the Queen's Privy Council and its responsibilities include the financial, personal and administrative management of the Government of Canada. In carrying out these functions, the Treasury Board is empowered to determine its own rules and procedures.[31] By virtue of section 35 of the National Defence Act, these functions also include the full authority to establish and regulate the pay and allowances of CF members.[32]

34. Under the authority of sections 5 to 13 of the *Financial Administration Act,* the TBS supports the Treasury Board in this management role.[33] This support includes providing recommendations and advice to the Treasury Board on financial matters including policies, regulations and expenditures related to the management of the resources of the Government of Canada and the Canadian taxpayers.[34]

35. In order to fulfil this management mandate in relation to CF members, the CFIRP is the TBS approved policy for relocation expenses related to military service. While the benefits outlined in the CFIRP are designed to provide CF members with flexibly to accommodate their needs and individual choices, the policy is clear that

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[29] 2011 SCC 61, at para 34, Respondent's Record at Tab E.
[30] *Q.* v. *College of Physicians & Surgeons (British Columbia),* 2003 SCC 19, at para 29, Respondent's Record at Tab F.
[31] *Financial Administration Act*, R.S.C., 1985, c. F-11, at ss. 5(1), 5(4) and 7(1), Respondent's Record at Tab K, [hereinafter "*Financial Administration Act*"].
[32] R.S.C., 1985, c. N-5, Respondent's Record at Tab L.
[33] *Financial Administration Act, supra* note 31.
[34] Zovatto Affidavit, *supra* note 3 at para 2.

these individual choices do not extend benefits beyond the terms of policy or create entitlements without approval of the appropriate decision making authority, in this case, the TBS.[35]

36. The CFIRP designates the TBS, as part of the Treasury Board's management and financial functions, to decide the question of "depressed market area", and not the CF itself. The Treasury Board Secretariat has relative expertise developed as a result of repeated experience in making determinations under the under this policy and others related to employment benefits and financial conditions throughout Canada. As such, its decisions with regards to the interpretation and application of facts to the CFIRP are closely related to its mandate and with which TBS has expertise. These factors should attract deference and a reasonableness standard of review.

The Question at Issue is one of Mixed Fact and Law Worthy of Deference

37. The present case involves the application of a policy to a set of specific facts and therefore is a question of mixed fact and law, worthy of deference. As a result, the applicable standard of review is reasonableness.

38. Recent jurisprudence supports the position that reasonableness is the applicable standard of review in the present case. In *Khalid v. National Research Council of Canada*, this Court dealt with a judicial review of the interpretation and application of the term "exceptional or unforeseen circumstances" of a "pre-retirement transition leave agreement" ("PRTL"), which had become part of the Applicant's employment contract. In that case, Justice Gagne found that the reasonableness standard was applicable to the issue of whether or not the applicant's circumstances amounted to "exceptional or unforeseen circumstances" was "worthy of deference" and therefore warranted review on a reasonableness standard. [36]

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[35] CFIRP, *supra* note 2 at s.1.3.01.
[36] 2013 FC 438, at paras 36-40, Respondent's Record at Tab G, [hereinafter "*Khalid*"].

39. Similarly, in *Canada (Attorney General) v. Bearss*, the issue on judicial review concerned the application of a public service policy relating to acting pay and whether or not specific terms used in the *Public Service Terms and Conditions of Employment Regulations (Policy)* had been appropriately applied to the Applicant's situation. As in the more recent *Khalid* decision, the Court held that the reasonableness standard of review was appropriate and in line with other decisions of this Court concerning "administrative policies governing the employment of the public sector employees". [37]

40. Finally, this Court in *Backx v. Canadian Food Inspection Agency* clearly held that decisions "which interpret and apply internal procedures and policies" are concerned with issues of mixed fact and law and therefore the reasonableness standard of review as applicable.[38]

41. In the present case, the issue before this Court is whether or not the facts of the Applicant's circumstances fit within the policy at issue. This is not purely a question of law, nor is it a consideration that takes place in a vacuum. Instead, TBS was required to not only interpret the terms of the CFIRP but to also consider the general context of the CFIRP, and apply the facts to terms of the policy. As such, this is clearly a circumstance where the "legal and factual issues are intertwined with and cannot be readily separated". Therefore, the reasonableness standard of review is appropriate.[39]

Conclusion on Standard of Review

42. Reasonableness is the appropriate standard of review. While there may be an element to the decision at issue which involves legal considerations, that element is not one "that is both of central importance to the legal system as a whole and outside the [Tribunal]'s specialized area of expertise" and therefore deference is not

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[37] 2010 FC 299, at para 21, Respondent's Record at Tab H.
[38] 2013 FC 139, at paras18-20, Respondent's Record at Tab I.
[39] *Dunsmuir, supra* at para 53.

inappropriate.[40] Furthermore, the decision at issue is highly factual and these factual matters are not readily separated from the legal elements. As a result, it is the Respondent's position that the applicable standard of must be reasonableness.

c) The Decision that Bon Accord was not a "Depressed Market Area" for purposes of the CFIRP was Reasonable

43. TBS' decision that Bon Accord was not a "depressed market area" for purposes of the CFIRP could not be made without regard for the complete context and terms of the CFIRP when considering the Applicant's case. In considering this context along with the facts of the Applicant's situation, the decision at issue was reasonable and should not be disturbed.

The Terms of the CFIRP Support the Reasonableness of Including the Town of Bon Accord as Part of the Edmonton Community

44. The terms of the CFIRP are meant to be flexible.[41] Nevertheless, when considering applications under the HEA provisions, TBS was required to be cognisant of the CFIRP as a whole and, in particular, the terms relating to the HEA. These terms indicate that for the purposes of the Applicant's military employment at CFB Edmonton, the inclusion of Bon Accord as part of the Edmonton area "community" was reasonable.

45. As previously noted, in order to be eligible for 100% of an equity loss on the sale of a home, the home in question must be located in a "depressed market area" which is defined as "a community where the housing market has dropped more than 20%".[42]

46. For the purposes of the CFIRP, CF members place of duty is defined as:

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[40] *Dunsmuir,* supra note 24 at paras 60 & 55.
[41] CFIRP, *supra* note 2, s. 1.3.01.
[42] CFIRP, *ibid.*, at 8.2.13.

> The place at which a CF member usually performs normal military duties and includes any place in the surrounding geographical area that is determined to be part thereof by the Chief of the Defense Staff or such other officer as shall be designated.[43]

47. In the present case, the evidence is clear that the Applicant's place of duty was CFB Edmonton. In addition, there is no evidence that the Applicant ever requested or received the approval to reside outside the geographical boundaries of CFB Edmonton. Nor was any evidence ever provided to TBS prior to the decision at issue which would indicate that Bon Accord was outside the Applicant's "place of duty". As result, for purposes of the HEA provisions of the CFIRP, it is reasonable to consider Bon Accord as being within the geographic boundaries of CFB Edmonton. Therefore, in turn, any consideration of the housing market as it related to the Applicant's military service at his place of duty would reasonably take this factor into account.

The Relevant Evidence Supports the Reasonableness of Including the Town of Bon Accord as Part of the Edmonton Community

48. As with the other terms of the CFIRP, the term "community" has a flexible meaning. This flexibility means that considering the town of Bon Accord as part of the Edmonton area is not unreasonable or incorrect.

49. At paragraphs 67 and 68 of the Applicant's memorandum, the Applicant has provided definitions of the term "community" from the Black's Law Dictionary (9th ed.) and the Oxford Canadian Dictionary. Both of these definitions include the point to a "community" as including a specific "locality". According to the most recent version of the Oxford English Dictionary online, locality is a general term that encompasses a number of concepts, including "a place or district, of undefined extent, considered as the site occupied by certain persons or things, or as the scene

[43] CFIRP, *supra* note 2, s. 1.4.

of certain activities".[44] Nothing in this definition of "locality" excludes the inclusion of Bon Accord as part of the greater Edmonton metropolitan area.

50. Similarly, the definition of "community" found in Terminum Plus, a non-binding reference tool for the Government of Canada Translation Bureau, does not foreclose the possibility that Bon Accord cannot be part of Edmonton community. In particular, this definition points out that a "community" is not necessarily limited to a particular geographic area but instead can include people with "held together by ... economic bonds".

51. With these definitions in mind, it is clear that that the evidence before TBS at the time of the decision at issue supported the idea that Bon Accord was part of the locality of the greater Edmonton region and that it was held together with Edmonton on the basis of economic bonds. For example, the independent evidence of the Town of Bon Accord indicates that the Town specifically markets itself, in large part, based on its close proximity to the Edmonton area. In particular, the Town's website states that Bon Accord is part of the Alberta "capital region", "minutes" away from Edmonton and that it is located on the northern boundary of Edmonton. [45]

52. Similarly, the Applicant's own evidence supports the inclusion of Bon Accord as part of the greater Edmonton community. For example, in the materials provided to TBS for consideration of the "depressed market area assessment", the Applicant repeatedly refers to Bon Accord as being in the "Edmonton area" and the "Edmonton region".[46]

53. In these same materials, the Applicant also supported his arguments regarding the 2007 and 2010 housing markets by referencing a "generalize[d] lack of available

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[44] Oxford English Dictionary, (Online Version), http://0-www.oed.com.just.iii.com/ , at http://0-www.oed.com.just.iii.com/view/Entry/109556?redirectedFrom=localitym (date accessed: March 12, 2014), Respondent's Record at Tab N.
[45] Zovatto Affidavit, *supra* note 3 at Exhibit "F", pages 3 and 4.
[46] Brauer Affidavit, *supra* note 5, at Exhibit "C", pages 26 and 50.

housing in the Edmonton region"; the facts that Bon Accord had "very minimal amenities" and that the majority of residents commuted out of the town for "recreation, shopping, work and school", as well as trends in the housing market through the Province of Alberta.[47]

54. Additionally, it is apparent from the real estate opinion provided by the Applicant's realtor that it is nonsensical to consider only the data from distinct municipalities as evidence of market depression. According to the opinion, there were only six homes sold in the Bon Accord municipality at the time of the application in 2010.[48] However, this matter was not actually referred to TBS until October, 2011 and there is no evidence that the Applicant or his realtor provided any update on this information. With a sample size that small, any variation in housing price for any reason at all could create a massive fluctuation in the differential average price of a home. It was therefore eminently reasonable for TBS to consider the broader economic conditions and market data in a larger area in making determinations of depression.

55. In considering the facts of the present case, it is reasonable for TBS not to have to rely on a small municipal breakdown in making determinations of economic depression. All of the available evidence indicates that Bon Accord is a very small, satellite town. Small towns such as Bon Accord are not free standing, and it is not unreasonable to consider a town only 30 kilometres from a major urban centre as part of its suburban community.

56. Further, the Applicant himself knew that Treasury Board Secretariat evaluated depressed market status based on larger areas and not on single small municipalities, and he knew that Bon Accord was considered by TBS as part of the Edmonton area, because this had been recounted to him first in his grievance decision and then later by the Chief of Defence Staff. While it is clear the Applicant

[47] *Ibid.*, at pages 50-53, 60-61.
[48] *Ibid.*, at page 30.

was in disagreement with this there is no evidence that he attempted to make TBS aware of the information relayed to him in his grievance decision or by the Chief of Defence Staff. This is a fact which is particularly important given that the request to have Bon Accord declared a "depressed market area" was not actually submitted to TBS until almost a year after the Applicant's initial application and more than a month after the Chief of Defence Staff's adoption of the grievance decision.

57. On the other hand, when the matter was referred to TBS for a decision, the CF representative expressly indicated that Bon Accord was part of the "Edmonton area" and that the National Defence Director of Compensation and Benefits was requesting that "Edmonton" be found to be a depressed market area for the purposes of the CFIRP.[49] Thus, TBS was faced with a direct request from the CF to consider the housing market in the Edmonton area in light of the HEA provisions.

58. It is the Respondent's position that when the foregoing evidence is considered in light of the express terms of the CFIRP, the decision to consider Bon Accord part of the greater Edmonton "community" is reasonable and should not be disturbed.

d) the Decision at issue was Correct

59. In the event this Court finds that the decision at issue is not one which attracts deference, the Respondent states that the foregoing reasons also support the position the TBS' decision in this matter was correct.

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[49] Zovatto Affidavit, at Exhibit "A".

Part IV – ORDER SOUGHT

60. The Respondent Respectfully requests that this application for judicial review be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 17th day of March, 2014 at Halifax, Nova Scotia.

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