

**FEDERAL COURT OF CANADA**



**MARCUS BRAUER**

Applicant

-and-

**CANADA (ATTORNEY GENERAL)**

Respondent

**APPLICATION**

Under s.18.1 of the  
*Federal Courts Act, R.S., 1985, c. F-7*

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

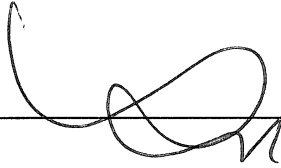
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 3, 2015

Issued by: \_\_\_\_\_



Address of local office: Thomas D'Arcy McGee Building  
90 Sparks Street  
Ottawa, Ontario  
K1A 0H9

ANN E. MURPHY  
REGISTRY OFFICER  
AGENTE DU GREFFE

TO: Attorney General of Canada  
Department of Justice Canada  
234 Wellington Street  
Ottawa, Ontario  
K1A 0H8

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date \_\_\_\_\_

Date de dépôt \_\_\_\_\_

Dated \_\_\_\_\_

Fait le \_\_\_\_\_

JUN 03 2015

JUN 03 2015

ANN E. MURPHY  
REGISTRY OFFICER  
AGENTE DU GREFFE

## APPLICATION

1. This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 in respect of a decision made by the Treasury Board Secretariat (TBS) dated April 7, 2015, transmitted to the Applicant on May 7, 2015.

### *Remedy*

2. The applicant seeks an Order that the matter be remanded to the TBS for redetermination under instruction or such other remedy as the court sees fit.

### *Facts*

3. The Applicant has served in the Canadian Forces (CF) since 1988. He and his wife have five dependent children.
4. Their last move to Halifax resulted in an \$88,000 loss to the family on the sale of their home in a community, Bon Accord, outside of Edmonton, Alberta. That loss was partially offset by a payment of \$15,000 under the Canadian Forces Integrated Relocation Program Directive (2009) (CFIRP Directive).
5. The Applicant contends that the full amount of the family's loss should be recovered under the CFIRP Directive as Bon Accord was a "depressed market area", as specified in section 8.2.13 of the CFIRP Directive, when they had to sell their home.<sup>1</sup>
6. On June 10, 2010 the Applicant's request was forwarded to the Canadian Forces Director Compensation and Benefits Administration (DCBA) Adjudicator. This was denied by DCBA on July 9, 2010.
7. On July 13, 2010 the Applicant submitted a grievance to the Director General Canadian Forces Grievance Authority seeking a reversal of the DCBA decision.
8. On September 19, 2011 the Final Grievance Authority granted partial redress to the Applicant, directing DCBA to transmit his Home Equity Assistance submission to the Treasury Board Secretariat (TBS) for evaluation of depressed market status. On October 24, 2011 DCBA requested that TBS approve 100% reimbursement for the Applicant's loss.

---

<sup>1</sup> Canadian Forces members who sell their home at a loss are entitled to reimbursement for up to 100% of the difference between the original purchase price and the sale price from specific funding envelopes in places designated as depressed market areas by Treasury Board Secretariat (TBS).

"Depressed market", as established by Treasury Board Secretariat, is defined as a community where the housing market has dropped more than 20%.

9. On July 17, 2012 TBS declined to designate “Bon Accord” as a “depressed market area” noting that the correct jurisdiction was “Edmonton” which was not a depressed market during this time. In making this decision the TBS declined to authorize full compensation for the Applicant’s financial loss. The Applicant sought Judicial Review of this decision.
10. On May 23, 2014 the Applicant received a judgement in his favour from the Federal Court (2014 FC 488). The TBS decision dated July 17, 2012 was quashed and the matter was remitted for reconsideration with the direction that the Town of Bon Accord be considered “the community” for determination whether it was a depressed market in 2010, not Edmonton. Costs were awarded in favour of the Applicant on a full indemnity basis.
11. The Applicant re-submitted his claim to TBS. A real estate analysis report (51 pages long) was prepared by Acumen Real Estate Valuations Inc (‘Report’) dated November 2014. The Report concludes that neither Edmonton nor Bon Accord were a depressed market at the time the Applicant sold his home. However, the Report makes unusual and improper subjective adjustments in their statistics to come to this decision. A straightforward calculation without adjustments demonstrates that the Real Estate values of Bon Accord had dropped more than 20%, thereby meeting TBS’ definition of a depressed market. These calculations, less the subjective adjustments, were provided to TBS in a letter dated December 12, 2014.
12. On April 7, 2015 TBS rendered a decision on the “Second Review” and concluded that Bon Accord was not a depressed market in 2010, and denied the Applicant his benefit.
13. On May 7, 2015, TBS’ decision was transmitted to the Applicant through DCBA.

*Grounds*

14. The TBS failed to observe a principle of fundamental justice, procedural fairness or other procedure that it was required by law to observe within the meaning of paragraph 18.1(4)(b) of the *Federal Courts Act*.
15. The TBS erred in law in making a decision or an order, whether or not the error appears on the face of the record within the meaning of paragraph 18.1(4)(c) of the *Federal Courts Act*;
16. The TBS based their decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it within the meaning of paragraph 18.1(4)(d) of the *Federal Courts Act*;

17. The TBS acted in any other way that was contrary to law within the meaning of paragraph 18.1(4)(f) of the *Federal Courts Act*.

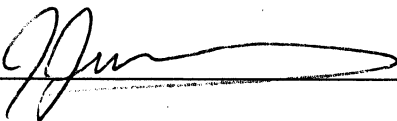
*Request for Tribunal Record*

18. The applicant requests the Director Compensation and Benefits Administration at the Department of National Defence to send a Certified Copy of the entire Tribunal Record, including copies of any and all records created by or under the possession or control of the Director Compensation and Benefits Administration related to the within application pursuant to *Federal Courts Rules* r.317, 318.

*Materials*

19. This application will be supported by the following materials:
- a. TBS decision dated April 7, 2015 and all supporting materials that would have been considered by them in making their decision;
  - b. Relevant correspondence between the Director Compensation and Benefits Administration, TBS, the Canadian Forces and the Applicant;
  - c. Previous judicial order concerning this matter that was not properly acted upon; and
  - d. Affidavit evidence.

June 3, 2015



Joshua M. Juneau  
Counsel for the Applicant

Michel Drapeau Law Office  
192 Somerset Street West  
Ottawa, Ontario, K2P 0J4

Tel: 613-236-2657  
Fax: 613-236-7476

LSUC #61367F  
Counsel for the Applicant