Court File No. T- -24

FEDERAL COURT

BETWEEN:

Andrew **BROCK**

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER S. 18.1 OF THE *FEDERAL COURTS ACT*

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 Ottawa, Ontario.

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 Court 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 Court 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.

Date: **Issued by _____**

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

TO: **Shalene Curtis-Micallef**
Deputy Attorney General of Canada
Department of Justice
Civil Litigation Department
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review against the decision denying the Applicant eligibility to apply for the Depressed Market Benefit under the Integrated Relocation Program: Relocation Policy for the Royal Canadian Mounted Police ("IRP 2009"). This decision was made at the final level by RCMP grievance adjudicator John Lawrence and communicated to the Applicant on December 13, 2023.

THE APPLICANT MAKES APPLICATION FOR:

1. an order quashing the decision denying the Applicant eligibility to apply for the Depressed Market Benefit under the IRP 2009;
2. a declaration that the IRP 2009 applied to the Applicant's relocation in September 2019;
3. a declaration that the Applicant is therefore entitled to make an application for the Depressed Market Benefit for the loss he incurred due to the sale of his residence effective May 31, 2020;
4. in the alternative to the relief set out in paragraphs 2 and 3, an order remitting this matter to a different RCMP final-level grievance adjudicator to reassess the Applicant's eligibility to apply for the Depressed Market Benefit under the IRP 2009, in accordance with instructions of this Honourable Court;
5. the costs of this application;
6. such further and other relief as this Honourable Court deems just.

THE GROUNDS OF THE APPLICATION ARE:

Identity of the Applicant

1. The Applicant is a member of the Royal Canadian Mounted Police ("RCMP"). He holds the rank of Corporal, though he was a Constable until May 1, 2023.

Nature of the Depressed Market Benefit

2. Members of the RCMP are also employees of the Treasury Board. The Treasury Board of Canada is responsible for determining the terms and conditions of employment for RCMP members that relate to pay and allowances.
3. In 2009, Treasury Board determined the various rules concerning pay, allowances, and reimbursement of expenses incurred by RCMP members who relocate for their employment. The RCMP then published the IRP 2009 reflecting Treasury Board's decision. The first article of the IRP 2009 states that "Treasury Board Secretariat of Canada (TBS) has approved the RCMP Integrated Relocation Program (IRP) effective April 1, 2009."
4. The IRP 2009 had two separate provisions to address the loss of the value of an RCMP member's home. The first provision was the Home Equity Assistance Program. This program paid up to $15,000 to RCMP members whose home lost value during their posting, but only if the home was worth less than $300,000.
5. The second provision was the Depressed Market Status. Depressed Market Status is triggered if the housing market in a community has decreased by at least twenty percent (20%). The IRP 2009 defines the term as follows: "**Depressed market** means a community where the housing market has decreased more than 20% since the time of purchase" (emphasis in original). The IRP 2009 requires an RCMP member and their

realtor to "build a business case" demonstrating that the housing market has decreased by more than 20% in that community. If the Treasury Board Secretariat agrees that the community was depressed at the time of the application, then the RCMP member is entitled to the full value of their loss.

6. In 2017, the IRP 2009 was repealed and replaced with a new relocation directive ("RD 2017"). The RD 2017 states that it applies to "all transfers issued on or after 1 April 2017." The RD 2017 increased the value of the Home Equity Assistance Program from $15,000 to $30,000 and eliminated the cap of $300,000 on the value of the homes to which it applied. The RD 2017 also eliminated the Depressed Market provisions in their entirety.

The Applicant's Claim for Eligibility under the IRP 2009

7. In March 2012, the Applicant was transferred to Fort McMurray, Alberta, by the RCMP. It was undisputed that the IRP 2009 was the applicable relocation policy at the time of this transfer. The Applicant purchased a home for $819,950 and finished the basement for approximately $40,000.
8. In September 2019, the Applicant was notified that he would be transferred out of Fort McMurray. He listed his house for sale but was unable to sell it until May 31, 2020. The sale price was $560,000. Including his capital improvements, the Applicant sustained a loss of approximately $299,950 on the sale of his house.
9. On June 15, 2020, the RCMP informed the Applicant that the RD 2017 applied to his transfer out of Fort McMurray, not the IRP 2009.

10. On June 16, 2020, the Applicant grieved this decision on the following grounds:

    a) He had a vested right to the application of the IRP 2009;

    b) The implementation of the RD 2017 was not taken in consultation with affected members and was therefore void; and,

    c) The RCMP was estopped from denying him the application of the IRP 2009.

Decision Denying IRP 2009 Eligibility

11. On November 9, 2022, the RCMP's initial-level adjudication panel rendered a decision dismissing the Applicant's grievance on, *inter alia*, the following grounds:

    a) The Treasury Board's decision to implement the RD 2017 and retire the IRP 2009 was not within the scope of this grievance;

    b) The Applicant did not have a vested right to the application of the IRP 2009, and in any event, the RD 2017 was not retroactive or retrospective so as to interfere with a vested right even if he had had one; and,

    c) The RCMP did not make an unequivocal promise or assurance to the Applicant regarding the application of the IRP 2009 to his transfer, so the conditions of promissory estoppel were not met.

12. On November 26, 2022, the Applicant sought a review of this decision at the final level of the grievance process, contending that the initial-level decision was based on an error of law and was otherwise clearly unreasonable.

13. On December 13, 2023, the Applicant received the final-level decision, which upheld the initial-level decision to dismiss his grievance. The final-level decision contained the following grounds:

a) The Treasury Board's decision to implement the RD 2017 and retire the IRP 2009 fell under the purview of Treasury Board, not the RCMP; was not made in the administration of the affairs of the Force; and so was outside the scope of this grievance;

b) The Applicant's legal situation was not different from any other member and the IRP 2009's Depressed Market benefit provisions were not enshrined for subsequent moves, so the Applicant had no vested right to the application of the IRP 2009; and,

c) The IRP 2009 did not contain any promise that it would apply to future transfers, so the test for promissory estoppel was not met.

Basis of Application

14. The final-level adjudicator made an unreasonable and/or incorrect decision by holding that the implementation of the RD 2017 was a matter outside the administration of the affairs of the Force. While the RD 2017 is a Treasury Board directive, it is implemented by RCMP management and so also concerns the administration of the RCMP's affairs;
15. The final-level adjudicator made an unreasonable decision by holding that the Applicant did not have a vested right to the application of the IRP 2009 on the entirety of his relocation, given (*inter alia*) the clear wording of the IRP 2009;
16. The final-level adjudicator made an unreasonable decision by holding that the IRP 2009 did not contain a promise to apply to future transfers. *Inter alia,* the wording of the IRP 2009 contained such a promise and so the test for promissory estoppel was met;
17. Subsection 18.1(4) of the *Federal Courts Act*, RSC 1985, c F-7.
18. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. the affidavit of Andrew Brock or such other person as counsel may advise and this Honourable Court permit.
2. such other material as counsel may advise and this Honourable Court permit.

The Applicant requests that the Treasury Board Secretariat send a certified copy of the material that is in its possession and relevant to the decision under review to the Applicant and to the Registry, pursuant to Rules 317 and 318 of the *Federal Courts Rules*.

Date: March 1, 2024

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