

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

**ETHEL AHENAKEW, ALBERT BELLEMARE, C. HANSON DOWELL,
MARIE GATLEY, JEAN GLOVER, HEWARD GRAFFTEY,
AIRACA HAVER, LELANND HAVER, ROBERT HESS,
ALBERT HORNER, OSCAR JOHVICAS, ARTHUR LANGFORD,
NEALL LENARD, PATRICIA McCracken, BLAIR MITCHELL,
TOM MITCHELL, DAVID ORCHARD, ARLEIGH ROLIND,
DONALD RYAN, LOUIS R. (BUD) SHERMAN,
GERALD WALTERS, CADY WILLIAMS and JOHN PERRIN**

Applicants
(Appellants)

- and -

PETER MacKAY
on his own behalf and on behalf of all members of the
PROGRESSIVE CONSERVATIVE PARTY OF CANADA
other than the applicants

Respondent
(Respondent in Appeal)

NOTICE OF APPEAL

THE APPLICANTS APPEAL to the Court of Appeal from the judgment of the Honourable Mr. Justice Jurianz dated December 5, 2003 made at Toronto.

THE APPELLANTS ASK that the judgement in the court below be set aside and that judgment be granted issuing:

- (a) a declaration that the provisions of the constitution of the Progressive Conservative Party of Canada (the "PC Party") do not permit the party to be dissolved except with the unanimous consent of all of its members;
- (b) a declaration that the provisions of the constitution of the PC Party do not permit the party to merge with another political party except with the unanimous consent of all members of the PC Party;
- (c) a declaration that, except in the ordinary course of business, the provisions of the constitution of the PC Party do not permit the transfer or alienation of any tangible or intangible assets presently held by the PC Party, or held by others in trust for it, or any tangible or intangible assets subsequently acquired by the PC Party or by others in trust for it, including without limitation the names 'Progressive Conservative Party of Canada', 'Parti progressiste-conservateur du Canada', all of the PC Party's membership lists, all of its funds and trust funds, all accounts receivable and all amounts due or falling due to the PC Party pursuant to sections 435.01 and 435.02 of the *Canada Elections Act* (collectively, the "PC Party Assets");
- (d) a declaration that the provisions of the constitution of the PC Party do not permit the members of the PC Party to authorize by ordinary or special resolution the transfer or alienation of the PC Party Assets to another political party or to any other entity;
- (e) a declaration that any resolution approving or purporting to approve an Agreement-in-principle on the Establishment of the Conservative Party of Canada which resolution was considered at a special meeting of the PC

Party on December 6, 2003 did not have the effect of authorizing the dissolution of the PC Party, or the merger of the party with any other party or the transfer or alienation of PC Party Assets to any other party or entity;

(f) a declaration that the resolution referred to in paragraph (e) above did not constitute the resolution required pursuant to sub-section 400(2)(b) of the *Canada Elections Act* in order for the PC Party to merge with another registered party under the *Act*;

(g) a permanent injunction enjoining and restraining any person with notice of the Court's order from dealing with PC Party assets in a manner inconsistent with the declarations of the Court sought above and requiring that any person who has dealt with any assets in a manner inconsistent with such declarations forthwith account for and return such assets together with an order referring the matter to the Master at Toronto in order that all necessary inquiries may be taken and accounts conducted in order to ensure that the PC Party assets are restored to and held for their intended and lawful purpose;

(h) an order appointing the respondent Peter MacKay as the representative of all members of the PC Party other than the applicants for the purposes of this proceeding, in order that all members may be bound by any relief granted in this proceeding; and

(i) an order granting the appellants their costs in this court and in the court below.

THE GROUNDS OF APPEAL are as follows:

- (a) The learned judge at first instance erred in law in basing his decision on the incorrect proposition that courts "have been reluctant to [become] involved in supervising the affairs of voluntary organizations" and that the rights of members of such organizations are only worthy of "some" protection when in fact the stated role of the courts is to assiduously protect the rights of the members in the minority of such organizations.
- (b) The learned judge at first instance erred in law in holding that the common law governing unincorporated associations did not apply to the Progressive Conservative Party of Canada merely because political parties which are registered under the *Canada Elections Act*, S.C. 2000, c. 9 are regulated by the *Act*.
- (c) The learned judge at first instance erred in law in his interpretation and application of the *Canada Elections Act*.
- (d) The learned judge at first instance erred in concluding that section 400 of the *Act*, which permits two political parties which are registered with the Chief Elections Officer to apply for registration as a single party, "regulates" the merger of registered political parties and obviates the need for the PC Party to comply with the terms of its own constitution and obviates the need for a lawful resolution authorizing any intended merger.
- (e) The learned judge at first instance erred in concluding that the common law governing the merger of unincorporated associations had been

supplanted, altered or displaced by the provisions of the *Canada Elections Act*.

(f) Such further and other grounds as counsel may advise.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS found in subsection 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 in the the judgment being appealed from is a final order of a judge of the Superior Court of Justice.

December 19, 2003

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- and -

PETER MackAY et al.

Appellants

Respondent

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

NOTICE OF APPEAL

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