

03-CV-259202CM/

Court File No.:

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

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 and CADY WILLIAMS, John Perrin

Applicants

- and -

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

Respondents

APPLICATION UNDER Rule 14.05 (3)(d), (g) and (h) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A **LEGAL PROCEEDING** has been commenced by the applicant. The claim made by the applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing on ~~WEDNESDAY, NOVEMBER 19,~~ <sup>WEDNES</sup> <sup>November 26</sup> 2003 at 10:00 a.m. or as soon after that time as the matter can be heard, at Osgoode Hall, 130 Queen Street West, Toronto.

**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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or where the

applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

If you wish to present affidavit or other documentary evidence to the court or to examine or cross-examine witnesses on the application, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer, or where the applicant does not have a lawyer, serve it on the applicant and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

November 20, 2003

Issued by:

Registrar

Address of Court Office:

10th FL  
393 University Avenue  
Toronto, Ontario  
M5G 1E6

TO: **PETER MacKAY on his own behalf  
and on behalf of all members of the  
PROGRESSIVE CONSERVATIVE PARTY  
OF CANADA**  
c/o Suite 806  
141 Laurier Avenue West  
Ottawa, Ontario  
K1P 5J3

## APPLICATION

1. The applicants make application for:
  - (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 the special *ad hoc* procedure mandated by the Management Committee of the PC Party in respect of the Special Meeting of the Members of the PC Party scheduled for December 6, 2003, as more particularly described in the affidavit material filed in support of this application, are contrary to the party's constitution and by-laws, and that as a consequence, any resolution emanating from the meeting is null and void;
- (f) 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 is to be considered at a special meeting of the PC Party scheduled for December 6, 2003 will 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;
- (g) a declaration that the provisions of the constitution of the PC Party prohibit the leader of the PC Party from agreeing with the leader of another political party that the PC Party will not nominate candidates in every federal constituency in Canada and do not permit the leader of the PC Party to take any steps in furtherance of any such purported agreement;
- (h) a declaration that the resolution referred to in paragraph (f) above does 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*;

- (i) 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;
- (j) a declaration that Peter MacKay is in breach of his written agreement with the applicant David Orchard dated June 1, 2003 and more particularly described in the affidavit material filed in support of this application, together with an order referring this matter to the Master at Toronto in order to determine the *quantum* of damages due to David Orchard by reason of the breach;
- (k) 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;
- (l) if necessary, an order abridging the time for service of this notice of application and the affidavit material filed in support thereof and validating service of this material;
- (m) the costs of this application on a substantial indemnity basis;
- (n) such further and other relief as the circumstances of the case may require and this Honourable Court deem to be just.

2. The grounds for the application are:
- (a) the PC Party is an unincorporated association, the constitution of which does not provide for dissolution or merger with any other unincorporated association;
  - (b) the respondent and others have signified an intention to attempt to purportedly dissolve the PC Party, or purportedly merge it with another unincorporated association otherwise than with the unanimous or meaningful consent of the members of the PC Party;
  - (c) in order to lend a patina of legitimacy to these intentions, the respondent and others have scheduled a national meeting of the PC Party, but have promulgated *ad hoc* procedures in respect of the meeting which purport to fetter the discretion of the persons in attendance at the meeting and the Chair of the meeting, and which contravene the constitution and bylaws of the PC Party;
  - (d) the meeting is scheduled for December 6 and this is a matter of urgency;
  - (e) the respondent Peter MacKay has entered into an agreement-in-principle with the leader of another unincorporated association pursuant to which Peter MacKay has agreed to breach the terms of the constitution of the PC Party, contrary to the obligations imposed on him by that constitution;
  - (f) Rules 3.02(1), 10.01(1), 14.05(3)(d), (g) and (h) and 16.08(a) of the *Rules of Civil Procedure*, section 97 of the *Courts of Justice Act*, R.S.O.

1990, c. C-34, as amended and section 400 of the *Canada Elections Act*,  
S.C. 2000, c. 9;

(g) such further and other grounds as counsel may advise.

3. The following documentary evidence will be used at the hearing of the application:

(a) the affidavit of David Orchard sworn November 20, 2003;

(b) such further and other material as counsel may advise and the Court  
permit.

November 20, 2003

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Respondents

**APPLICATION UNDER Rule 14.05 (3)(d), (g) and (h) of the *Rules of Civil Procedure***

**A F F I D A V I T**

I, **DAVID ORCHARD**, of the Town of Borden in the Province of Saskatchewan,  
**MAKE OATH AND SAY** as follows:



1. I am one of the applicants herein and a member in good standing of the Progressive Conservative Party of Canada (the "PC Party"). Accordingly, I have knowledge of the matters deposed to in this affidavit.

2. The PC Party is an unincorporated association and is registered as a federal political party under the *Canada Elections Act*. Copies of the party's constitution and bylaws are marked respectively as Exhibits "A" and "B" to this affidavit.

3. The PC Party's roots pre-date Confederation. It was founded by Sir Georges-Etienne Cartier and Sir John A. MacDonald in 1854 and is Canada's oldest political party. It played a central role in negotiating the terms of Confederation, and Sir John A. MacDonald became Canada's first prime minister in 1867 with Cartier in the defence portfolio. Mr. MacDonald remained in power for most of the next 25 years and his government negotiated the entry of P.E.I., Manitoba, British Columbia and all of western and northern Canada into Confederation.

4. The PC Party is the only party in Canada aside from the Liberals to have won national office and it has played a critical role in Canada's history. In government, the party was responsible for the creation of two transcontinental railways - the CPR which was completed in 1885 and the CNR, which was nationalized in 1917. Under Robert Borden, it gave women the right to vote in 1917, and in 1960 under John Diefenbaker it extended the franchise to aboriginal Canadians for the first time. R.B. Bennett's administration in the 1930s created the Canadian Broadcasting Corporation, the Canadian Wheat Board and

the Bank of Canada. The party changed its name to the Progressive Conservative Party in 1942 and won record-breaking victories in 1958 and 1983.

5. The respondent Peter MacKay is a member in good standing of the party and is its 18th elected leader. He won this position at a national convention of the party conducted in Toronto on May 29 to June 1, 2003.

#### **AGREEMENT-IN-PRINCIPLE**

6. This proceeding concerns an 'Agreement-in-principle on the establishment of the Conservative Party of Canada'.

7. The agreement-in-principle was signed on October 15, 2003 by Mr. MacKay, purportedly acting in his capacity as the leader of the PC Party, and by Stephen Harper, acting in his capacity as leader of another political party called the Canadian Reform Conservative Alliance (the "Alliance Party"). A copy of this agreement-in-principle is marked as Exhibit "C" to this affidavit.

8. The agreement-in-principle provides for the formation of a "new party" to be called the Conservative Party of Canada. There are a number of other provisions in the agreement-in-principle, as follows:

- (a) Filings with the Chief Electoral Officer pursuant to the *Canada Elections Act*, with respect to the founding of the new party, will be completed by December 31, 2003.

- (b) At some unspecified point in the future the new party "will assume all the rights, obligations, assets and liabilities of the PC Party and the Alliance".
- (c) Anyone who joins or renews their membership in either the PC Party or the Alliance after October 15, 2003 will automatically become a member of the new party.
- (d) There is to be a "stand still on nominations". In particular, in paragraph 14 of the agreement, Messrs. Harper and MacKay purported to agree on behalf of their respective parties that meetings in constituency associations across Canada for the nomination of candidates to stand for election to Parliament in the coming federal election will be "cancelled, and further nominations will be frozen", pending ratification of the agreement.

#### **EFFECT OF AGREEMENT UNCLEAR**

9. Although the agreement-in-principle expressly contemplates the creation of a new party, it is silent as to what exactly is being proposed in respect of the existing PC Party. As noted above, Messrs. Harper and MacKay contemplate that the assets and liabilities of both the PC and Alliance parties are at some future point in time to be transferred to the new party, and contemplate that membership between the existing and new parties will overlap. This suggests that they plan to merge the two existing parties into the new one, although when this might occur is not stated in the agreement-in-principle.

10. I am not the only person who is confused about precisely what it is that Messrs. MacKay and Harper are proposing in respect of the existing PC Party. Glenn Solomon is

a solicitor and one of the Directors of the PC Canada Fund. The PC Canada Fund is the registered agent of the PC Party.

11. On October 23, 2003, an opinion was prepared by a firm of solicitors in respect of legal issues surrounding the agreement-in-principle. This legal opinion was forwarded to Mr. Solomon and he responded to it by saying, among other things, that he himself did not understand what the structure of the transaction was. In particular, Mr. Solomon wrote as follows:

The [legal opinion] seems to assume that we are going to vote on dissolution of the Party. That is not at all clear, and the difference is important. We may be voting on merger, rather than dissolution. ... There is no reason why the members of the Party cannot vote to dissolve the Party. If merger is being contemplated and voted upon the [*Canada Elections Act*] specifically provides for and authorizes it. ... I suspect that Members will be asked to vote on merger, or to vote on dissolution and merger, so that all bases are covered.

A copy of Mr. Solomon's full email containing the extracts set out above is appended as Exhibit "D" to this affidavit.

12. As set out in more detail below, there is a PC Party meeting scheduled for December 6, 2003, at which the approval of the agreement-in-principle is being sought. The agreement-in-principle for which approval is sought does not, however, clarify whether a merger, a dissolution, or something else is being proposed in respect of the PC Party.

#### **HISTORY OF MERGER PROPOSALS**

13. The Alliance Party is the successor to a political party called the Reform Party of Canada, which was formed in 1987. Discussions about a merger or some sort of co-

operation of the PC and Reform parties began in about the mid-1990s, however as set out below the vast majority of the members of the PC Party have repeatedly and decisively affirmed their decision that a merger with the Reform/Alliance is irreconcilable with the fundamental objects of the PC Party.

14. I was a candidate for the leadership of the PC Party in 1998, and placed second on the final ballot to the winner, the Right Honourable Joe Clark. During the leadership campaign, both Mr. Clark and I publicly opposed any merger with the Reform Party. The two candidates who indicated that they were more open to such co-operation placed fourth and fifth out of a field of five candidates.

15. In 1998 the leader of the Reform Party had begun pressing for the creation of a "united alternative", a term which was intended to signify either merger of the parties, or at least some sort of affiliation or co-operation, including strategic co-operation in the nomination process in Parliamentary constituencies across Canada, so that PC and Reform party candidates did not stand for election opposite each other in the same ridings.

16. The PC Party met in a national convention in Toronto in 1999. The most important piece of business at this convention was a resolution passed in response to the merger overtures. The resolution, colloquially known as the '301 Rule', was supported by roughly 95% of the delegates in attendance. It enshrined an amendment to the PC Party constitution, currently found in article 2.2.3, which provides that one of the party's fundamental "aims" is the nomination of Progressive Conservative candidates in every

federal constituency in Canada, and the formation of a Progressive Conservative government, as opposed to running a partial slate of candidates or attempting to form a government in coalition with the Reform/Alliance or any other party.

17. That is, in 1999, the party members rejected by an overwhelming vote the suggestion that the PC and Alliance parties would run joint slates of candidates or otherwise co-operate by not opposing each other in some or all ridings in the country. This decision of the membership was taken in the face of considerable pressure from members of the Reform/Alliance party, a large group of whom went so far as to book a block of rooms at a hotel across the street from the PC Party convention, for the express purpose of vigorously lobbying members of the party to vote against the '301 resolution'.

18. Following the general election in 2000, the Alliance Party (as it had become by that time) persisted in its overtures to merge with the PC Party. The Caucus of PC Members of Parliament under Joe Clark initiated a form of co-operation in the House of Commons between the PC Party caucus and eight dissidents who had left the Alliance caucus. At no time did Mr. Clark propose giving up the name of the party, merging it with any other party or dissolving it. In fact, he forcefully resisted any such suggestions.

19. The limited developments which had taken place led to a vigorous discussion at a meeting of the PC Party's National Council in Richmond Hill in September 2001.

20. The party's constitution provides that the "government, management and control of the activities of the Party are vested in members at national meetings". The constitution also provides that between national meetings, government, management and control are vested in the National Council, subject to direction from and accountability to national meetings.

21. The National Council is composed of a representative from each of the party's 301 constituency associations (the riding association president or someone appointed by him or her), the leader of the party and approximately 50 other persons, *ex officio* their positions with the party, or with youth federations and other similar associations closely affiliated with the party.

22. At the September 2001 meeting of the National Council in Richmond Hill, proponents of closer relations with the Alliance put forward a motion which among other things endorsed on-going discussions "with other Canadians" with the objective of forming a "principled and unified conservative government". An amendment to this motion was put forward, in which the word "Progressive" was added to make it clear that the objective of the party was to form "a principled and unified **Progressive** Conservative government".

23. The proponents of the original motion responded by expressly stating that the amendment was hostile to the original motion. Thus, it was clearly understood that the amendment opposed to any further discussions about possible electoral co-operation or merger with the Alliance Party.

24. The amendment was then voted upon and passed by an overwhelming majority of the members of the National Council present. That is, the 1999 vote at the national convention, not to enter into any coalition with the Alliance Party, was strongly reaffirmed by the National Council.

25. At a national convention of the party in August 2002, the delegates present once again overwhelmingly reaffirmed their opposition to any merger with the Alliance Party. A resolution which began with a recital that "the promotion of democracy in Canada and the electoral defeat of the Liberal Party of Canada makes necessary a single conservative alternative" proposed that "the Leader and his caucus and the National Council be directed to take all responsible steps to negotiate a single conservative alternative". The resolution was overwhelmingly defeated.

26. Shortly before the national convention in August 2002 the former leader, the Right Honourable Joe Clark, announced his intention to retire as party leader and a leadership convention took place on May 29 to June 1, 2003.

27. I once again stood as a candidate for the leadership of the party, and entered the convention with the second highest delegate support, behind the front runner Peter MacKay. In addition to Mr. MacKay and I, Heward Grafftey, (who is also an applicant in this proceeding), ran as a candidate, along with four others, namely Jim Prentice, Scott Brison, André Bachand and Craig Chandler.



28. Of the seven candidates, only one, Craig Chandler, campaigned in favour of, or expressed any public support for, the idea of merging the PC Party with the Alliance Party. Mr. Chandler received less than 1% of the delegate support, and withdrew from the race before the first ballot.

29. By the end of the second ballot all of the candidates except for Mr. MacKay, Mr. Prentice and myself had withdrawn or been eliminated. This led to discussions between Mr. MacKay's representatives, Senator Noël Kinsella and Fred Doucet, and myself, and subsequently led to a direct meeting between Mr. MacKay and I in which he expressly and unequivocally agreed, among other things, that if I threw my support behind him, there would not be any merger of the PC and Alliance parties. This agreement was reduced to writing. A copy of the agreement, bearing my signature and that of Mr. MacKay is marked as Exhibit "E" to this affidavit.

30. The first provision of my agreement with Mr. MacKay was as follows: "No merger, ~~talks~~, joint candidates w Alliance. Maintain 301". The word 'talks' was stroked out because Mr. MacKay indicated that he wished to be free to talk with other parties concerning day-to-day matters in the House of Commons, to which I readily consented. Mr. MacKay expressly agreed that this did not in any way detract from the remaining, very clear, provisions of the agreement. The reference in the written agreement to "maintaining 301" is Mr. MacKay's commitment to uphold and abide by the provision of the party's constitution which requires that Progressive Conservative candidates be run in every riding in Canada, and that there be no cooperation with the Alliance party to split seats.

31. Senator Kinsella's newspaper account of these events is marked as Exhibit "F" to this affidavit. He correctly recounts that my first condition for supporting Mr. MacKay, which Mr. MacKay agreed to without reservation, was that there was to be "no fooling around" with the Canadian Alliance, which Mr. MacKay agreed represented existing party "policy".

32. On the strength of Mr. MacKay's signed agreement, I publicly threw my support behind him and asked the delegates who had supported me to vote for him as leader of the party. A majority of the over 600 delegates who had originally supported me voted for Mr. MacKay, and he was elected leader.

33. In the hours and days after the convention Mr. MacKay reminded Canadians on several occasions that his agreement with me simply restated the position the party had already adopted in respect of co-operation with the Alliance. He repeated that he had always opposed a merger with the Alliance and that the PC Party had voted at its 2002 Edmonton convention to field its own candidates in all 301 ridings, which quashed any notion of running joint candidates or merging with the Alliance. In an article in the June 4, 2003 edition of the *Toronto Star*, Mr. MacKay said:

"I have never been an advocate of institutional merger. ... I'm saying we're running a slate of Progressive Conservative candidates in the next election."

34. A week or so after the convention, I met with Mr. MacKay and his chief of staff, Rick Morgan, in Ottawa. Mr. MacKay began the meeting by assuring me that I could rely on his word and that he intended to fully live up to our agreement.

35. On September 19, 2003, I again met with Mr. MacKay's chief of staff, Rick Morgan, in Ottawa. He assured me that notwithstanding any media reports I may have heard regarding negotiations with the Alliance party, no merger was being contemplated and that the talks being reported in the media at the time were simply explorations about co-operation between the two parties in the House of Commons.

36. On the morning of October 15, 2003, Mr. MacKay telephoned me and said that he had signed an agreement-in-principle with Stephen Harper which he sent to me by fax while we were speaking. I expressed my view that his actions constituted a complete and utter betrayal of both our agreement and, more importantly, of the members of the party who had elected him.

#### **PURPORTED RATIFICATION**

37. The Management Committee of the PC Party has convened a meeting for December 6, 2003 at which selected delegates will consider the following resolution:

Be it resolved that:

The Agreement-in-principle on the Establishment of the Conservative Party of Canada be approved and the Leader of the Progressive Conservative Party of Canada and its Management Committee are instructed and authorized to take all necessary steps to implement the Agreement.

A copy of the resolution is marked as Exhibit "G" to this affidavit.

38. The *Canada Elections Act* provides as follows:

366. (1) The leader of a political party may apply to the Chief Electoral Officer for the political party to become a registered party.

...

(2) An application for registration must include

(a) the full name of the political party;

...

(i) the names, addresses and signatures of 100 electors who are members of the party.

...

400. (1) Two or more registered parties may, at any time other than during the period beginning 30 days before the issue of a writ for a general election and ending on polling day, apply to the Chief Electoral Officer to become a single registered party resulting from their merger.

(2) An application to merge two or more registered parties must

...

(b) be accompanied by a resolution from each of the merging parties approving the proposed merger;

...

402. (2) On the merger of two or more registered parties,

(a) the merged party is the successor of each merging party;

(b) the merged party becomes a registered party;

(c) the assets of each merging party belong to the merged party;

(d) the merged party is responsible for the liabilities of each merging party

39. As set out at paragraphs 9 to 12 above, the agreement-in-principle is silent as to whether or not the PC Party is to be merged or dissolved, or unaffected by the agreement-in-principle. The agreement-in-principle calls for all filings to be made with the Chief

Electoral Officer pursuant to the *Canada Elections Act* with respect to the founding of the new party by December 31, 2003.

40. Aside from the December 6 meeting of delegates, no other meetings are scheduled. *If* it is the respondent's position that the resolution set out above authorizes the merger or dissolution of the PC Party (which is something I do not know), I assume that the further steps to be taken if the resolution is passed include filing an application to merge before December 31, and do not include calling for a vote of all of the members of the party.

41. The Management Committee has purported to stipulate that the resolution will be passed if two-thirds of the delegates who cast votes support it, however it is important to understand that this does not mean that two-thirds of the party's members must be in support of the resolution in order that it be passed.

42. In 1995, the delegate selection process for leadership conventions in the party's constitution was amended to provide for proportional representation among delegates from each riding association. For example, if 40% of the members in a riding association favoured candidate A and 60% favoured candidate B, the delegates to the leadership convention from that riding association would be chosen proportionately. Formerly, the bare majority in any given constituency association controlled all of the delegates.

43. There are no similar provisions in the constitution or bylaws for the proportionate selection of delegates for conventions other than leadership conventions. In the result, in

each constituency where a bare majority of members support the resolution, all of the elected delegates from that constituency will vote in favour of the resolution and, assuming momentarily that the resolution is legally effective, a bare majority of the party's members can bring about its demise. Indeed, 51% support at the membership level could translate into, and appear as, overwhelming support at the delegate level.

44. The Alliance Party closed its membership list some days after the Agreement-in-principle was announced and, as I understand it, is conducting a poll of all of its members for ratification of the agreement-in-principle.

45. The Management Committee of the PC Party failed to take any steps to prevent memberships of convenience being taken out by people who do not support the aims and objectives of the PC Party, but merely want to influence our ratification vote. Thus, there is a very real risk that the ratification process will be affected by people who have joined the PC Party for the sole purpose of seeing it dissolved or merged into another party.

46. Indeed, in its October 18 editorial, the *National Post* encouraged members of the Alliance Party to join the PC Party, to "help push this deal through from the PC side". Similarly, Brian Pallister, an Alliance Member of Parliament has announced that he intends to vote twice in the same election. He has a web-site where he publicly encourages other Alliance members to avail themselves of the decision to keep PC Party membership lists open. This tactic is also advocated at a website called "[www.2cards.ca](http://www.2cards.ca)".

47. According to media reports membership in the PC Party increased by 33% in the period between October 15, 2003 and November 18, 2003 when the sales of memberships were finally suspended.

#### **POLICIES**

48. I am opposed to the proposed merger for two reasons. I believe the process for attempting to bring it about is profoundly anti-democratic and, as set out below, the aims and objects of the two parties are irreconcilable.

49. There has been no discussion about what the policies of the merged party will be. The agreement-in-principle recognizes that a policy convention before the next election may be "unachievable", and states that the merged entity is to be run by an "interim joint council" of 12 hand-picked individuals. This provisional governing structure is to remain in place for an indefinite period.

50. This can not be squared with the practice and constitution of the PC Party, which provide for the development of policy by the membership through a process of democratic debate and voting.

51. Apart from the (lack of) process leading up to the proposed merger, and without speaking to their relative merits, I observe that various important policies of the PC and Alliance parties are fundamentally at odds.

52. By way of illustration, the Alliance Party holds decided views on Aboriginal rights. The party has repeatedly called for the privatization of the Reserve system and expressly advocates the deliberate assimilation of First Nations people. As party leader, Stockwell Day stated that the Alliance Party would end tax exempt status of on-reserve Aboriginal people, and would encourage Aboriginals to join the mainstream of Canadian society by ensuring the private ownership of Indian Reserve lands. The Alliance Party campaigned vigorously against the recent treaty process for the N'sga people in British Columbia, and the party proposes for Native Canadians "a delegated municipal level of government".

53. In contrast, the PC Party policy book expressly endorses the inherent right of First Nations to self-government, and the party has a long history of respect for the binding and permanent nature of treaties between the Crown and First Nations. As noted above, Mr. Diefenbaker's 1960 *Bill of Rights* extended full citizenship rights, including the franchise, to Aboriginal people for the first time. In the early 1990s, Brian Mulroney set up the country's first Royal Commission on Aboriginal Peoples, whose recommendations have been attacked by Tom Flanagan, Stephen Harper's chief of staff and long-time policy advisor to the Reform/Alliance party, as "aboriginal orthodoxy". Mr. Flanagan argues that instruments of assimilation such as franchise restrictions and residential schools were necessary and desirable because "the Old World was 5,000 years ahead of the New World on the path of civilization".

54. On the question of the rights of French-speaking Canadians, the PC party's very origin was a coalition between John A. MacDonald and George-Etienne Cartier, from



Upper and Lower Canada respectively. The coalition resulted in a Confederation based on respect for, and promotion of, the French fact in Canada. Mr. Diefenbaker first introduced simultaneous translation in the House of Commons and Brian Mulroney vigorously defended Francophone rights in Manitoba in 1983 and subsequently.

55. In the 1997 general election, the Reform party ran a television advertisement advocating no more Prime Ministers from Québec, and in 2001, an Alliance member tabled a private member's bill to emasculate the *Official Languages Act*. Mr. Harper vigorously defended the member's views in an article entitled "Official Bilingualism - The God that Failed". Mr. Harper's article concludes that bilingualism has "failed" and that it has "led to no fairness, produced no unity, and cost Canadian taxpayers untold millions". On the topic of French language rights, the agreement-in-principle is confined to recognizing equal linguistic rights and privileges in "Parliament and the Government of Canada", but is silent as to minority language rights in all other areas of Canadian life.

56. On agriculture, the Alliance policy is unconditionally committed to dismantling the powers of the Canadian Wheat Board, which the PC Party is not, unless there has been a vote to this effect by the Board's farmer/producer members. Several more examples to illustrate profoundly different approaches to policy, including policies such as public health care, and social policies such as capital punishment and the rights and roles of women and immigrants could be given.

57. As previously set out, without drawing conclusions in this forum about which policies are preferable, no one can dispute that the policies of the two parties are radically different in key areas. As also set out above, there has not been any policy development process for the merged party, and none is contemplated prior to December 6.

#### **PC PARTY CONSTITUTION AND RIGHTS OF MEMBERS**

58. The constitution of the PC Party provides as follows:

**8.2** The government, management and control of the activities of the Party are vested in the Members at national meetings.

**8.3** Between national meetings of the Party, the government, management and control of the activities of the Party are vested in the National Council, subject to general direction from, accountability to and review by the Members at national meetings.

**8.4** Between meetings of the National Council, the government, management and control of the activities of the Party are vested in the Management Committee, subject to general direction from, accountability to and review by the National Council at meetings of the National Council.

59. The party's Management Committee met on October 25, 2003 to consider the Agreement-in-principle. I am advised by the Saskatchewan Vice-President of the PC Party, Marjaleena Repo, and verily believe that she attempted to introduce a resolution objecting to Mr. MacKay's un-mandated actions in entering into the Agreement-in-principle.

60. Ms. Repo advises and I verily believe that John Scott, who is the PC Party's in-house counsel, declared that the motion was out of order and that the Chair of the meeting, party president Bruck Easton, acquiesced to Mr. Scott's advice in this regard and refused

to consider the motion without allowing any discussion or debate by the persons present at the meeting.

61. The party's National Council met on November 8, 2003 and discussed the agreement-in-principle. The applicant Cady Williams, who is the riding president for Vancouver East, was present by telephone at this meeting. I am advised by Ms. Williams and verily believe that the applicant John Perrin, a long-time party member and president of the Winnipeg South Centre riding association, attempted to introduce a motion.

62. A copy of Mr. Perrin's motion is marked as Exhibit "H" to this affidavit. It calls for the convening of a National Meeting of the Party to deal with the Agreement-in-principle and stipulates that the meeting ought to "be conducted in full compliance with the Constitution of bylaws of the Party". As set out below, the meeting now scheduled for December 6 does not comply with the party's bylaws.

63. I am further advised by Ms. Williams and verily believe that once again, Mr. Scott declared that the motion was out of order and could not be entertained, and that the Chair of the meeting, Bruck Easton, once again accepted this advice and refused to deal with the motion without allowing any discussion or debate by the persons present at the meeting. That is, Messrs. Easton and Scott are insisting that a meeting proceed otherwise than in accordance with the party's constitution and by-laws.

64. My brother Grant Orchard is the president of the Toronto Danforth Federal PC Association. He was present at the meeting and advises me, and I believe, that when the meeting started, Mr. Easton indicated that it was only an informational meeting and that nothing would be debated or discussed.

**SPECIAL AD HOC PROCEDURAL PROCEDURES**

65. The party's by-laws provide in article 4.9 that "all" PC Party meetings are to be conducted in accordance with the most recent edition of *Wainberg's Society Meetings including Rules of Order*.

66. The Management Committee has nonetheless purported to establish special *ad hoc* procedures to control the December 6, 2003 meeting. A copy of these *ad hoc* procedures is marked as Exhibit "I" to this affidavit.

67. According to the *ad hoc* procedures, the December 6 meeting will take place in Ottawa and by audio connection at approximately 20 sites across Canada. The meeting will be chaired by someone appointed by the party's Management Committee, who will oversee the conduct of the meeting and who will appoint a Deputy Chair for each participating site. The quorum for the meeting will be one-third of the approximately 4,000 delegates entitled to attend and vote at the meeting.

68. The *ad hoc* procedures for the December 6 meeting also provide as follows:

- (a) No amendments to the resolution will be entertained by the Chair.

- (b) No motion to suspend, nullify, recess or otherwise postpone or cancel the meeting will be entertained by the Chair.
- (c) No motion concerning the placement of the resolution before the members or the vote thereon will be entertained by the Chair.
- (d) In the event that the connection with one of the participating sites is lost, the Chair, in his or her sole discretion, will determine whether the quorum has been maintained and provided this is the case, the meeting will continue and all debate proceedings and voting procedures will be valid notwithstanding the lost connection(s).
- (e) Debate will not last more than a total of 1½ hours.
- (f) Points of order and privilege are to be screened by the deputy chairs and the Chair can, in his "absolute discretion", terminate the rights of members to raise points of order and privilege.
- (g) Mr. MacKay will be granted five minutes in which to speak.
- (h) Each site will choose one delegate to speak in support of the resolution and one delegate to speak in opposition to the resolution. The two delegates from each site will only be given one minute each in which to speak.
- (i) The vote will then be conducted. If two-thirds of the delegates vote in favour of the resolution, the motion will be declared carried.

69. Aside from the one minute allotted to each of the two delegates at all of the sites, no time has been allotted for any debate or discussion of the merits of the resolution

*between* the delegates at the sites. Further, as a result of the departure from the party's usual practice, there will be no opportunity for either the formal or informal discussions and debate which invariably take place in respect of important issues when the delegates are all brought together in the same place at a national convention.

70. The *ad hoc* procedures for the December 6 meeting violate or fall far short of the requirements set out in *Wainberg* in a number of respects.

71. For example, once the Chair determines that a quorum is present, he or she must ask for a motion to approve the agenda for the meeting. (Rule 16.01) However, *item* 5.4 of the Management Committee's *ad hoc* procedures for the December 6 meeting pre-determines that the "sole" business at the meeting will be consideration of the resolution and there has apparently been a pre-determination that the delegates present will not be allowed to vary the agenda.

72. Further, item 5.5 of the *ad hoc* procedures stipulates that no amendments to the resolution will be entertained by the Chair. *Wainberg's Rules of Order* provide (with some irrelevant exceptions concerning procedural motions) that any number of "alternatives to the motion on the floor" may be proposed and debated (Rules 17.2 and 18). The Management Committee has pre-determined that any amendment, including for example, an amendment to put the Agreement-in-principle to a vote of the full membership of the party, will be out of order.

73. Further, *Wainberg's Rules of Order* provide that members present at a meeting may challenge the validity of the meeting itself and object to the consideration of any motion. (Rules 16.5 and 20.1). Item 5.6 of the *ad hoc* procedures however purports to rid the delegates of that right.

74. As set out above, the *ad hoc* procedures for the Special Meeting on December 6, 2003 also purport to limit discussion and debate of the resolution to a maximum of 90 minutes, with each of the approximately 20 sites being given a total of two minutes to speak, evenly divided between those in favour or opposed to the resolution regardless of the actual proportion of delegates on each side.

75. This provision in the *ad hoc* procedures to curtail debate and discussion conflicts with a number of Wainberg's Rules including the following:

- (a) Members have the right to "attend meetings and be provided with adequate ... facilities to hear and participate in proceedings", "to enter into discussions" and "to propose motions and amendments". (Rule 11.1)
- (b) Every member has the right to speak once on each motion. (Rule 19.4)
- (c) While the time allowed for discussion may be limited by the Chair or the meeting, such limits must be "within reason" and done in such a way so as to ensure that minority opinions are not suppressed. The Chair must be "careful not to stifle debate" and "everyone entitled to vote should be permitted to speak". (Rule 19.5)

(d) An attempt to limit discussion must be done by way of a motion.

Motions to limit debate "must be used with caution" and require a two-thirds majority "because [they] suppress discussion". (Rule 20.5)

(e) A ruling by the Chair to limit debate can be appealed to the meeting.

(Rule 10.9)


76. An extract from *Wainberg's Rules of Order* setting out the various provisions referred to above is marked as Exhibit "J" to this affidavit.

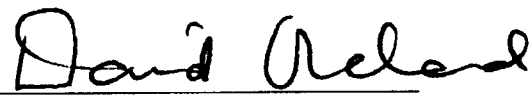
**SWORN BEFORE ME** at the City )

of Toronto in the Province )

of Ontario, this 20<sup>th</sup> day )

of November, 2003 )

  
A Commissioner for Taking Affidavits

  
David Orchard