

ONTARIO
SUPERIOR COURT OF JUSTICE

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

- 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

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:

1. There are two parts to this affidavit. In the first part, I reply to evidence in the affidavit of Dominique Bellemare sworn November 26, 2003. The second part of this affidavit is supplementary to my affidavit sworn November 20, 2003 and deals with matters which I do not believe to be in any way controversial, namely providing details as to the standing and identity of the other applicants in this proceeding.

I. REPLY

AIMS AND OBJECTIVES

2. In his affidavit, Mr. Bellemare concludes that because many of the founding principles for the new party which Messrs. MacKay and Harper propose to establish are copy-typed from the PC party constitution into the Agreement-in-principle, the aims and objectives of the new party and the PC party are the same. In fact, rather than codifying any aims and objectives, the agreement-in-principle merely recites that the constitution and policies of the new party "will be guided by" by the enumerated principles.

3. There is, of course, no draft constitution specifying what the aims and objectives of the proposed party will be, however what we do know at this juncture makes it clear that the new party will not have the same objects as the PC Party. For example, Mr. Bellemare's affidavit completely overlooks article 2.2.3 of the PC Party Constitution which, as set out in my previous affidavit, stipulates that a fundamental aim of the PC Party is that it shall run its own candidates in every riding in Canada, and not merge with the Alliance.

4. Similarly, in paragraph 31 of his affidavit, Mr. Bellemare sets out three founding principles for the proposed party, touching on health care, bilingualism and free trade. He acknowledges that these "are not exact reproductions" of the aims and principles enumerated in the constitution of the PC Party. This is such an understatement as to be inaccurate:

(a) Although far from clear, the language in the agreement-in-principle strongly implies that Messrs. Harper and MacKay's new party will support two-tier health care. The PC Party is committed not only to the five principles enumerated in the *Canada Health Act*, (public administration, comprehensiveness, universality, portability and accessibility), but is also committed to adding a sixth principle, namely predictable, stable, long-term funding to the provinces. The language used in the agreement-in-principle for the proposed party includes no commitment to the public administration of health care, universality of *public* health care, portability or stable funding for health care.

(b) As set out in my earlier affidavit, the proposed party's commitment to bilingualism does not extend beyond Parliament and federal government institutions, which is radically different from the traditions and policy of the PC party.

(c) Finally, Mr. Bellemare alludes to a founding principle of the proposed party being a belief that global free trade gives the greatest potential for achieving the party's other social and economic objectives. As Mr. Bellemare well knows, the membership of the PC Party has on several occasions expressly and overwhelmingly defeated proposals for the insertion of a similar provision in our party's constitution.

5. Apart from the tentative nature in the principles set out in Mr. MacKay's agreement with Mr. Harper ("will be guided by") and the significant differences appearing on the face

of the agreement, Mr. Bellemare's affidavit blurs the distinction between those generalized principles which have been copy-typed from the PC constitution and established PC party policies.

6. Article 9 of the PC Party constitution prescribes the process for the development of the party's policies in a manner that is to "at all times accountable to the members". The members have the right under the party constitution to "full and continuing involvement" in the formulation of policy.

7. The policies of the PC Party runs to a hundred pages and deals in detail with a wide variety of social, economic and other policy matters. Mr. Bellemare is simply in error in stating in paragraph 32 that the proposed party has developed policies. The agreement in principle is quite clear in stipulating that the constitution and policies are to be developed at a first convention which will be held at some undetermined point in the future. An "interim council" of twelve unelected individuals will run the new party in the meantime.

8. Moreover, the policies of the PC Party, both as developed in accordance with the party's constitution and as developed by the party leader and caucus from time to time, include positions on matters as diverse as immigration, regional economic development and social issues, such as the rights of gays and lesbians, abortion rights or capital punishment, which are consistently more tolerant than views expressed by various members of the Alliance Party, who routinely distinguish themselves by advocating views that cannot be reconciled with the positions of the PC Party.

9. As with my earlier affidavit, the point is not to engage in a debate in this Honourable Court about whether or not particular policies are better or worse. The point is that there are several undeniable matters of fact:

(a) The policy objectives of the two parties being merged, the Alliance and PC, are significantly different in important respects.

(b) There has been no democratic development of policies for the new party in the manner guaranteed to the members of the PC Party by their constitution.

(c) Although the policy objectives of the new party are largely undeveloped, it is already evident that they cannot be reconciled with the aims and objects of the PC Party.

STEVENS' ARBITRATION

10. At no time have the applicants agreed to submit the issues raised in this proceeding to arbitration.

11. Exhibit 10 to Mr. Bellemare's affidavit sets out that nine members of the PC party including Sinclair Stevens submitted a dispute with the party's Management Committee to arbitration on November 5, 2003 (the "Stevens' Arbitration"). I have had no part of this arbitration. My information about it is derived largely from the documents referred to below, which were provided to my counsel by the respondent's counsel after this proceeding commenced.

12. As I understand it, Brian Heald, Michael Maddalena and Martin Mason, who are members of the PC Party's standing arbitration committee, were appointed to deal with the Stevens Arbitration. By letter dated November 13, 2003, the solicitors for the party members who had commenced the Stevens' Arbitration suggested that Messrs. Heald, Maddalena and Mason were biased. A copy of this letter is marked as Exhibit "A" to this affidavit.

13. The respondent in the Stevens Arbitration is the party's Management Committee. A copy of the Management Committee's responding submissions in respect of the alleged bias is marked as Exhibit "B" to this affidavit.

14. In a memorandum dated November 17, 2003, Messrs. Heald, Maddalena and Mason rejected any suggestion of bias. No reasons whatsoever were provided for rejecting the allegations and they did not deal in any way with the substance of the arguments alleging bias. No issue is taken at a factual level with the allegations that they are all connected in varying ways with the Alliance party or the factions within the PC party in favour of merger, and there is no suggestion that the panel of arbitrators is balanced with a nominee opposed to merger. A copy of this memorandum of November 17, 2003 is marked as Exhibit "C" to this affidavit.

15. As set out at paragraphs 80 and 81 of Mr. Bellemare's affidavit, the members who launched the Stevens' Arbitration have withdrawn from the process and do not wish to continue with it. Nevertheless, the committee has determined that the Steven's Arbitration

will proceed in any event and counsel has been appointed to speak to the issues raised by Mr. Stevens et al.

16. As noted above, each of Exhibits A, B and C were provided to my counsel by counsel for the Management Committee. One of the applicants in this proceeding, Donald Ryan, was also an applicant in the Stevens Arbitration, however aside from him, none of the applicants herein are in any way connected with the Stevens Arbitration.

PURPORTED REFERRAL OF THIS APPLICATION TO ARBITRATION

17. This application was commenced on November 20, 2003. As set out at paragraph 84 of Mr. Bellemare's affidavit on November 24, 2003 the Management Committee purported to refer the matters in dispute in this application to arbitration.

18. I am advised by the applicants' counsel, Sean Dewart and Steven Barrett, and verily believe that on November 25, 2003, they were provided with a copy of a letter from counsel for the Management Committee to Messrs. Heald, Maddalena and Mason, a copy of which is marked as Exhibit "D" to this affidavit. My counsel learned of the purported referral of the matters in dispute in this proceeding to arbitration when this letter was provided to them.

19. Article 6.6 of the party's by-laws provide that on referral of any dispute by the Management Committee to the arbitration committee, the chair of the arbitration committee shall refer the dispute to a panel of three members of the arbitration committee, "following

consultation with the parties to the dispute" and the referring party. It appears from Exhibit D that there was some type of consultation with counsel for the Management Committee before the matters in dispute in this proceeding were purportedly referred to Messrs. Heald, Maddalena and Mason. There was, however, no consultation with me or the other applicants or our counsel as required by article 6.6.

20. Our counsel were afforded the opportunity to participate in the hearing of the Stevens' Arbitration, which I understand proceeded on November 28, (albeit in the absence of the applicants who launched it). Now shown to me and marked as Exhibit "E" to this affidavit is a copy of a letter dated November 27, 2003 to counsel for the respondent and to Messrs. Heald, Maddalena and Mason from our counsel, setting out our position in response to the invitation to attend at November 28 meeting.

VOTE STACKING

21. I note that Mr. Bellemare deposes to the fact that there are now more than 60,000 members of the PC Party. It is my understanding that as of the date of the agreement-in-principle, there were approximately 40,000 members of the party. That is, my prior affidavit is out of date. According to Mr. Bellemare's affidavit and more recent media reports, the membership in the PC Party has increased by 50% (as opposed to 33%) in the last month. This type of membership increase after a leadership race is over is unheard of in Canadian politics.

22. In paragraph 92 of his affidavit, Mr. Bellemare singles out by name three PC Party members who supported me when I ran for the leadership. He suggests that there is an impropriety in the fact that they might be members of both the PC Party and other political parties. I do not know if they are members of other parties, but in any case it is irrelevant. As Mr. Bellemare states, there is no prohibition on dual-membership in the PC Party. Furthermore, as he well knows, all candidates in a leadership race search out both existing, lapsed and new members who want to support the candidate and who, it is hoped, will remain with and build the party.

23. This, however, is radically different from recruiting new members to join the party for the sole purpose of voting to destroy it. Moreover, the recruitment effort to which I object is being organized in part by the very party that stands to benefit from the takeover, and which, as we have seen, has the resources to rapidly pour large numbers of new members into the PC Party by using their existing member database and party infrastructure.

24. For example, I am advised by Marjaleena Repo, immediate past-president of the Saskatoon Blackstrap constituency association, and verily believe that at the delegate selection meeting on November 29, 2003, 50 party members attended to vote. At least twelve of these members have joined since October 15. On the vote, 24 members voted "no" and 26 voted "yes", with the result that all eight delegates from a riding that was narrowly split will attend the December 6 meeting in support of the resolution.

NAME CHANGES

25. In paragraph 101 of his affidavit, Mr. Bellemare alludes to various names by which the PC Party has been known in the past. To my knowledge, although the name of the party has changed, there has never been an occasion in the 150 year history of the party where anyone has proposed that it should be dissolved or merged into another much larger entity.

PROVISIONS OF CONSTITUTION

26. Mr. Bellemare's affidavit refers at length to various provisions of the party's constitution. The present constitution was adopted in 1995, following a consultation process with the party membership. A copy of the National Restructuring Committee Report is marked as Exhibit "F" to this affidavit.

TAMPERING WITH EVIDENCE

27. As set out in my earlier affidavit, special *ad hoc* procedural rules have been developed for the meeting scheduled for December 6, 2003. In his affidavit, Mr. Bellemare deposes that the copy of the special *ad hoc* rules appended to my earlier affidavit was merely a draft, and that the rules as ultimately adopted are different in a number of respects. I was not aware that the previous version was a draft until I saw Mr. Bellemare's affidavit.

28. At paragraph 103 of his affidavit, in addressing this issue, Mr. Bellemare suggests that I or someone on my behalf tampered with the version of the *ad hoc* rules appended

to my earlier affidavit to remove a word-processing “watermark” which would have made it clear that these *ad hoc* rules were merely in draft form.

29. I obtained a copy of the *ad hoc* rules (Exhibit I to my earlier affidavit) from Marjaleena Repo, who is the party's Saskatchewan Vice-President and a member of the PC Party's Management Committee. I am advised by Ms. Repo and verily believe that the document was e-mailed to her on November 3, without any suggestion that it was to be confidential. I am advised further by Ms. Repo and verily believe that she did not tamper with the document, either in the manner suggested by Mr. Bellemare or otherwise, but that she merely printed it and faxed it to me. Similarly, I did not tamper with the document in any way. After reading the allegation in Mr. Bellemare's affidavit, my counsel had Ms. Repo forward the e-mail to them with the attachment as she had received it. I am advised by my counsel that they printed it and there was no watermark on the document when they did this.

30. In short, Mr. Bellemare's allegation that I or someone associated with me engaged in criminal conduct by tampering with evidence before submitting it to this Court is unfounded.

31. As Mr. Bellemare points out, the version of the *ad hoc* meeting rules appended to my earlier affidavit was revised after this application was commenced, and after my affidavit was sworn. That is, the current version did not exist when I swore my affidavit.

32. Returning to the substance of the matter, whether one refers to the earlier draft or the current version, the point is that the rules for conducting PC Party meetings prescribed by the constitution and bylaws (*Wainberg's Society Meetings including Rules of Order*) have been suspended and replaced with *ad hoc* rules that will restrict debate at the December 6 meeting.

WITHDRAWAL OF CLAIM FOR RELIEF

33. It is quite true, as Mr. Bellemare deposes in paragraph 109 of his affidavit that the relief claimed in paragraph 1(j) of the notice of application was withdrawn when this matter came up for the first time before Mr. Justice Nordheimer on November 26, 2003. This was done on consent, and was expressly without prejudice to the right to pursue this relief subsequently.

34. I am advised by my counsel and verily believe that this was done because counsel for the respondent indicated that this claim for relief was complicating the proceedings, and that it might make it necessary for Mr. MacKay to obtain separate representation. The claim for this relief was withdrawn on consent of all counsel with a view to narrowing the issues and allowing this application to be dealt with expeditiously.

IMPROPRIETY IN ANNOUNCING PROCEEDINGS

35. Mr. Bellemare also complains that the media were made aware of this proceeding before the respondent was served with the application record.

36. The notice of application was issued on November 20, 2003. I believe that the issues raised in this litigation are legitimately matters of significant public interest and in response to numerous media calls, a media conference was scheduled for late in the morning of November 21, 2003. I am advised by my counsel and verily believe that they therefore made arrangements to have the Application Record served early in the day on November 21, precisely so that the respondents would have all the papers in hand before anything appeared in the media.

37. Unfortunately, due to a misunderstanding on my part for which I accept responsibility, some members of the media did become aware of the proceedings before the media conference and before the respondent was served. I am advised by my counsel and verily believe that upon learning of this and upon being contacted by, and thus learning the identity of the respondent's counsel, they took immediate steps to get a copy of the material delivered to counsel on an urgent basis in paper and electronic form.

38. I am further advised by Messrs. Barrett and Dewart and verily believe that each of them, in their (separate) initial conversations with the respondent's counsel, apologized for this unintended discourtesy. Finally, I am advised by Messrs. Barrett and Dewart and verily believe that the respondent's counsel was gracious in accepting the apology and did not suggest that the discourtesy was anything other than unintentional.

II. THE APPLICANTS

39. All of the co-applicants in this matter have been involved with the PC Party in one capacity or another, some of them going back several decades. They are all members in good standing and many have been involved with the party in numerous capacities, as both volunteers and/or elected executives. Among the applicants are three former Members of Parliament. We are all united in our opposition to the manner in which Peter MacKay has purportedly chosen to merge the PC Party with the Canadian Alliance.

40. Ethel Ahenakew was born and raised on the Ahtahtkakoop Reserve in Saskatchewan. She is an aboriginal elder and church leader who lives in Saskatoon, Saskatchewan. Ethel is immediate past president of the PC Party riding association for Saskatoon-Wanuskewin, and has had a life-time involvement with the Church. She serves on the outreach committee of her local cathedral and on the national Eco-Justice Committee of the Anglican Church of Canada. She is also the prison Minister for the Anglican church at the Saskatoon Correctional Centre.

41. Albert Bellemare is a francophone lawyer from Montréal. He and his law-partner spouse specialize in immigration law and international commercial law, and have done so since 1984 in their bi-lingual practice.

42. Hanson Dowell is the Chair of the PC party's Presidents Council of Nova Scotia and has been an active member of the PC Party for over three decades. Mr. Dowell served on

the executive of the PC Party from 1969 until 2003 and has also been extremely active in the party at the provincial level. He has worked on the campaigns of such PC Party luminaries as the Right Honourable John Diefenbaker and the Honourable Robert Stanfield and served as executive assistant to a number of Members of Parliament and Ministers including the Honourable Hugh John Flemming, the Honourable George Nowlan and the Honourable Elmer MacKay. Mr. Dowell is a lawyer and lives in Middleton, Nova Scotia.

43. Marie Gatley, retired, was the director of occupational therapy at Grace and Our Lady of Mercy hospitals in Toronto. She co-founded the Yorkminster Outreach programme for seniors and people with physical deficits. She is the great grandniece of Sir John A. Macdonald. Another of her ancestors, Sir Charles Springer, gave his life in the war of 1812. She is the staunch keeper of her family's proud Tory history - going back three centuries - and a long-time party volunteer.

44. Jean Glover, a resident of Waterford, Ontario and herself a longtime member and volunteer for the PC Party, is descended from a long line of Tory supporters dating back to Confederation. Ms. Glover served in the Women's Division of the RCAF in World War II and then graduated from the University of Toronto with an Honours B.A., after which she ran her own small business. Ms. Glover is a member of the executive of the Haldimand-Norfolk-Brant Riding Association, serving as Secretary in 2002 and now as the Secretary /Treasurer. She was a delegate at the PC Party's 2002 annual general meeting in Edmonton and again at the 2003 leadership convention.

45. The Honourable Heward Grafftey was first elected to the House of Commons in 1958 for the francophone riding in Quebec of Brome-Missisquoi and was re-elected to Parliament from that riding in 1962, 1963, 1965, 1972, 1974 and 1979. When the PC Party, lead by Joe Clark, was elected to government in 1979, Mr. Grafftey was named Minister of State for Social Programs and Minister of Science and Technology. Since leaving politics, Mr. Grafftey has worked as a consultant and in 1988, formed Safety Sense Enterprises Inc., a company devoted to implementing government measures to reduce injuries from preventable automobile accidents. He has also written several books on Canada's political history. Mr. Grafftey was a candidate for the party's leadership in 2003.

46. Airaca Haver, a resident in the British Columbia riding of Okanagan / Coquihalla is a painter and strong supporter of the arts community in her area. Her husband, Leland Haver, has a background in broadcasting and advertising. Mr. Haver is a self-employed business-person in sales, servicing the hospitality industry.

47. Robert Hess is a planner with the Vancouver International Airport Authority. He has been a member of the party for over a decade and is the current president of the Delta - South Richmond PC Party Riding Association in Delta, British Columbia.

48. Albert R. Horner is a retired farmer and prize-winning breeder of purebred Angus cattle and Clydesdale horses from Blaine Lake, Saskatchewan. Mr. Horner first joined the PC Party in 1957 at which time he ran unsuccessfully for election to Parliament as the PC Party's candidate in his home riding. Mr. Horner ran again and won election to Parliament

in the federal elections of 1958, 1962, 1963 and 1965. During his years as an MP, Mr. Horner served on numerous parliamentary committees and has also served on the executive of his riding's PC Party association.

49. Oscar Johvicas has been an active member of the party since 1965. His involvement began as president of the PC club at the University of British Columbia. He has served as national youth director for the party and as executive secretary for the B.C. P.C. Association. In the late 1970s he was executive assistant to the Minister of Health in Manitoba and then special assistant to the Minister of State for Science and Technology in Joe Clark's government. He served as senior policy advisor to the government of Bill Davis and more recently as a special policy assistant to the provincial Minister responsible for seniors. He is the immediate past president of the PC Party riding association for Beaches East-York in Toronto.

50. Arthur N. Langford is Professor Emeritus, Bishops University in Lennoxville Quebec. Dr. Langford is a retired university botanist and professor of biology with a long and distinguished career of public service. He served four years with CIDA in Africa and seven years as secretary of the Long Point World Biosphere reserve. Dr. Langford at 93 is extremely active in his community. A relative newcomer to party politics he became active in a political party for the first time in his life at age 91. He is Vice-President of the Haldimand-Norfolk-Brant PC riding association and served as delegate to the party's national meeting in Edmonton in 2002 and the leadership convention in Toronto in 2003.

51. Blair Mitchell is lawyer in Tantallon, Nova Scotia. He is the former president of the PC Party for Nova Scotia (1991-93) and was an associated member of the PC Party's provincial council and party committees in that province. Mr. Mitchell unsuccessfully sought the PC Party nomination for his riding in Halifax in 1993. He was also a member of, and counsel to, the Halifax West PC riding executive.

52. Tom Mitchell is an industrial electrician and for 18 years has been a member of the Canadian Auto Workers union. Mr. Mitchell served on the board of the Oshawa PC riding association for the past two years, including one term as treasurer. He was elected as a delegate to both the Annual General Meeting of the PC Party in 2002 and the Leadership Convention in 2003. Mr. Mitchell is a "sustaining donor" of the PC party.

53. Arleigh Rolind is a homemaker and mother of two in the riding of Okanagan Coquihalla where she lives with her husband Neall Lenard. She has been active in the battle for a safer environment for a number of years. Neall Lenard is a professional engineer with an expertise in oil and mining exploration in Canada including the Arctic. He has served as a consultant to the industry for four decades beginning with Standard Oil in New York in the late 1940s. He attended the PC Party's annual general meeting in Edmonton in 2002 and as a delegate at the leadership convention in 2003.

54. Donald Ryan, a resident of Napanee, Ontario, is a 25 year decorated veteran of Canada's armed forces. Mr. Ryan is the membership chair for the riding association for Hastings Frontenac Lennox and Addington where he has been very successful in recruiting

new members to the PC party. Mr. Ryan has served on the PC Party's executive on two separate occasions and has worked on the leadership campaigns of Joe Clark, Jean Charest and Peter MacKay.

55. Louis R. (Bud) Sherman is a former vice-chairman of the CRTC, a position he held from 1987 until his retirement in 1995. Mr. Sherman was a Member of Parliament for the Winnipeg riding of Winnipeg South (1965-68) and also served as a Member in the Manitoba Legislative Assembly from 1969 until 1984. He served as the Minister of Health for Province of Manitoba for the full term of the Sterling Lyon administration (1977-81).

56. Gerald Walters is a farmer, home-builder and real estate developer in Orillia, Ontario. An active supporter of the provincial PC party in the late 1990s, Mr. Walters is the father of three and proud grandfather of seven.

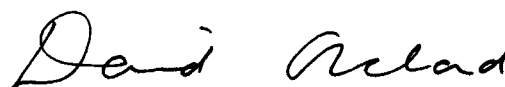
57. Trish McCracken is registered home economist and former secondary school teacher and counselor. She left her profession early to establish her practice in marriage and family therapy and family mediation. She joined the party over a decade ago and was a supporter of Jean Charest as leader. She has served in numerous posts in the party, including as Vice-President for policy of the Simcoe North federal PC association. She has been an area director for the Simcoe North provincial association for many years and served four years on the executive of the Ontario Progressive Association for Women.

58. Cady Williams' first experience with the PC party was as a student cheerleader for John Diefenbaker. Today she is an extremely active member of the party in her native B.C. She is the current president of the Vancouver East PC riding association. Ms. Williams has participated in numerous party meeting and events over the years, including as a delegate at the 2000 PC policy convention in Quebec City and at the 2002 annual general meeting in Edmonton.

59. John Perrin, of Winnipeg, Manitoba, first joined the PC Party in 1975 and since that time has held many positions, both elected and appointed, within the party structure at both the provincial and federal levels. Mr. Perrin was elected to the executive of the federal constituency association for the riding of Winnipeg South Centre in 1979. Over the past ten years, he has held several positions on the association's executive, including that of Director, Policy Chair, Vice President and then finally President from June 2000 until his resignation from that position in protest on November 8, 2003. In addition to his work with the Winnipeg South Centre riding association, Mr. Perrin was also heavily involved, as both a paid staff member and a volunteer, in the leadership campaigns of Joe Clark, Brian Mulroney and Jean Charest.

SWORN BEFORE ME at the City)
 of Toronto in the Province)
 of Ontario, this 30th day)
 of November, 2003)




 David Orchard

 A Commissioner for Taking Affidavits