

**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 McCRAKEN, 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

**AFFIDAVIT OF DOMINIQUE BELLEMARE  
(sworn November 26, 2003)**

I, Dominique Bellemare, of the City of Beauharnois, in the Province of Quebec make  
oath and say as follows:

1. I have been a member in good standing of the Progressive Conservative Party  
of Canada (the "Party") since 1975. I am a past vice-president of the Quebec  
Progressive Conservative Youth Federation, a past national vice-president of the  
Progressive Conservative Youth Federation and former Senior Policy Advisor to the  
Rt. Hon. Joe Clark when he was the Secretary of State for External Affairs.

2. I was co-chair of the 1995 National Convention where the core of the Party's present constitution was adopted. I have served as a member of the Leadership Selection Committee for the last two leadership selection processes in 1998 and 2003. I have chaired most of the Party's constitutional and policy sessions since 1999.

3. I am currently the National Secretary of the Party, a member of the Party's Management Committee (the "Management Committee") since 2001, a member of the Party's National Council (the "National Council") since 1996, Chair of the Management Committee's sub-committee on governance and co-chair of the National Meeting Organizing Committee ("NMOC") for the December 6, 2003 special meeting of Party members (the "Members"). I do not receive any remuneration from the Party for fulfilling these roles.

4. On account of the foregoing, I have personal knowledge of the matters hereinafter deposed to, except where matters are stated to be on information or belief, in which case the source of that information and the basis for my belief have been stated.

5. I swear this affidavit in support of the position that the issues raised by the applicants are political in nature, relate to disputes internal to the Party and are most appropriately resolved through the Party's constitutional dispute resolution procedures. I believe that the application is an unjust and inappropriate use of the Court process and is a tactical manoeuvre by the applicants to stifle a democratic

process from going forward. As more particularly described below, the applicants, by proceeding to Court, have violated the Party's constitution.

### **Nature of the Organization**

6. The Party is an unincorporated association and is registered as a federal political party under the *Canada Elections Act*, S.C. 2000, c.9.
7. The affairs of the Party are governed by the Constitution of the Progressive Conservative Party of Canada (the "Constitution") and by the Progressive Conservative Party of Canada By-laws (the "By-laws"). Attached and marked as Exhibit 1 to this affidavit is a copy of the Constitution. Attached and marked as Exhibit 2 to this affidavit is a copy of the By-laws.
8. Article 8.2 of the Constitution provides that the government, management and control of the activities of the Party are vested in its Members at national meetings. There is no higher decision making authority than the Members at a national meeting.
9. The definition of "Member" is found at article 4.1.11 of the Constitution and reads as follows:

**4.1.11** *"Member" means a member in good standing of the Party;*
10. The criteria for membership and the entitlements of a Member are set out in article 5 of the Constitution:

**5.1** *Every person who:*  
**5.1.1** *is a citizen or permanent resident of Canada,*

5.1.2 has attained the age of fourteen (14) years, and

5.1.3 actively supports the Aims and Principles of the Party, is eligible for membership in the Party;

5.1.4 through a constituency association in the constituency in which that person maintains a principal residence; or

5.1.5 through a constituency association in the constituency in which that person serves on the executive of that constituency association; or,

5.1.6 through an affiliated organization or youth association.

5.2 Membership shall be granted to every person who is a member in good standing of a constituency association or of an affiliated organization or of a youth association and who has paid the prescribed fee for membership in the Party; provided that any Member be required to be a Member for at least fourteen (14) days prior to exercising a vote for candidate nomination, at any constituency association Annual General Meeting, leadership selection or delegate selection; but provided further that a person who has been a Member in the previous calendar year shall be entitled to renew that membership at the candidate nomination meeting, at any constituency association Annual General Meeting, leadership selection or delegate selection meeting and shall be entitled to vote thereat.

5.3 Every Member is entitled to:

5.3.1 participate in any meeting of any constituency association, affiliated organization and/or youth association of which that person is a member;

5.3.2 vote for, and stand for election to, the executive of any constituency association, affiliated organization and/or youth association of which that person is a member;

5.3.3 attend any national meeting of the Party upon payment of the prescribed fee; and

5.3.4 to vote for, and stand for election as, a delegate or alternate delegate at any meeting called by the constituency association, affiliated organization or youth association of which that person is a member for the selection of delegates or alternate delegates to any national meeting of the Party.

5.4 Only Constituency Members are eligible to:

*5.4.1 vote for, and stand for election as, a candidate for Member of Parliament;*

*5.4.2 vote for, and stand for election as, the Leader; and*

*5.4.3 vote on the question of the leadership selection process to be referred to a national meeting pursuant to Article 11.3.*

*5.5 The Party shall maintain a National Membership Program containing, as a minimum for each Member, that Member's name and address and the name of the constituency association, affiliated organization and/or youth association to which the Member belongs.*

*5.6 The National Membership Program shall be administered by the National Director under the general direction of the Management Committee through the Secretary.*

*5.7 The objectives of the National Membership Program are:*

*5.7.1 to facilitate communication and dialogue between Members and the leadership;*

*5.7.2 to establish and maintain common, national criteria for the National Membership Program;*

*5.7.3 to preserve the right of constituency associations, affiliated organizations and youth associations to verify the qualification of a person as a Member provided that the verification is carried out on a timely basis without undue impediment;*

*5.7.4 to respect the primary role of constituency associations for membership recruitment and activity;*

*5.7.5 to promote the purposes of the Party and provide benefits to Members on a national basis;*

*5.7.6 to protect confidentiality of data about Members and not permit the use of the National Membership Program other than for the purposes of the Party; and*

*5.7.7 to provide sharing of the membership fee as determined by the National Council between the costs of operation of the National Membership Program and the provision of revenue to constituency associations, affiliated organizations and youth associations.*

11. Pursuant to article 8.3 of the Constitution, between national meetings, the government, management and control of the activities of the Party are vested in the

National Council, subject to the general direction from, accountability to and review by the Members at national meetings. The membership of the National Council is specified in article 8.11 of the Constitution:

*8.11 The National Council shall be comprised of the following Members:*

*8.11.1 the Leader;*

*8.11.2 the president or designated representative, neither of whom may be the Member of Parliament, of each constituency association;*

*8.11.3 the National President;*

*8.11.4 the Executive Vice-President;*

*8.11.5 the Secretary;*

*8.11.6 the Treasurer;*

*8.11.7 the Chair of the PC Canada Fund;*

*8.11.8 the Chair of the National Campaign Committee;*

*8.11.9 the Chair of the Policy Advisory Committee;*

*8.11.10 the Chair of the Parliamentary Caucus;*

*8.11.11 the Provincial/Territorial Vice-Presidents;*

*8.11.12 the Chairs of each Regional Council;*

*8.11.13 ten (10) voting members of the executive of the Progressive Conservative Youth Federation of Canada;*

*8.11.14 the presidents of each Provincial/Territorial Progressive Conservative Youth Association;*

*8.11.15 the presidents of each Provincial/Territorial Progressive Conservative Post-Secondary Association;*

*8.11.16 the immediate past-National President in office at the time of the election of another person as National President; and,*

*8.11.17 the National Director as a non-voting member who otherwise will be entitled to attend and fully participate in the proceedings of meetings.*

12. Pursuant to article 8.4 of the Constitution, 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. The membership of the Management Committee is specified in article 8.16 of the Constitution:

*8.16 The Management Committee shall be comprised of the following Members:*

*8.16.1 the Leader;*

*8.16.2 the National President;*

*8.16.3 the Executive Vice-President;*

*8.16.4 the Secretary;*

*8.16.5 the Treasurer;*

*8.16.6 the Chair of the PC Canada Fund or a member of the Board of Directors of the PC Canada Fund designated by the Chair;*

*8.16.7 the Chair or either of two Co-Chairs of the National Campaign Committee;*

*8.16.8 the Chair or either of two Co-Chairs of the Policy Advisory Committee;*

*8.16.9 the Chair of the Parliamentary Caucus or a member of Caucus designated by the Chair;*

*8.16.10 the President, Vice-President Anglophone and Vice-President Francophone of the Progressive Conservative Youth Federation of Canada;*

*8.16.11 the Provincial/Territorial Vice-Presidents, or a designated representative of National Council from the Province or Territory of the Vice-President as designated by the Vice-President;*

*8.16.12 the immediate past-National President in office at the time of the election of another person as National President; and*

*8.16.13 the National Director as a non-voting member who otherwise will be entitled to attend and fully participate in the proceedings of meetings.*

### **The Agreement in Principle**

13. On October 15, 2003, the leader of the Party (the "Leader") and the leader of another registered federal political party, the Canadian Reform Conservative Alliance (the "Alliance"), agreed to place the recommendations contained in a document entitled "Agreement-in-principle on the establishment of the Conservative Party of Canada" (the "AIP") before their respective members for consideration. The terms of the AIP require it to be considered before December 12, 2003. Attached and marked as **Exhibit 3** to this affidavit is a copy of the AIP.

14. The founding principles of the proposed Conservative Party of Canada, as recited in the AIP are, for the most part, taken word for word from the aims and principles in the Party's Constitution. Of the nineteen founding principles listed in the AIP, sixteen of them are exact reproductions of aims and principles listed in the Party's Constitution. The founding principles that are not exact reproductions of the aims and principles in the Constitution are in harmony with them and consistent with the policy positions of the Party.



15. "A balance between fiscal accountability, progressive social policy and individual rights and responsibilities" is a founding principle in the AIP and article 2.1 of the Constitution.

16. "Build a national coalition of people who share these beliefs and who reflect the regional, cultural and socio-economic diversity of Canada" is a founding principle in the AIP and article 2.2.1 of the Constitution.

17. "Develop this coalition, embracing our differences and respecting our traditions, yet honouring a concept of Canada as the greater sum of strong parts" is a founding principle in the AIP and article 2.2.2 of the Constitution.

18. "The Party will operate in a manner accountable and responsive to its Members" is a founding principle in the AIP and article 2.3 of the Constitution.

19. "A belief in loyalty to a sovereign and united Canada governed in accordance with the Constitution of Canada, the supremacy of democratic parliamentary institutions and the rule of law" is a founding principle in the AIP and article 3.1.1 of the Constitution.

20. "A belief in the equality of all Canadians" is a founding principle in the AIP and article 3.1.2 of the Constitution.

21. "A belief in the freedoms of the individual, including freedom of speech, worship and assembly" is a founding principle in the AIP and article 3.1.3 of the Constitution.

22. "A belief in our constitutional monarchy, the institutions of Parliament and the democratic process" is a founding principle in the AIP and article 3.1.4 of the Constitution.
23. "A belief in the federal system of government as the best expression of the diversity of our country, and in the desirability of strong provincial and territorial governments" is a founding principle in the AIP and article 3.1.5 of the Constitution.
24. "A belief that the best guarantors of the prosperity and well-being of the people of Canada are: the freedom of individual Canadians to pursue their enlightened and legitimate self-interest within a competitive economy; the freedom of individual Canadians to enjoy the fruits of their labour to the greatest possible extent; and the right to own property" is a founding principle in the AIP and article 3.1.6 of the Constitution.
25. "A belief that a responsible government must be fiscally prudent and should be limited to those responsibilities which cannot be discharged reasonably by the individual or others" is a founding principle in the AIP and article 3.1.7 of the Constitution.
26. "A belief that it is the responsibility of individuals to provide for themselves, their families and their dependents, while recognizing that government must respond to those who require assistance and compassion" is a founding principle in the AIP and article 3.1.8 of the Constitution.

27. "A belief that the purpose of Canada as a nation state and its government, guided by reflective and prudent leadership, is to create a climate wherein individual initiative is rewarded, excellence is pursued, security and privacy of the individual is provided and prosperity is from a free competitive market economy" is a founding principle in the AIP and article 3.1.9 of the Constitution.
28. "A belief that the quality of the environment is a vital part of our heritage to be protected by each generation for the next" is a founding principle in the AIP and article 3.1.10 of the Constitution.
29. "A belief that Canada should accept its obligations among the nations of the world" is a founding principle in the AIP and article 3.1.11 of the Constitution.
30. "A belief that good and responsible government is attentive to the people it represents and has representatives who at all times conduct themselves in an ethical manner and display integrity, honesty and concern for the best interest of all" is a founding principle in the AIP and article 3.1.12 of the Constitution.
31. The founding principles in the AIP which are not exact reproductions of articles in the Party Constitution accord with the policies of the Party and read as follows:

*A belief that English and French have equality of status, and equal rights and privileges as to their use in all institutions of Parliament and Government of Canada;*

*A belief that all Canadians should have reasonable access to quality health care regardless of their ability to pay;*

*A belief that the greatest potential for achieving social and economic objectives is under a global trading regime that is free and fair.*

32. I note that while Mr. Orchard spends paragraphs 48 through 57 of his affidavit stating that he believes the policies of the Party and the Alliance are irreconcilable, he does not take issue with any of the founding principles of the Conservative Party listed in the AIP. In fact, Mr. Orchard entirely disregards the founding principles in the AIP and incorrectly states that the Conservative Party will have no policies.

#### **October 25, 2003 Management Committee Meeting**

33. At the regularly scheduled and duly constituted meeting of the Management Committee on October 25, 2003, the AIP was considered. I was in attendance at the meeting and recorded the minutes.

34. At the start of the meeting, the Chair of the meeting advised that Marjaleena Repo ("Ms. Repo"), a friend and political ally of Mr. Orchard, had requested permission to tape the meeting and to bring her own legal counsel to the meeting. The Chair told the meeting that he had rejected both requests. Ms. Repo then attempted to challenge the Chair but could find no seconder. As such, no vote was taken on the challenge to the Chair, and the meeting proceeded.

35. When a motion was tabled to place the AIP before the Management Committee, Ms. Repo put forward a procedural motion, moving that the Management Committee object to considering the motion. Ms. Repo's motion was voted upon and defeated 31-1. A vote then proceeded on the original motion to consider the AIP and it was passed with only Ms. Repo opposing.

36. In accordance with its authority under the Constitution and By-laws, the Management Committee passed ten resolutions on October 25, 2003 calling for a special meeting of Members to be held on December 6, 2003 and dealing with the structure, organization and conduct of that meeting. Attached and marked as **Exhibit 4** to this affidavit is a copy of the October 25, 2003 resolutions passed by the Management Committee.

#### **Resolutions Passed by Management Committee**

37. Article 8.9 of the Constitution grants the Management Committee the authority to convene a special meeting of Members at any time to transact business relating to the government, management and control of the activities of the Party.

38. Resolution #1 reads as follows:

*In accordance with the authority vested in the Management Committee of the Progressive Conservative Party of Canada (the "Party") pursuant to Article 8.9 of the Constitution of the Party, a special meeting of Members of the Party be convened by the Management Committee, through the President of the Party, to be held on December 06, 2003.*

39. Resolution #2 reads as follows:

At the special meeting of Members of the Progressive Conservative Party of Canada to be held December 06, 2003, a question be put to the voting delegates as follows:

*Whereas on October 15, 2003 the Leader of the Progressive Conservative Party of Canada entered into an Agreement-in-principle on the Establishment of the Conservative Party of Canada (the "Agreement");*

*And whereas the Leader of the Progressive Conservative Party of Canada, in accordance with the provisions of the Agreement, has requested that the Agreement be placed before the Members of the Progressive Conservative Party of Canada for consideration and the Leader seeks the support and approval of the Members of the Progressive Conservative Party of Canada for the Agreement;*

*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.*

40. By passing resolutions #1 and #2, the Management Committee exercised its constitutional authority under article 8.9 to convene a special meeting of the Members. Resolution #1 passed by a vote of 30-2 and resolution #2 passed by a vote of 27-5.

41. In accordance with article 8.10 of the Constitution, all Members were sent a copy of the full text of the AIP and the question to be voted on at the December 6, 2003 meeting. That mailing occurred on October 28, 2003.

42. Resolution #4 reads as follows:

*In accordance with Section 4.12 of the Bylaws of the Progressive Conservative Party of Canada, Management Committee of the Party appoint a National Meeting Organizing Committee, to consist of such members and Chair(s) as may be determined by Management Committee, to have the responsibility for organizing and overseeing the special meeting of Members to be held on December 06, 2003.*

43. By passing resolution #4, the Management Committee resolved to appoint a National Meeting Organizing Committee ("NMOC") to organize and oversee the December 6, 2003 meeting. This resolution was made under the explicit

constitutional authority of by-law 4.12 which empowers the Management Committee to appoint an NMOC for any national meeting of Members. Appointing an NMOC is a standard procedure for a national meeting. I am not aware of any occasion when a national meeting has been held without an NMOC being appointed to oversee it. Resolution #4 was passed with only Ms. Repo opposing. Management Committee also resolved to appoint myself and Bruck Easton as co-chairs of the NMOC and Ian Fraser, Bruce McLaughlin, Irene Swindells, Kim Linkletter and Judith Seidman as members.

44. Resolution #3 reads as follows:

*The question to be put to voting delegates at the special meeting of Members on December 06, 2003 shall require the approval of at least two-thirds (2/3) of delegates voting on the question.*

45. Resolution #5 reads as follows:

*The special meeting of Members to be held on December 06, 2003 shall be conducted at local sites, simultaneously with audio connectivity at a minimum, in each province and territory, all to be held in such format and pursuant to such rules and procedures as may be determined by the National Meeting Organizing Committee.*

46. Resolution #8 reads as follows:

*The Management Committee of the Progressive Conservative Party of Canada recommends to the National Meeting Organizing Committee the adoption of the proposed structure, as attached to this Resolution, for the special meeting of Members to be held on December 06, 2003.*

47. Resolutions #3, #5 and #8 relate to the procedures for conducting the December 6, 2003 national meeting. Article 8.17.5 of the Constitution gives the Management Committee the authority to enact and amend the rules and procedures

for national meetings. By-law 4.17 gives the Management Committee the further authority to make, amend or revoke any determination or decision of the NMOC. The Management Committee sets individual rules and procedures for each national meeting and has the full constitutional authority to do so for the December 6, 2003 meeting. Resolution #3 was passed 31-1 with Ms. Repo as the lone opposition. No motion was brought to amend resolution #3 to require unanimity rather than a two-thirds majority. Resolution #5 was passed 27-5 and resolution #8 was passed without opposition.

48. Resolution #6 reads as follows:

*For the purpose of electing delegates to the special meeting of Members to be held on December 06, 2003, and in addition to those individuals listed in Section 4.16 of the Bylaws of the Progressive Conservative Party of Canada, each constituency association shall be entitled to elect six (6) senior delegates and two (2) youth delegates if the constituency association does not have a youth constituency association and two (2) senior alternate delegates and one (1) youth alternate delegate if the constituency association elects youth delegates; each youth constituency association shall be entitled to elect two (2) delegates and one (1) alternate delegate; each campus club shall be entitled to elect three (3) delegates and one (1) alternate delegate and each affiliated organization shall be entitled to elect two (2) delegates and one (1) alternate delegate.*

49. By-law 4.15 charges the Management Committee with the responsibility of determining the number of delegates entitled to vote at any national meeting of members from each youth and constituency association and from each affiliated organization. By passing resolution #6, the Management Committee fulfilled its constitutional responsibilities under By-law 4.15. Resolution # 6 was passed without opposition.



50. Resolution #7 reads as follows:

*For the purpose of electing delegates to the special meeting of Members to be held on December 06, 2003, the Management Committee of the Progressive Conservative Party of Canada, in accordance with the authority vested in it under Section 8.3 of the Bylaws of the Party, suspends the time period required for notice to be given to the National Director of the date, time, and place of a delegate selection meeting as per Section 3.1.2 of the Party's Bylaws and refers to the National Meeting Organizing Committee the decision to set the time period for the submission of such notice to the National Director.*

51. Resolution #7 suspended the time period for notice to the National Director under by-law 3.1.2 in advance of delegate selection meetings ("DSMs") for the December 6, 2003 meeting. Resolution #7 directed the NMOC to set a new time period for notifying the National Director of a DSM for the December 6, 2003 meeting. Resolution #7 was passed without opposition.

52. By-law 8.3 permits the Management Committee, in exceptional circumstances, to alter, abridge or suspend time periods provided for in the By-laws. The Management Committee has exercised that power on previous occasions and decided that the December 12, 2003 deadline for Members to consider and vote upon the implementation of the AIP was an exceptional circumstance warranting an alteration of the notice given to the National Director under by-law 3.1.2.

53. By-law 3.1.2 exists to ensure the National Director has time to complete necessary administrative tasks relating to the DSMs. The National Director is a fully participating, non-voting member of the Management Committee (see article 8.16.13 of the Constitution) and took no issue with the alteration of the notice period in this circumstance.

54. Resolution #9 reads as follows:

*On or before November 3, 2003, the National Meeting Organizing Committee shall recommend to the Management Committee, for approval, a delegate fee structure for the special meeting of Members to be held on December 06, 2003 and shall present to Management Committee the rules and procedures, as have been determined by the National Meeting Organizing Committee, for the special meeting to be held on December 06, 2003.*

55. By passing resolution #9, the Management Committee requested that the NMOC recommend a delegate fee structure and a formal set of rules and procedures for the December 6, 2003 national meeting. Resolution #9 passed without opposition.

56. By-law 4.14 gives the Management Committee the authority to set the fees paid by delegates to attend a national meeting. Typically those fees are in the hundreds of dollars and are in addition to any travel costs delegates may also have to incur. Pursuant to its constitutional authority to set the delegate fees, on November 3, 2003 the Management Committee accepted the NMOC's recommendation and set the fee for the December 6 national meeting at \$0.00 in order to allow for maximum participation. I was in attendance at that meeting and recorded the minutes.

57. Also on November 3, 2003 the Management Committee received the NMOC's confidential recommendations on rules and procedures for the December 6 national meeting and for the DSMs leading up to the December 6 national meeting. The Management Committee sent the draft rules and procedures for the December 6 national meeting back to the NMOC for further revision. The Management

Committee adopted the rules and procedures for the DSMs on November 3, 2003 and immediately sent those rules and procedures to the presidents of all the constituency associations, youth associations and affiliated organizations. Attached and marked as **Exhibit 5** to this affidavit is a copy of the rules and procedures for the DSMs as adopted by Management Committee on November 3, 2003.

58. At a meeting on November 18, 2003 the NMOC revised its recommendations on the rules and procedures for the December 6 national meeting. The revised rules and procedures were then remitted to the Management Committee and approved in accordance with its authority under article 8.17.5 of the Constitution on November 24, 2003. I was in attendance at both the November 18, 2003 meeting of the NMOC and the November 24, 2003 meeting of Management Committee and recorded the minutes of the latter. Attached and marked as **Exhibit 6** to this affidavit is a copy of the rules and procedures for the December 6 national meeting as approved by the Management Committee on November 24, 2003.

59. Resolution #10 reads as follows:

*Whereas pursuant to Article 13.5 of the Constitution of the Progressive Conservative Party of Canada (the "Party"), Management Committee of the Party has the authority to refer any matter, other than any dispute related to the leadership selection process, to the Arbitration Committee of the Party for reference to a panel of the Arbitration Committee for consideration and decision.*

*Be it further resolved that:*

*If any dispute whatsoever arises out of or is made in connection with the authority of the Management Committee of the Progressive Conservative Party of Canada to convene a special meeting of Members of the Party pursuant to the Constitution of the Party for the purpose of consideration of the Agreement-in-principle on the Establishment of the Conservative Party of Canada dated October 15, 2003 (the "Agreement") or arises out of or is made in connection with any Resolution or Resolutions enacted by Management Committee relating to such special meeting or the Agreement, any such dispute shall be referred to the Arbitration Committee of the Party for reference to a panel of the Arbitration Committee for consideration and decision, and the provisions of the Constitution and the Bylaws of the Party related to dispute resolution shall apply to any such proceedings, including the application of Article 13.6 of the Constitution of the Party that the decision of any Arbitration Committee panel is final and binding and is not subject to appeal or review on any grounds.*

60. Article 13.5 of the Constitution permits the Management Committee to refer any dispute (other than one related to the leadership selection process) to the Arbitration Committee for consideration and decision. The Management Committee acted with constitutional authority in passing resolution #10 and directing that all disputes arising out of or in connection with its actions regarding the December 6 national meeting be referred to the Arbitration Committee for consideration and decision. Resolution #10 passed without opposition.

#### **The Arbitration Committee**

61. The Constitution and By-laws provide for an annually appointed Arbitration Committee to arbitrate disputes. By-law 6.13 clearly states that, "... the intention of the Party's arbitration process is for all the parties to a dispute or matter be given an opportunity for a full, fair and equal presentation of their concerns and views."

62. Pursuant to article 8.12.4, the Party's National Council annually appoints one Member from each province and territory to sit on the Arbitration Committee. Members are nominated by the vice-president of their province or territory pursuant to by-law 6.1.

63. Under by-law 6.5 the Arbitration Committee selects its own chair and vice-chair.

64. By-law 6.4 dictates that no member of the Arbitration Committee shall be compensated for being a member.

65. Article 13.5 of the Constitution states that the Management Committee may refer any matter, other than a dispute related to the leadership selection process, to the Arbitration Committee.

66. Pursuant to by-law 6.6, upon referral of any dispute or matter to the Arbitration Committee, the Chair of the Arbitration Committee shall refer the matter to a panel of three Arbitration Committee members. By-law 6.7 states that an Arbitration Committee panel shall select its own chair.

67. By-law 6.8 directs that any issue raised respecting the suitability of any member of the Arbitration Committee to act as a panel member shall be determined by the Chair of the Arbitration Committee. In the circumstance where issue is taken with the suitability of the Chair of the Arbitration Committee to sit on any panel, the Vice-Chair shall make the determination as to the Chair's suitability. The decision of the Chair and/or Vice-Chair is final and binding.

68. Article 13.6 of the Constitution states that any decision of the Arbitration Committee is final and binding and not subject to appeal or review on any grounds.

69. Article 13.7 of the Constitution states that, subject to any specific directions from any Panel, the Management Committee is empowered to implement the decision of the appointed Arbitration Committee panel.

70. Numerous matters have been referred to the Party's Arbitration Committee over the years and it has proven to be a successful means for efficient and effective resolution of disputes within the Party.

71. The current Arbitration Committee members were appointed well before the AIP was signed and the issues surrounding its implementation surfaced. The Arbitration Committee does not contain any members who sit on the Management Committee, National Council or Party executive and the Arbitration Committee acts entirely independently from the Management Committee, National Council and Party executive.

#### **Threats of Court Action**

72. On October 23, 2003 the law firm of Gardiner Roberts LLP ("Gardiner Roberts") issued a public memorandum giving purported legal opinions on the implementation of the AIP and stating that the voluntary members of the Management Committee could have civil lawsuits filed against them and face personal liability for allowing the Members to vote on implementing the AIP. The opening paragraphs of the memorandum disclose that it was purposely written to be

circulated in advance of the Management Committee meeting scheduled for October 25, 2003. The memorandum was requested by Ms. Repo, who personally distributed it to all members of the Management Committee. Attached and marked as **Exhibit 7** to this affidavit is a copy of the October 23, 2003 Gardiner Roberts LLP Memorandum, with covering letter addressed to Ms. Repo.

73. Mr. Orchard posted the Gardiner Roberts memorandum on his website and threatened to pursue legal action before the Management Committee had even concluded its meetings the weekend of October 25, 2003.

74. On October 26, 2003 Mr. Orchard appeared on the CTV television program *Question Period* and spoke of taking legal action to prevent the Members from voting on the AIP. Attached and marked as **Exhibit 8** to this affidavit is a transcript of Mr. Orchard's October 26, 2003 interview on *Question Period*.

75. In an October 27, 2003 article by Bruce Cheadle of the Canadian Press, Mr. Orchard was quoted as saying that the events surrounding the AIP were forcing the issue to be adjudicated by the rule of law and that Mr. Easton (Party president) "may be asking for a lawsuit." Attached and marked as **Exhibit 9** to this affidavit is a copy of the October 27, 2003 article by Bruce Cheadle.

#### **Arbitration Proceeding**

76. On November 5, 2003 Gardiner Roberts sent a Submission to Arbitration (the "Submission") to the National Party President, National Party Secretary and the Chair of the Arbitration Committee on behalf of nine persons (the "Complainants"), who

identified themselves as Members of the Party. The Submission challenged the validity of the resolutions passed by the Management Committee at the October 25, 2003 meeting. No direct challenge was made to resolution #10 and it was recognized as the authority under which the Submission was being made. Attached and marked as **Exhibit 10** to this affidavit is a copy of the November 5, 2003 Submission to Arbitration.

77. On November 11, 2003 the Arbitration Committee panel selected to adjudicate the issues (the "Panel") sent a memorandum to Gardiner Roberts and to counsel for the Management Committee, Cassels Brock & Blackwell LLP. The Panel suggested a timeline for proceeding that would have seen written submissions received, a hearing held and a decision rendered no later than November 26, 2003. The Panel also requested that arbitration documents be kept in confidence and that they not be reproduced, distributed or publicly disseminated. Attached and marked as **Exhibit 11** to this affidavit is a copy of the November 11, 2003 email from the Panel.

78. I believe myself to be bound by the Panel's request that the arbitration documents not be reproduced or publicly disseminated and therefore have not attached any of the arbitration documents to this affidavit, other than Exhibit 9 which was made public when one of the Complainants published it on his website prior to the Panel's determination that the arbitration was to be private.

79. On November 17, 2003 the Management Committee delivered its written submissions in compliance with the agreed timeline. The Complainants did not.



80. On November 19, 2003 Gardiner Roberts emailed the Panel and counsel for the Management Committee to say the Complainants were withdrawing their request for arbitration and would not participate any further in the arbitration proceedings. Attached and marked as **Exhibit 12** to this affidavit is a copy of the November 19, 2003 email message sent by Gardiner Roberts notifying the Panel of the Complainants' withdrawal.

81. On November 21, 2003 the Panel issued a memorandum indicating that the arbitration would proceed and that independent counsel would be appointed to speak to the issues raised by the Complainants. The hearing is now scheduled to take place November 28, 2003. The Panel will render a decision by December 3, 2003 and, in accordance with the Arbitration Committee's standard practice, that decision will be public.

82. I have reviewed the arbitration submissions and believe that the matters raised in this application are substantially the same as those currently before the Panel. I also believe that the matters in this application fall squarely within the matters referred to the Arbitration Committee by the Management Committee via resolution #10 on October 25, 2003 and that the Applicants are in breach of the Constitution for failing to abide by the referral to arbitration.

83. The applicants are aware of the arbitration procedures, the referral of these matters to the Arbitration Committee, and that an arbitration on these matters is in progress. None of the applicants have filed a submission to arbitration nor have they intervened in the arbitration already in progress. I also note that Mr. Orchard fails to

recognize the Party's constitutional dispute resolution procedures in his affidavit and fails to mention the ongoing arbitration proceedings.

84. On November 24, 2003, the Management Committee considered the application initiated by the applicants in this proceeding. The Management Committee then passed the following resolution:

*Whereas pursuant to Article 13.5 of the Constitution of the Progressive Conservative Party of Canada (the "Party"), Management Committee of the Party has the authority to refer any matter, other than any dispute related to the leadership selection process, to the Arbitration Committee of the Party for reference to a panel of the Arbitration Committee for consideration and decision.*

*And whereas Management Committee resolved to refer to the Arbitration Committee disputes related to the Agreement in principle and other matters by resolution dated October 25, 2003.*

*And whereas Ethel Ahenakew and others, including David Orchard, brought a proceeding in the Ontario Superior Court of Justice in Court File No. 03-CV-259202CM1 (the "Action") against Peter MacKay personally and on behalf of all members of the Progressive Conservative Party of Canada (other than the applicants);*

*And whereas an Arbitration Panel has been constituted by the Arbitration Committee for consideration and decision of all disputes related to the Agreement-in-principle and the actions of the Party related to the Agreement-in-principle, which includes the issues arising in the Action.*

***Be it resolved that:***

*The Management Committee refers to the Arbitration Committee Panel for consideration and decision all matters relating to the claims of the applicants in the Action, and without limiting the generality of the foregoing, all allegations and submissions with respect to the constitution of the Party relating to the Agreement-in principle, including all actions and procedures which have been taken or are to be taken by and on behalf of the Party in connection with the Agreement-in-principle.*

*The provisions of the constitution and the by-laws of the Party related to dispute resolution shall apply to any such proceedings, including the application of Article 13.6 of the Constitution of the Party that the decision of any arbitration panel is final and binding and is not subject to appeal or review on any grounds.*

85. By continuing this application before the Court, the applicants are in violation of two constitutional referrals to arbitration.

### **Membership Eligibility and Delegate Selection**

86. Mr. Orchard's affidavit includes a recitation of his opinions on Party membership and who should be permitted to stand as delegates at the December 6 national meeting. These are matters governed by the Constitution and By-laws and not by Mr. Orchard's opinions.

87. As set out at paragraphs 9 and 10 above, the Constitution defines the criteria for, and entitlements of, membership in the Party. Mr. Orchard refers to "memberships of convenience being taken out by people who do not support the

aims and objectives" of the Party, yet he provides no facts and only speculation to support his assertions. Further, Mr. Orchard has not followed the constitutional procedures for commencing a challenge regarding the qualification of Members.

88. Contrary to the allegations contained in paragraph 45 of Mr. Orchard's affidavit, It is not the responsibility of the Management Committee to verify the qualifications of membership applicants. Article 5.7.3 of the Constitution makes it clear that it is the right of the constituency associations, affiliated organizations and youth associations to verify the qualifications of a person as a Member.

89. An allegation regarding the qualification of persons to become Members is an allegation that a constituency association, affiliated organization or youth association has failed to meet the requirements referred to in article 5.7.3 of the Constitution. Such a charge clearly falls within the dispute resolution mechanism outlined in article 13 of the Constitution. Article 13.1 states that any ten members of a constituency association, affiliated organization or youth association may give notice to the National Director of a claim that the requirements of the Constitution or By-laws are not being met by the executive of their association or organization. Article 13.2 requires the National Director to investigate the merits of the claim and then article 13.3 states that the matter will be referred to the Arbitration Committee if the National Director decides not to intervene or is unsuccessful in resolving the dispute.

90. I am informed by the National Director and believe it to be true that, at the date I swear this affidavit, there have been no claims filed with him regarding constituency associations, youth associations or affiliated organizations failing to verify the

qualifications of any membership applicant. Further, from my experience in the Party, I can testify that the individual constituency associations, affiliated organizations and youth associations are well situated to determine any questions regarding a Member's qualifications that might be raised leading up to the DSMs or the meeting on December 6, 2003.

91. Mr. Orchard's affidavit also implies that a member of another federal political party can not also be a member of the Party. In fact, the Members have recently considered and rejected that idea. At the Party's 2002 National Convention in Edmonton, I was the lead speaker in support of a motion to amend the Constitution to prevent members of other federal political parties from holding memberships in the Party. That motion did not receive the two-thirds support required to amend the Constitution and in fact received the support of less than 50% of the delegates.

92. Further, Mr. Orchard's view regarding so called "memberships of convenience" is curious given his activities with membership sales and supporters in recent years. At the recent 2003 Party Leadership Convention I spoke to a number of delegates supporting Mr. Orchard who disclosed they were members of other registered federal political parties, namely the Canadian Action Party, the New Democratic Party, the Green Party and the Marijuana Party. In particular I note the following persons who are members of the Canadian Action Party who were delegates in support of Mr. Orchard's failed bids to become leader of the Party: Marc Bombois and Michael Pengue who both serve as vice-presidents of the Canadian Action Party and Kevin Peck who is Director of Membership Services for the Canadian Action Party.

93. Questions regarding the qualification of Members must be considered and resolved in accordance with the Constitution. The right of the constituency association, affiliated organization or youth association to verify Member qualification must be preserved. The rights of Members to engage in the constitutional dispute resolution process must also be preserved. Through these constitutional provisions, the Party will ensure that only properly qualified Members of the Party will participate in the DSMs and the special meeting on December 6, 2003.

94. Turning to the issue of the DSMs, Mr. Orchard correctly points out that the Constitution and By-laws have different delegate selection processes for leadership conventions than they do for national meetings and conventions that are not leadership conventions. The December 6 national meeting is not a leadership convention and the Party has therefore followed the requirements in the Constitution and By-laws for delegate selection for a national meeting where leadership is not an agenda item.

95. By requiring a delegated national meeting on December 6, 2003, which therefore requires each constituency association, affiliated organization or youth association to hold DSMs, the NMOC and the Management Committee have ensured the Party's compliance with the Constitution and the By-laws.

96. I also note that the Rules and Procedures for the DSMs for the December 6 national meeting, marked as Exhibit 7 to this affidavit, expressly provide a mechanism for the resolution of any disputes which arise out of the DSMs and permits Members to engage the Arbitration Committee.

97. Mr. Orchard's views on delegate selection and his criticisms of the constitutionally mandated system of simple plurality are curious in light of the previous use he has made of this system. As a member of the Management Committee I received a number of complaints regarding delegate selection in the Province of Saskatchewan for the 2002 National Convention in Edmonton. Members from Saskatchewan advised that Mr. Orchard and his organizers had advanced slates and organized Members to elect those slates as delegates. Long time Party officials such as Mr. Rich Gabruch, who served as co-chair of the 2000 National Convention in Quebec City, were denied delegateship when the slates organized by Mr. Orchard were elected. In this respect, Mr. Orchard used the simple plurality delegate selection process to achieve his interests in a constitutional manner. The simple plurality delegate selection process is equally constitutional in respect of the December 6 national meeting.

#### **Mr. Orchard's Affidavit**

98. Throughout his affidavit Mr. Orchard states personal views on policy issues within the Party which he attempts to pass off as unassailable facts. They are not. This is exactly why the Party is putting the question of the AIP to the Members, so they may decide for themselves, via the national meeting, whether the AIP embodies the views and principles of the Party.

99. In addition to the irrelevant, subjective historical and political opinions which Mr. Orchard attempts to pass off as fact in his affidavit, there are a number of inaccuracies that must be corrected.

100. The first Prime Minister of Canada was Sir John A. Macdonald. Mr. Orchard has incorrectly spelled his name 'MacDonald' throughout his affidavit.

101. Contrary to Mr. Orchard's assertions in paragraph 4, the political parties which have formed the government of Canada include many more names than just the Liberal Party and the Progressive Conservative Party. Sir John A. Macdonald was leader of the Liberal-Conservative Party when he was Prime Minister. Sir Robert Borden was leader of the Conservative Party and then the Unionist Party during his time as Prime Minister. Sir Charles Tupper, Sir Mackenzie Bowell, Arthur Meighen and R.B. Bennett were all leaders of the Conservative Party when they were Prime Minister. Arthur Meighen was also Prime Minister while he was leader of the National Liberal and Conservative Party. The first Prime Minister under the Progressive Conservative Party banner was John Diefenbaker. Attached and marked as **Exhibit 13** to this affidavit is a print-out from the Library of Parliament's web-site listing the Prime Ministers of Canada and the political parties they represented.

102. As discussed in paragraph 35 above, paragraph 60 of Mr. Orchard's affidavit is incorrect. Ms. Repo did put forward a motion at the October 25, 2003 Management Committee meeting. She moved that the Management Committee object to considering the motion to place the AIP before it. Neither Mr. Scott nor the



Chair prevented Ms. Repo's motion from being heard. It was voted upon and defeated 31-1.

103. Paragraphs 67-75 in Mr. Orchard's affidavit are incorrect. Mr. Orchard has attached a document to his affidavit as Exhibit I which he incorrectly states to be the rules and procedures for the conduct of the December 6 national meeting. It is not. Exhibit I to Mr. Orchard's affidavit is a confidential draft document from the NMOC that was not approved by the Management Committee. As discussed at paragraph 57 above, the Management Committee reviewed that draft on November 3, 2003 and requested the NMOC to rewrite it. Neither Mr. Orchard nor any other applicant is a member of the NMOC or the Management Committee. Mr. Orchard's affidavit fails to disclose how he came to be in possession of that document. I also note that Mr. Orchard has failed to disclose to the Court that the electronic draft stamp, which appears as a watermark across the center of every page of NMOC drafts, was removed from the document before it was printed and attached to his affidavit. Attached and marked as **Exhibit 14** to this affidavit is a true copy of the draft NMOC rules and procedures for the December 6 national meeting, bearing the electronic draft stamp, that the Management Committee sent back to the NMOC for further revisions on November 3, 2003.

#### **Misuse of the Court Process**

104. I believe the applicants have commenced this court proceeding for the improper purpose of delaying and disrupting a process they know will allow the Members to vote on the AIP in a manner compliant with the Constitution.

105. In a November 20, 2003 Toronto Star article, Mr. Orchard's political ally Ms. Repo stated that a civil suit was being launched because opponents to the implementation of the AIP did not feel they have the political support necessary to see their views prevail at the December 6 national meeting. Attached and marked as **Exhibit 15** to this affidavit is a copy of the article posted to the Toronto Star website on November 20, 2003.

106. The affidavit filed by Mr. Orchard in this proceeding is filled with recitations of his subjective opinions on history and politics. I believe those paragraphs are purely for media consumption.

107. The applicants went to the media with their application prior to serving it. The Party learned the details of the application, as well as the identity of the applicants and their counsel from reporters to whom information had been distributed on November 20, 2003, the day before the application was served.

108. Before serving the application, Mr. Orchard and his counsel contacted media and scheduled a press conference. At that press conference on November 21, 2003, Mr. Orchard and his counsel, among other things, made disparaging comments about the respondent Mr. MacKay. Mr. Orchard scheduled various other media appearances on November 21, 2003 and made similarly disparaging comments at those appearances. Attached and marked as **Exhibit 16** to this affidavit are copies of various newspaper articles with comments from the applicants and their counsel and a printout from Mr. Orchard's web-site listing some of his media appearances on November 21, 2003.

109. After garnering the media attention they sought and making the above noted remarks about Mr. MacKay, the applicants came before the Court on November 26, 2003 and withdrew the claim for relief set out at paragraph 1(j) of their application which reads:

*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 materials 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;*

This further supports my belief that the applicants have commenced this proceeding for an improper purpose. The applicants are using this forum to raise political issues and garner media attention to publicize their views and to prevent the Members from voting on the AIP.

#### **Importance of the December 6, 2003 Special Meeting**

110. The AIP presents an initiative that, by its terms, must be considered by the Members prior to December 12, 2003. Mr. Orchard and the other applicants seek to prevent the Members from expressing their democratic will.

111. The process of consideration has been carefully charted to proceed in accordance with the Constitution and By-laws. A disruption to the December 6, 2003 national meeting permanently impairs consideration of the AIP. The Party cannot re-

schedule the meeting and still consider the AIP according to its terms. Intervention by the Court to stop the meeting, or any DSM, therefore prevents its consideration.

112. Significant preparatory work for the Meeting has already been undertaken by NMOC, constituency associations, youth associates, affiliated organizations and individual Members. Among other things,

- a) accommodations and travel arrangements have been booked by Members and volunteers;
- b) facilities across the country have been rented for DSMs and for the national meeting;
- c) communication equipment is being procured and installed; and
- d) contracts are being entered into with numerous third party service providers so as to facilitate the DSMs and the national meeting.

113. Most importantly the DSM process has begun, allowing more than 60,000 Members to have their say on the AIP. I believe that it is essential that they be permitted to do so.

114. The current issues raised by the applicants, at their root, are based in matters of the internal politics of the Party. Any such dispute is best resolved by the Party's internal dispute resolution process, where differences in policy/political views related to the Party are capable of being fully examined, assessed, and determined. The Arbitration Committee is fully familiar with the Party's Constitution and By-laws, as well as the Party's historical and political context.

115. By these proceedings, the applicants seek to have the Court adopt their views regarding the Party, ignore the need for consultation of the Members, and make a determination that will achieve their political objective of frustrating a democratic vote being held on December 6, 2003. Such action by the applicants is inappropriate. I believe the proper forum for the applicants' concerns is before the Arbitration Committee Panel in proceedings commenced pursuant to the Constitution.

SWORN BEFORE ME at the City of  
Montreal, on November 26, 2003.

Dora Perovic  
Commissioner of Oaths



Dominique Bellemare  
Dominique Bellemare