



GARDINER ROBERTS LLP
L a w y e r s

October 23, 2003

Memo Regarding the Proposed arrangement between the Progressive Conservative Party of Canada and the Canadian Alliance to establish the Conservative Party of Canada

We understand that the Management Committee of the Progressive Conservative Party of Canada (the "PC Party") is to meet on this matter commencing Saturday October 25, and that the Agreement-in-Principle calls for member ratification by December 12. The purpose of this memo is to provide you and those to whom you may wish to circulate this memo, with advice and information as to the possible consequences of acting on the Agreement-in-Principle.

You have asked us to consider what obligations or personal liabilities a member of the Management Committee may face as a result of the implementation of the Agreement-in-Principle between Mr. MacKay, as the leader of the PC Party, and Mr. Harper, as leader of the Canadian Alliance.

It is our opinion that a member of the Management Committee has a number of obligations and may be exposed to personal liability arising from the proposed implementation of the Agreement-in-Principle. In addition, those who do not support the proposed arrangement may have significant rights with respect to the ongoing status of the PC Party, even after a purported member ratification.

BACKGROUND

The PC Party is an unincorporated political association established and governed by its Constitution and Bylaws.

On October 15, 2003, Mr. MacKay, as the leader of the PC Party, signed an Agreement-in-Principle with the Canadian Alliance leader, Mr. Harper. The leaders agreed to take certain immediate steps, to place certain recommendations before their membership, and to encourage their members to ratify the document by December 12, 2003.



The Agreement-in-Principle contemplates the dissolution of both parties and the establishment of the "Conservative Party of Canada". Moreover, it outlines a new leadership selection mechanism, reframed membership requirements, the establishment of an interim joint council, the immediate creation of a trust fund, and a merging of the parties' assets and liabilities. In the meantime, the Agreement-in-Principle obliges both parties to freeze candidate nominations and refrain from incurring new obligations.

In light of the Agreement-in-Principle, the Management Committee of the PC Party must now decide on a course of action.

ISSUES AND CONCLUSIONS

We have considered the issues set out below. Our conclusion on each issue immediately follows it. Each issue is later analyzed and discussed in more detail.

1. Can the Agreement-in-Principle be implemented by any method other than a properly constituted national meeting?

The Agreement-in-Principle must be implemented by a properly constituted national meeting. It cannot be implemented by a mail-in ballot, regional meetings, or any other truncated version of a national meeting.

2. What legal process must the PC Party use to implement the Agreement-in-Principle?

Any amendment to the PC Constitution requires a two-thirds majority vote by those entitled to vote at a properly constituted national meeting. As the PC Constitution does not presently explicitly provide for the dissolution of the PC Party, it is likely a two stage process would be required at that meeting.

3. Will the Management Committee or its individual members be exposed to personal liability for unilaterally acting to implement the Agreement-in-Principle?

The Management Committee or its individual members may be exposed to personal liability on a number of legal grounds and in a number of areas.

4. Is the Management Committee vulnerable to claims from donors to the PC Canada Fund (the "PC Fund")?



The Management Committee may be individually liable for all claims from donors to the PC Fund if they divert the funds to another beneficiary, as the donations have been made for a specific purpose, i.e. to promote the goals of the PC Party.

5. What are the duties of the Management Committee or other organs of the PC Party with respect to the admission of new members after October 15, 2003?

The PC Constitution places a duty on the Management Committee via the Secretary to verify the qualifications for admission of new members.

6. Is there likely to be insurance for the members of Management Committee, if their actions result in personal liability?

There is no policy expressly covering the members of the Management Committee. Individual policies would likely not apply.

7. If the Management Committee proceeds with the arrangement and the Conservative Party is established, can dissenters to the arrangement retain the assets of the PC Party?

Caselaw suggests that loyal dissenters who adhere to the original objectives of the PC Party may be entitled to retain the assets of the original association. Those assets would include the name of the PC Party, raising an intellectual property or *Canada Elections Act* issue potentially prohibiting the use of the name "Conservative Party of Canada" by the proposed new party.

DOCUMENTS REVIEWED

For this opinion, we have reviewed the following:

- a) the Constitution of the PC Party, as amended to August 24, 2002 (the "PC Constitution");
- b) the Progressive Conservative Party of Canada by-laws, as amended to June 1, 2003 (the "Bylaws");
- c) the Agreement-in-Principle on the establishment of the Conservative Party of Canada (the "Agreement-in-Principle") dated October 15, 2003;
- d) pertinent legal commentaries and texts including *Wainberg's Society Meetings including Rules of Order (2nd)*;
- e) applicable legislation;
- f) caselaw applicable to unincorporated associations; and
- g) media reports and internet resources.



ANALYSIS

We have had only a brief period of time in which to consider these issues and provide this memo. There was insufficient time to review each issue in the detail necessary to provide a definitive answer. We have not had time to explore additional issues which have come to our attention during the preparation of this memo. We have only been provided with suggestions as to what specific decisions are proposed for the Management Committee meetings. More complete information might lead both to refinement of this memo, and give rise to other possible claims or liabilities.

1. Can the Agreement-in-Principle be implemented by any method other than a properly constituted national meeting?

The terms of the Agreement-in-Principle purport to alter fundamental aspects of the PC Party as it is organized under the PC Constitution. Dissolution of the PC Party is the most extreme amendment possible. On such a question, detailed compliance with the PC Constitution is required.

The PC Party is an unincorporated association. It is not governed by any particular statute, such as those applicable to corporations. MacDonald CJBC provides, “[a] voluntary association, having no legal entity, has its most familiar form in a members’ club. Decisions on such clubs show that the relationship of members to each other is purely contractual, the contract being found in the constitution or rules which they adopt. Unless that contract provides for its being varied, it can only be varied with the unanimous consent of all contracting parties; a mere majority can do nothing”¹.

The PC Constitution outlines the method by which amendments to it are to be made. Article 14.1 provides, "Amendments to the Constitution may be made at any national meeting". As this is the only method for amending the constitution, this amounts to a mandatory provision, particularly when read in conjunction with the balance of Article 14 of the PC Constitution. A properly constituted national meeting is a prerequisite to members of the Management Committee fulfilling their responsibilities.

A national meeting is defined in the PC Constitution as "including general and special meetings of members for any purpose provided under the provisions of the Constitution save and except for the leadership selection process". Article 14.4

¹ *Stephen v. Stewart* [1943] 1 DLR 305 (B.C.C.A.).



requires the Secretary to send a copy of the proposed constitutional amendment twenty-eight days prior to the next national meeting to, among others, “all members of record entitled to vote on the proposed amendment”.

Only delegates and an inclusive list of individuals are entitled to vote at a national meeting². The Management Committee determines the number of delegates entitled to vote at a national meeting of members, which cannot be less than six delegates from each constituency association and not less than two from each affiliated organization. Each constituency association determines via delegate selection meetings who will attend the national meeting as its delegates, and an equal number of delegates is sent by each constituency association³.

Nothing in the PC Constitution, Bylaws or *Wainberg’s Society Meetings*⁴ permits mail-in ballots, regional meetings or any other method of conducting a meeting, except as specifically set out in the PC Constitution. To the extent that *Wainberg’s Society Meetings* deals with the method of holding a meeting, it clearly states that constitutional requirements must be rigorously followed.

If a mail-in ballot purports to give each PC Party member one vote on an amendment to the PC Constitution, it will contravene the constitutional requirement of voting by delegates. Moreover, the one-member one-vote mechanism would prejudice constituencies with small constituencies, the very result that the delegate mechanism seeks to preclude. Thus, a mail-in ballot would contravene both the spirit and letter of the PC Constitution.

The question arises as to whether regional meetings or polling stations might constitute a national meeting. The PC Constitution uses the word “meeting” in the singular, not the plural. A national meeting implies face to face discussion by people from the various regions of Canada. One of the aims of the PC Party is to develop “a national coalition of people who share...beliefs and who reflect the regional, cultural and socio-economic diversity of Canada”⁵. It is difficult to characterize a series of regional meetings or voting stations, precluding face to face discussion, consensus building and the emergence of a “national coalition” as a properly constituted national meeting⁶. Historical precedent for regional meetings for some purposes does not alter constitutional obligations. Regardless, national meetings of the PC party have never

² Bylaw 4.16 and 4.15.

³ Bylaw 4.15 and 4.19.

⁴ Bylaw 4.9 provides that all proceedings at meetings are to be governed by this text.

⁵ Article 2.2.1

⁶ *Byng v. London Life Ass’n Ltd.* [1989] 1 All E.R. 560 (C.A.), in which the court held that a meeting conducted in a series of rooms in which all the members were not able to hear proceedings in the main room was unacceptable and a new meeting was required.



been held in that way⁷. It would be improper for the Management Committee to authorize a departure from historical practice and a literal reading of the words of the PC Constitution, in order to authorize regional meetings or polling stations as a new form of "national meeting". Even if a national meeting were conducted at various locations in a "seamless" manner under which each delegate at any location can see and hear all proceedings as if present in one room, this would still not satisfy the Constitutional principle of building a national coalition. People in one location will not be able to mingle and share their views with those present from other regions, a characteristic inherent in a single location meeting. Any decision to hold a meeting other than at one location in the traditional manner, exposes the entire process to court intervention and possible invalidity.

2. What legal process must the PC Party use to implement the Agreement-in-Principle?

As mentioned earlier, when constitutional amendments are proposed, the PC Constitution requires a national meeting. Any motion to amend must be passed with the affirmative vote of at least two-thirds of all members voting on the motion.

The PC Constitution does not presently provide for dissolution of the PC Party. It is arguable that a motion to dissolve is not contemplated by the word "amendment". It would be prudent to first expressly amend the PC Constitution to provide for a dissolution process. The question of whether the national meeting wants the PC Party to dissolve would be the second step. Both of these could be on the agenda at the same national meeting.

Members entitled to vote at the national meeting are made up of a select group of individuals named by position, and delegates from local associations. The number of delegates to be sent to the national meeting from each constituency association is determined by the Management Committee.

The selection of delegates is through delegate selection meetings at the local level. The dates for those meetings are scheduled by the National Meeting Organizing Committee which is set-up by the Management Committee. At least fourteen days

⁷ We understand that the 1998 leadership selection procedure electing Joe Clark as leader was run using a regional meeting procedure. Leadership selection is specifically excluded from the definition of "national meeting" in the PC Constitution. Article 11 of the PC Constitution governing leadership selection procedure provides for much more flexibility in calling and conducting leadership selection meetings. This example cannot be used to justify abrogating the specific provisions of Article 8 of the PC Constitution. The meetings of the National Council or Management Committee at which members participate by telephone or other electronic media are specifically authorized by Bylaw 4.8, and do not alter the definitive requirements of the PC Constitution for the conduct of a national meeting.



notice must be given to the membership of their local delegate selection meeting. The membership list of each association must be certified by the National Director through the Party's National Headquarters seven days before the holding of a delegates' meeting. Only certified members can vote at the delegate selection meeting.

At least thirty days before the national meeting, the Secretary must send the National Director notice of the date, time and place of the meeting; and twenty-eight days prior to the date of the national meeting, the Secretary must send everyone a copy of the proposed amendment.

This process must be followed correctly and completely if the constitutional amendment is to conform to the PC Constitution.

3. Will the Management Committee be exposed to personal liability for unilaterally acting to implement the Agreement-in-Principle?

A. Liability of a Member of an Unincorporated Association:

The members of the Management Committee are, for all intents and purposes, the executives of the PC Party operating on behalf of the membership. Because of their unique position, and the unincorporated association status of the PC Party, members of the Management Committee may be personally liable for steps they take or in which they concur. For example, actions in breach of the PC Party Constitution might render a member of the Management Committee liable to a PC Party member claiming that the PC Constitution is in effect a contract. Any PC Party member who feels personally aggrieved, and suffers damages, could raise such an argument. People who have made financial donations to the PC Party might allege a breach of trust.

The most substantial problem would appear to be the establishment of the Conservative Fund Trust. The Agreement-in-Principle calls for this trust to be immediately established. But presumably it first needs to be authorized by Management Committee. The Conservative Fund Trust is a joint venture between the PC Party and the Canadian Alliance. It is intended that contributions be made to the Conservative Fund Trust for the benefit of the proposed Conservative Party. By agreeing to proceed on the Agreement-in-Principle, the Management Committee would be suggesting to its members and prospective donors that further contributions not be made to the PC Fund, but rather to the Conservative Fund Trust. The opportunity of the PC Party to receive donations in the PC Fund is actively being discouraged. The PC Party itself (or an individual on its behalf) might well have a



claim against the Management Committee for this financial undermining of the PC Fund. As some members of the Management Committee are also directors of the PC Fund, this could impose additional duties on such members. To avoid liability it may not be enough to simply refrain from acting. It may well be necessary to actively ensure that no step is taken in the name of the PC Party promoting a competing fund.

The problem appears particularly acute as an amendment to the *Canada Elections Act* in Bill C-24 changes the ability of corporations to donate after January 1, 2004. It has been reported that there are substantial expectations of significant corporate donations being made in the balance of 2003, prior to the effective date of the new legislation. Accordingly, the issue raised could be one of considerable financial exposure. The PC Party could legitimately expect that at least a portion of those funds would have been donated to the PC Fund.

A similar problem arises with respect to actions taken by members of the Management Committee which cause or contribute to individual constituency associations contributing assets to the Conservative Party of Canada. There is a tort of inducing breach of contract. The tort requires an intention to injure (in this case the PC Party) or reckless disregard as to whether such injury will result. Damages must be caused to the injured party. Illegal means must be used to accomplish the objective. It has been held that a breach of contract is sufficient to constitute illegal means. Therefore, breach of the PC Party Constitution with the intention of dissolving the PC Party and local constituency associations, which has the effect of causing property owned by local constituency associations to be moved to the Conservative Party of Canada, could found an action by anyone with an interest in the assets of the local constituency association.

Finally, there is an issue with respect to the indebtedness of the PC Party, currently a net figure of approximately \$4.367 million, to a bank as set out in the December 31, 2002 financial statements. If there is a legal impediment to the transfer of the liabilities of the PC Party to the Conservative Party of Canada, a number of issues arise. While we have not been able to review the banking documentation, the dissolution of the PC Party is no doubt an event of default, which would permit the bank to seek immediate repayment of the loan. The bank has most likely waived personal recourse, but if not the bank could take personal action against members of the Management Committee who have caused the event of default (with respect to which a Member of the Management Committee would have an indemnity from the PC Party of probably little value). If matters became contentious between the Conservative Party of Canada and the PC Party, resulting in difficulty repaying the bank, it is conceivable that the bank would take the position that members of the Management Committee were guilty of the tort of intentional interference with contractual relations by virtue of any steps they took, outside of those expressly



authorized by the Constitution of the PC Party, which resulted in the bank being unpaid. Under these circumstances, personal liability could be imposed notwithstanding that the loan may be without recourse.

B. Fiduciary Obligations:

There are no set categories of who is a fiduciary. Rather, a fiduciary relationship will generally exist where one party has placed its trust and confidence in another and the latter is dependent.

Certain aspects of the relationship between the Management Committee and the membership generally fit the above definition. Almost certainly with respect to the administration of the assets of the PC Party, and in particular the PC Fund, each member of the Management Committee would be held to be a fiduciary.

Fiduciaries must adhere to certain principles. First, they must not serve two masters. Although this does not mean exclusivity, a fiduciary cannot act if he or she owes a duty to two beneficiaries whose interests are in conflict. A corollary of this is that the fiduciary must act impartially as between beneficiaries. To illustrate, in *Roblin v. Jackson* (1901) 13 Man. R. 328 (C.A.) the court found that where a fiduciary acts with partiality to the detriment of a beneficiary, that beneficiary has a right of recourse against both the fiduciary and the third-party beneficiary.

If the Management Committee acts unilaterally in pursuance of the Agreement-in-Principle, it may be interpreted that they are serving two masters, the PC Party and the soon-to-be-established Conservative Party. For example, the Agreement-in-Principle obligates the PC Party to refrain from undertaking new obligations prior to ratification and to freeze nominations. If those actions are taken, without proper consent of the membership, the Management Committee appears to be forwarding the interests of the Conservative Party, while purporting to act in favour of its proper beneficiary, the PC Party.

For a breach of their duties, fiduciaries are personally liable for any losses that a beneficiary suffers, or any benefits the fiduciary obtains. Consequently, any breach of the Management Committee's fiduciary obligations in carrying out actions in furtherance of the Agreement-in-Principle could impose personal liability on the members of the Management Committee for losses of the PC Party, constituency associations, or the PC Party's members.

A fiduciary must not appropriate an opportunity that was or should have been available to the person to whom the duty is owed. Again, the establishment of the



Conservative Fund Trust seems to be appropriating for a competing entity, an opportunity (to receive donations) that should have been available to the PC Fund.

Breaches of fiduciary obligations may be waived in certain situations. The case *Perrin v. Bellamy* [1899] 1 Ch. 797 at 798 (C.A.) stands for the principle that, where the beneficiary has consented to or concurs in a breach of trust prior to its being carried out, or releases the fiduciary from liability, or in some other way acquiesces in the breach after it has been carried out, he or she may not subsequently claim from the fiduciary any compensation for the loss arising. However, mere passive acquiescence is insufficient. There must be positive acts or words that demonstrate that the beneficiary knew of the breach and approved of what was proposed or done.

Because of the contractual nature of the PC Constitution, the Management Committee may have to obtain the consent and release of each and every PC Party member for breaches or potential breaches of fiduciary duty, to be entirely risk-free on this score.

Incorporated associations have the benefit of statutory provisions permitting relief or waiver of conflict of interest. No such provisions exist for unincorporated associations. While it may be possible under certain circumstances to obtain a court order sanctioning conduct under the Trustee Acts in the various provinces, this could involve a lengthy and complex procedure.

4. Is the Management Committee vulnerable to claims from donors to the PC Fund, members of the Party and under the *Elections Canada Act*?

The PC Fund is a trust established for the purposes of the PC Party. Personal and corporate donations are made to the PC Fund for the use of the PC Party.

The PC Fund has characteristics of an implied special purpose trust fund. Such a fund exists where donors make gifts to a parallel foundation, such as a hospital foundation, on the assumption that the gifts will be used to benefit the parallel operating charity, particularly when the names of the parallel foundation and the parallel operating charity are virtually identical, for instance the "ABC Hospital" and the "ABC Hospital Foundation". Analogously, donors to the PC Fund naturally assume that their gifts will be used to benefit the PC Party.

Where there is an implied special purpose trust fund, there is a corresponding implied restriction on the entity in what it can do with the gift. Legal commentaries suggest that personally liability may be imposed on one who fails to operate within the terms and conditions of such a trust.



Examples of situations where courts have found a breach of trust by directors or trustees for failing to observe the terms of a special purpose charitable trust include cases where the directors diverted a fund intended for one charitable purpose to another, for example, by using monies intended by a donor for one church building to maintain another church building, or where the majority of members in a church unilaterally attempt to alter the fundamental terms of trust in a trust deed for church property without obtaining proper authorization.

Therefore, donors to the PC Fund may be able to claim against a member of the Management Committee personally for donations earmarked for the PC Party and which the donor does not wish transferred to the Conservative Party, if the PC Fund is merged with the Conservative Fund Trust.

We have reviewed the relevant provisions of the *Canada Elections Act*, beginning with section 400, dealing with the merger of registered parties. While the Agreement-in-Principle does not use the word “merger”, it appears to be clear that, at least insofar as the proposed transfer of assets and liabilities is concerned (section 8 of the Agreement-in-Principle) that was what is intended. We are not satisfied that approval by the Chief Electoral Officer will eliminate the potential common law liability of those supporting the transfer of assets, particularly where a group of PC Party members wish to have the PC Party remain in existence and continue to operate as a registered political party.

5. What are the duties of the Management Committee or other organs of the PC Party with respect to the admission of new members after October 15, 2003?

The Management Committee may be obliged to investigate the qualifications of potential members. Article 5.6 establishes the National Membership Program, administered by the National Director under the general direction of the Management Committee through the Secretary. The objectives of the National Membership Program are,

*... 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 process is carried out on a timely basis without undue impediment⁸. [emphasis added]*

and

⁸ Article 5.7.3



... to promote the purposes of the Party and provide benefits to Members on a national basis⁹.

Article 5 lists the criteria for eligibility of membership. It provides that every person who is a citizen or permanent resident of Canada, has attained the age of fourteen years, and ***actively supports the Aims and Principles of the Party*** is eligible for membership in the PC Party. [emphasis added]

The PC Constitution and Bylaws do not permit a freeze on the admission of new members nor the establishment of a record date for voting at delegate meetings earlier than eleven days before the meetings.

It has been reported that members of the Canadian Alliance are being encouraged to join the PC Party in large numbers for the purpose of overwhelming any vote of pre-October-15-PC-Party members regarding the dissolution of the PC Party. Any person who is a current member of the Canadian Alliance, and who joins the PC Party only for the purpose of voting for its dissolution, is not a person qualified under Article 5 of the PC Constitution. If the Management Committee permits such admissions to occur without some investigation into the qualifications of new members, the Management Committee may be breaching their duty as provided for in the Constitution.

Bylaw 3.15 permits the National Director of the PC Party to make additional arrangements for the receipt of membership applications. This would permit the establishment of a protocol for dealing with suspect applications.

We note in passing that members of a local constituency association who believe that voting may have been tainted by improperly admitted members have rights under Bylaw 4.17 to institute a procedure to protest delegate selection. This protest is to be referred to a panel of the Arbitration Committee of the PC Party. If the national meeting is held to be improperly constituted or decisions taken at the meeting are successfully challenged because of failure to properly enforce membership admission criteria, the results of the meeting will be void.

⁹ Article 5.7.4



6. Is there likely to be insurance for the members of Management Committee, if their actions result in personal liability?

We have been told that members of the Management Committee do not have insurance provided by the PC Party for their role in acting as the executive of the PC Party.

Some members of the Management Committee may have individual insurance policies, such as directors and officers insurance indemnifying for errors and omissions. Typically, such policies require the association or corporation for which coverage is given to the member, to be specified in the policy (i.e. there is not usually general coverage for any corporation or association with whom a person may be involved). Such policies typically provide indemnity for a "wrongful act", the definition of which varies widely from policy to policy. Intentionally acting outside the scope of one's duty (for example intentionally breaching the PC Constitution) would likely provide a defence to any insurer issuing such a policy.

7. If the Management Committee proceeds with the merger and the Conservative Party is established, can dissenters to the arrangement retain the assets of the PC Party?

There is a strong argument that the dissenters of the proposed merger are entitled to retain the assets of the PC Party in an ongoing PC Party.

A series of cases, including the Ontario Court of Appeal decision in *Vick v. Toivonen* (1913) 4 O.W.N. 1542, provides that "it is a well settled principle of law that the property of a voluntary society cannot be diverted by a majority of its members from the purposes for which it was given by those who contributed it, or devoted to purposes which are alien to or in conflict with the fundamental rules laid down by the society, and a dissenting minority who adhere to these rules are entitled to have them restrained from so doing".

Similarly in *Hennig v. Trautman* [1926] 2 D.L.R. 280 (Alta T.D.), the court concluded that where property is held in trust for the members of an association, and the majority of the members vote to change the fundamental doctrines of the association, those members who still adhere to the original principles are entitled to the property, rather than those who have departed from the principles of the founders.

Another decision, *Anderson v. Gislason* (1920) 3 W.W.R. 30 (Man. C.A.), states, "where the majority of the members of an association voted to amalgamate with



another association having agreed to submerge fundamental differences between the doctrines of the two associations... they had seceded from the association, and therefore had forfeited all their rights in the property of the [original] association".

These cases strongly suggest that those voting against the merger may be able to retain any assets of the PC Party. A similar issue would arise with respect to the assets of each of the local constituency associations. Among the assets of the PC Party is its name. While we have not reviewed the issue in detail, it might be that those entitled to use or register the name of the PC Party could successfully object to the use of the name, the Conservative Party of Canada, as contemplated by the Agreement-in-Principle. In addition to the foregoing, pursuant to section 368 of the *Canada Elections Act*, the Chief Electoral Officer may refuse to permit the registration of the name, the Conservative Party of Canada, on the grounds that it may be confusing with the name, the Progressive Conservative Party of Canada.

The PC Fund is also among the assets of the PC Party. If the PC Fund cannot be transferred to the Conservative Party of Canada, will the new party agree to take on the bank indebtedness of the PC Party? Difficult issues will arise, some of which have already been canvassed under the heading personal liability of the members of the Management Committee.

In Conclusion:

The members of the Management Committee are vulnerable in that the Agreement-in-Principle contemplates activities in contravention of the PC Constitution. As an unincorporated association, the members of the PC Party are entitled to have the PC Constitution enforced. Actions in contravention of the PC Constitution are likely to result in significant difficulties, some of them personal, for members of the Management Committee. Even with the appropriate constitutional amendment, there will be some difficult residual issues regarding the assets of the PC Party including the PC Fund and amounts held by local constituency associations.

This memorandum is only to be used for the purpose described above and is not to be relied upon by anyone to whom it is not addressed. It is neither to be considered as recommending the commencement of any litigation or other proceedings, nor as suggesting that any individual or group has committed or is about to commit any illegal act.

GARDINER ROBERTS LLP