

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DAVID ORCHARD

Plaintiff

– and –

THE CONSERVATIVE PARTY OF CANADA

Defendant

REPLY AND DEFENCE TO COUNTERCLAIM

REPLY

1. The plaintiff denies the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 of the Statement of Defence.
2. In respect to paragraph 2 of the Statement of Defence, the defendant states that the stay therein referred to is temporary and that the plaintiff reserves the right, and is so entitled, to renew its claim for the relief claimed in paragraphs 1(c) and 1(f) of the Statement of Claim.
3. The plaintiff states that he has complied fully with all financial reporting requirements and that all of the expenses related to his leadership campaign have been reported as required.

4. The plaintiff states that the “debts remaining from his leadership campaign” are not reportable expenses but, rather, debts incurred to pay reported expenses.
5. The plaintiff states that he has fully paid the “expense levy” required by the *Selection Process Rules* (the “Rules”).
6. The defendant is estopped by its own conduct and representations from relying on its repeated allegations in its Statement of Defence that the plaintiff is not entitled to receive the funds and relief claimed in paragraph 1 of his Statement of Claim because, according to the defendant’s allegations, the plaintiff has breached or is in breach of his obligations under the *Selection Process Rules*.
7. The said estoppel arises from the conduct and statements of the defendant and its agents including, but not limited to, the following:
 - a. the chief financial officer of the Progressive Conservative Party of Canada, Darren Cunningham, advised the plaintiff’s Chief Financial Officer, Marjaleena Repo, on January 12, 2004, that the plaintiff’s financial reports were complete and in order;
 - b. the Chief Financial Officer of the Conservative Fund of Canada, Susan J. Kehoe, confirmed to Ms. Repo that there were no deficiencies in the reports;
 - c. notwithstanding the defendant’s current allegations of the plaintiff’s long-standing breach of the Rules, commencing in June, 2003, the defendant remitted donations to the plaintiff until the plaintiff contested the legal validity of the merger of the

Progressive Conservative and the Conservative Alliance parties in December, 2003.

8. The plaintiff has relied on these representations and conduct of the defendant, accepting the defendant as having been acting in good faith and anticipating payment of the amounts due pursuant to the Rules, and has arranged his affairs accordingly, including but not limited to the assumption of debt obligations.
9. In reply to paragraph 25 of the Statement of Defence, the plaintiff states that, pursuant to Rule 3.2, the “administrative fee” of 15% withheld by the defendant from the donations submitted by the plaintiff, pursuant to Rule 2.10, constitute a set off in favour of the plaintiff against any “expense levy” claimed by the defendant.
10. In reply to paragraph 27, the plaintiff states that all issues related to non-negotiable donation cheques or vouchers that were brought to the plaintiff’s attention by the defendant prior to September, 2003, were quickly and satisfactorily resolved. No such problems have been reported by the defendant since September, 2003, and it is likely that the plaintiff has been prejudiced by the defendant’s delay in raising any valid issue, if any, relating to the donations.
11. In reply to paragraphs 28 and 29 of the Statement of Defence, the plaintiff states
 - a. that the defendant’s treatment of the plaintiff’s donations has been discriminatory as compared to the treatment of other leadership candidates;

- b. that certain donations in issue, those in the form of credit card charges, were processed by the defendant and the funds paid to the defendant notwithstanding the objection now raised in the Statement of Defence; and,
 - c. that all of the donations in issue were made in 2003 and submitted in a timely manner.
12. The defendant is estopped by its own conduct and representations from relying on the allegations made in paragraphs 28 and 29 of the Statement of Defence because on January 12, 2004, the Chief Financial Officer of the Progressive Conservative Party of Canada, Darren Cunningham, advised the plaintiff's Chief Financial Officer, Marjaleena Repo, that the donations in question would be processed like earlier donations according to the Rules.
13. In reply to paragraph 37 the plaintiff states:
- a. that, in spite of his repeated requests, he has not received an a complete accounting for deductions from the compliance deposit; and,
 - b. that no deductions can properly be made without such an accounting.

DEFENCE TO COUNTERCLAIM

14. The plaintiff denies that the defendant is entitled to relief claimed by the defendant in paragraph 50 of its counterclaim.

15. The plaintiff repeats and relies on the allegations made in his Statement of Claim and Reply.

DATED; April 30, 2004

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