

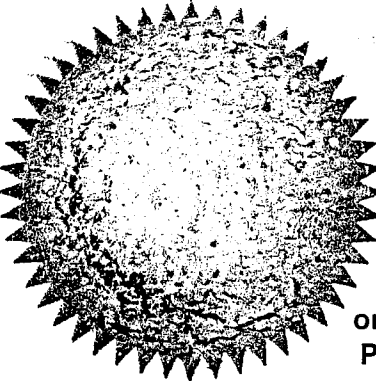
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ETHEL AHENAKEW, ALBERT BELLEMARE, C. HANSON DOWELL,
MARIE GATLEY, JEAN GLOVER, HEWARD GRAFFTEY,
AIRACA HAVER, LELANND HAVER, ROBERT HESS,
ALBERT HORNER, OSCAR JOHVICAS, ARTHUR LANGFORD,
NEALL LENARD, PATRICIA McCracken, BLAIR MITCHELL,
TOM MITCHELL, DAVID ORCHARD, ARLEIGH ROLIND,
DONALD RYAN, LOUIS R. (BUD) SHERMAN,
GERALD WALTERS and CADY WILLIAMS, John Perrin

Applicants

- and -



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

Respondents

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

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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

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

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or where the

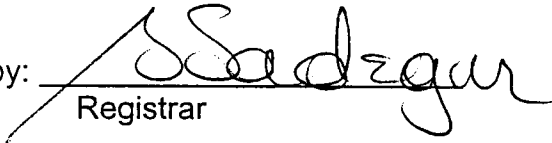
applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

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

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

November 20, 2003

Issued by:


Registrar

Address of Court Office:

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

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

APPLICATION

1. The applicants make application for:
 - (a) a declaration that the provisions of the constitution of the Progressive Conservative Party of Canada (the "PC Party") do not permit the party to be dissolved except with the unanimous consent of all of its members;
 - (b) a declaration that the provisions of the constitution of the PC Party do not permit the party to merge with another political party except with the unanimous consent of all members of the PC Party;
 - (c) a declaration that, except in the ordinary course of business, the provisions of the constitution of the PC Party do not permit the transfer or alienation of any tangible or intangible assets presently held by the PC Party, or held by others in trust for it, or any tangible or intangible assets subsequently acquired by the PC Party or by others in trust for it, including without limitation the names 'Progressive Conservative Party of Canada', 'Parti progressiste-conservateur du Canada', all of the PC Party's membership lists, all of its funds and trust funds, all accounts receivable and all amounts due or falling due to the PC Party pursuant to sections 435.01 and 435.02 of the *Canada Elections Act* (collectively, the "PC Party Assets");
 - (d) a declaration that the provisions of the constitution of the PC Party do not permit the members of the PC Party to authorize by ordinary or special resolution the transfer or alienation of the PC Party Assets to another political party or to any other entity;

- (e) a declaration that the special *ad hoc* procedure mandated by the Management Committee of the PC Party in respect of the Special Meeting of the Members of the PC Party scheduled for December 6, 2003, as more particularly described in the affidavit material filed in support of this application, are contrary to the party's constitution and by-laws, and that as a consequence, any resolution emanating from the meeting is null and void;
- (f) a declaration that any resolution approving or purporting to approve an Agreement-in-principle on the Establishment of the Conservative Party of Canada, which resolution is to be considered at a special meeting of the PC Party scheduled for December 6, 2003 will not have the effect of authorizing the dissolution of the PC Party, or the merger of the party with any other party or the transfer or alienation of PC Party Assets to any other party or entity;
- (g) a declaration that the provisions of the constitution of the PC Party prohibit the leader of the PC Party from agreeing with the leader of another political party that the PC Party will not nominate candidates in every federal constituency in Canada and do not permit the leader of the PC Party to take any steps in furtherance of any such purported agreement;
- (h) a declaration that the resolution referred to in paragraph (f) above does not constitute the resolution required pursuant to sub-section 400(2)(b) of the *Canada Elections Act* in order for the PC Party to merge with another registered party under the *Act*;

- (i) a permanent injunction enjoining and restraining any person with notice of the Court's order from dealing with PC Party assets in a manner inconsistent with the declarations of the Court sought above;
- (j) a declaration that Peter MacKay is in breach of his written agreement with the applicant David Orchard dated June 1, 2003 and more particularly described in the affidavit material filed in support of this application, together with an order referring this matter to the Master at Toronto in order to determine the *quantum* of damages due to David Orchard by reason of the breach;
- (k) an order appointing the respondent Peter MacKay as the representative of all members of the PC Party other than the applicants for the purposes of this proceeding, in order that all members may be bound by any relief granted in this proceeding;
- (l) if necessary, an order abridging the time for service of this notice of application and the affidavit material filed in support thereof and validating service of this material;
- (m) the costs of this application on a substantial indemnity basis;
- (n) such further and other relief as the circumstances of the case may require and this Honourable Court deem to be just.

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

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

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

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

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

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

November 20, 2003

SACK GOLDBLATT MITCHELL

Barristers and Solicitors
20 Dundas Street West
Suite 1130
Toronto, Ontario
M5G 2G8

Sean Dewart
LSUC #26708B
(416) 979-6970 (Tel.)
(416) 591-7333 (Fax)

Solicitors for the applicants