

Court File No.

CV-19-00629 240-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



DIMITRIOS ("JIM") KARAHALIOS

Plaintiff

and

PROGRESSIVE CONSERVATIVE PARTY OF ONTARIO

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Oct. 16/2019 Issued by 
Local Registrar

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto ON
M5G 1E6

TO: Progressive Conservative Party of Ontario
56 Aberfoyle Crescent, Suite 400
Toronto, ON
M8X 2X1

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE

CLAIM

1. The plaintiff, Dimitrios Karahalios, claims:
 - (a) General, aggravated, and punitive damages in the amount of \$100,000 for breach of contract and/or for breach of the defendant's duty of good faith contractual performance;
 - (b) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) the costs of this proceeding, plus all applicable taxes; and
 - (d) such further and other relief as to this Court may seem just.

The parties

2. The plaintiff Dimitrios (or Jim) Karahalios ("Karahalios") is a lawyer, activist and political volunteer who resides in the City of Cambridge, in the Province of Ontario.
3. The Defendant, the Progressive Conservative Party of Ontario (the "Party"), is a provincial political party whose Members of Provincial Parliament currently form the government. It is headquartered in the City of Toronto, in the Province of Ontario. Karahalios is a member in good standing of the Party.

Overview of the Claim

4. In November 2018, Karahalios ran for the volunteer position of president of the Party (“President”). Karahalios’s ran on a platform of abiding by the Party’s Constitution. He also expressed views that were critical of the outgoing executive of the Party, and Party officials responsible for arranging the election, among others. Karahalios’s campaign appealed directly to the grassroots of the Party. He was an outsider candidate for the Presidency.
5. Karahalios was a well known figure in the Party when he ran for President, in part because of his many years of activism in the Party and in part because he had just successfully resisted a lawsuit brought against him by the Party (the “SLAPP Suit”). In December, 2017 this Court held that the SLAPP Suit was strategic litigation against Karahalios’s public participation, dismissed it, and ordered the Party to pay Karahalios’s costs on a substantial indemnity basis.
6. The election for President (the “Election”) was set to be held during the Party’s November 16–18, 2018 convention of party delegates at the Toronto Congress Centre located at 650 Dixon Road in Etobicoke (the “Convention”). The Election was ultimately held on the morning of Sunday, November 18 between 7 a.m. and 10 a.m.
7. In order to run in the Election, Karahalios was required to and did enter into a contract with the Party (the “Contract”).
8. It was a term of the Contract that the Election was to be run in compliance with:

- (a) the Party's Constitution (the "Constitution");
 - (b) the Rules and Guidelines 2018 General Meeting of the Progressive Conservative Party of Ontario (the "Rules and Guidelines"), which were promulgated by the Party in advance of the Election;
 - (c) procedures that reasonably complied with well-established norms of free and fair elections ("Electoral Norms"); and
 - (d) procedures as agreed upon by the candidates participating in the Election and the Party officials running the Election (the "Procedures").
9. The Constitution, the Rules and Guidelines, Electoral Norms and the Procedures together constituted the rules governing the Election (the "Rules"). Material compliance with the Rules was a term of the Contract and the Party was obligated to run an Election in compliance with the Rules.
10. The Contract was created when:
 - (a) Karahalios paid money to the Party to be a candidate in the Election; and
 - (b) the Party agreed to provide Karahalios with the opportunity to participate in the Election, which was to be held in compliance with the Rules.
11. Instead of holding the Election in compliance with the Rules, the Party and its agents deliberately and materially breached the Rules in order to prevent Karahalios from winning the Election. The Party both took steps and acquiesced in the conduct of others

that was calculated to undermine Karahalios's campaign and favour Karahalios's opponent in the Election, Brian Patterson ("Patterson").

12. As a result of the Party's breaches of the Rules, the Election saw:
 - (a) more people casting ballots than the number of individuals that were properly eligible to vote (the "Eligible Voters") and that voted or that the Party claimed were eligible to vote;
 - (b) more ballots counted than the total number of people who cast ballots (the "Actual Voters"); and
 - (c) Patterson winning the Election by a margin that was less than the number of votes improperly cast and counted.
13. Prior to the Election, the Party provided Karahalios's campaign with a list of 1179 persons who the Party claimed were the Eligible Voters (the "1179 List"). In fact, the 1179 List was a list of those eligible delegates and alternate delegates who had paid their Convention registration fees ("Convention Fee") online prior to the weekend of Convention.
14. Not all of the individuals on the 1179 List were Eligible Voters, as Karahalios would later learn that some of the individuals identified on the 1179 List paid the Convention Fee but did not attend Convention, while others paid the Convention Fee but did not register in person at Convention by the required deadline, and therefore could not vote. Karahalios would also later learn that approximately 220 eligible delegates paid their Convention Fee in person at the Convention but were not included on the 1179 List.

15. As the Election was held on the Sunday morning of a weekend convention, it is improbable that all of the Eligible Voters voted in the Election. The Eligible Voters who actually voted in the Election (the "Legitimate Voters") numbered less than 1000. Notwithstanding the fact that there were less than 1000 Legitimate Voters, and as Karahalios learned after the fact:

(a) there were 1230 Actual Voters; and

(b) 1345 ballots were cast.

In other words, well over 300 ballots were counted that had not been cast by Eligible Voters (the "Illegitimate Ballots").

16. The ballots used in the Election allowed voters to vote for the position of President, as well as other positions. The final vote count for the position of President was:

(a) 607 for Karahalios;

(b) 663 for Patterson; and

(c) 75 ballots either spoiled or cast by voters who declined to cast a vote for President, but did cast votes for other offices on the ballot.

17. Karahalios expended substantial personal resources (time and money) to participate in the Election. In return he expected that the Party would comply with its own Rules. Instead, the Party engaged in the following conduct that made it impossible to administer

a free, fair, and democratic Election in accordance with the Rules (the “Wrongful Conduct”):

- (a) making no effort to identify and make a proper list of the Eligible Voters (the “Eligible Voters List”) by properly tracking which eligible delegates paid the Convention Fee and attended and registered at Convention by the required deadline in order to vote in the Election, and distinguishing between Eligible Voters and other individuals attending Convention who were ineligible to vote.
 - (b) permitting persons other than Legitimate Voters to cast Illegitimate Ballots for Patterson;
 - (c) permitting not less than 115 Illegitimate Ballots that were not cast by Actual Voters (the “Stuffed Ballots”) to be marked in favour of Patterson, inserted into the ballot boxes and counted;¹
 - (d) preventing Karahalios and his team from properly scrutineering the Election; and
 - (e) allowing the results of the Election to stand despite Karahalios’s repeated attempts to have the Party review and overturn the results.
18. By deliberately engaging in the Wrongful Conduct and breaching the Rules, the Party also breached the Contract.

¹ 115 being the difference between the number of ballots counted (1345) and the number of Actual Voters (1230).

Karahalios's involvement in the Party prior to the Contract

19. From 2005 to the present, Karahalios has had various roles in provincial and federal politics through the Conservative Party of Canada ("CPC") and the Party. Karahalios has run internal Party and general election campaigns, served in various roles, and generally been active within the Party.

20. Between 2016 and 2018 Karahalios became concerned about issues related to internal Party democracy. There were widespread reports of ballot box stuffing, voter fraud, and other irregularities in the Party's nomination processes across several ridings. These reports included, without limitation, incidents in:
 - (a) the riding of Hamilton West – Ancaster – Dundas, where an investigation by Hamilton Police later confirmed that voter fraud had taken place;
 - (b) the riding of Ottawa West – Nepean, where the nomination was later overturned and re-opened; and
 - (c) Karahalios's home riding of Cambridge, where a questionable nomination being run by the Party's then Executive (that was to allow a non-Ontario resident to run as a candidate) was cancelled after the Cambridge Party Riding Association voted to task Karahalios to retain a lawyer to threaten an injunction against the Party unless it cancelled the nomination.

21. Karahalios found these reports of irregularities credible and concerning.

The Party sues Karahalios

22. On November 17, 2017 the Party sued Karahalios with the goal of silencing him as retribution for his vocal opposition to the way the Party was being operated during this period. The Party used its lawsuit to attempt to prevent Karahalios and others from fighting for true Party democracy in accordance with the Party's Constitution.
23. On November 26, 2017 the then Executive of the Party convened a meeting via teleconference to approve of the SLAPP Suit that had already been filed. At this meeting the then Party Executive also revoked Karahalios's membership in the Party.
24. On December 22, 2017 the Ontario Superior Court held that the Party's lawsuit against Karahalios constituted "strategic litigation against public participation" and dismissed it.
25. In February of 2018 Patrick Brown ceased to be the leader of the Party. The Party launched a leadership race. The themes of Karahalios's issue-oriented campaigns (Axe the Carbon Tax and Take Back Our Party), which had led to the Party bringing the retaliatory SLAPP Suit, were major issues in the leadership race. Karahalios's membership in the Party was reinstated after Doug Ford became leader of the Party. Following the June 2018 Ontario provincial election, the Party formed a majority government. Shortly after the provincial election, an early Party general meeting (also known as Convention) was organized in order to elect a new President and Party Executive.

The role of the Executive and Party President

26. The Party Executive and President play important roles in the Party.

27. Article 9.2 of the Constitution provides that the “Executive” of the Party consists of: the Leader, the Immediate Past President, the President, 9 Vice-Presidents, 10 Regional Vice-Presidents, the Secretary, the Treasurer, the President of the Women’s Association, the President of the Youth Association, and the President of the Campus Association. In accordance with the Constitution, each of these Executive positions other than the President of the Women’s Association, the President of the Youth Association, and the President of the Campus Association are to be elected at regularly held general meetings of the Party.
28. The Executive, including the President, leads the governance and operations of Party. The President has a significant role in the operations of the Party.
29. In August of 2018, Karahalios decided to run for President.

The Contract

30. In accordance with the Rules and Guidelines, Karahalios:
 - (a) submitted his Nomination Papers on September 20, 2018 to Quinn Anastas (“Anastas”), who was then an employee of the Party, at Party headquarters;
 - (b) agreed to comply with the Rules; and
 - (c) paid the required registration fee of \$2,000 to become a candidate.

He also accepted the Party’s offer to participate in a “bulk mailing service” (set out in the Nomination Papers for Election form) where, in exchange for the Bulk Mailing Fee of \$400,

candidates could have the Party send out their campaign literature in a Convention package to all delegates eligible to participate in the Convention.

31. Guideline 1, of the Rules and Guidelines provides:

No member of the [sic], nor any member of the Credentials Committee, nor any member of the Elections Committee, nor a Regional Presiding Officer, nor any individual employed or retained as a consultant by the Office of the Leader, PC Caucus Services, the Party or the PC Ontario Fund shall directly or indirectly lend any support or assistance in any manner to any candidate or person seeking to become a candidate.

32. In addition to other requirements, Rule 1.5.1 of the Rules and Guidelines require that the following individuals be neutral in accordance with Guideline 1:

- i. the Convention Chair or Co-Chairs;
- ii. the Credentials Chair;
- iii. the Elections Chair;
- iv. the Presiding Officer and any Regional Presiding Officer;
- v. any individual who is employed or retained as a consultant by the Office of the Leader or by PC Caucus Services; or
- vi. any individual who is employed by the Party or the Fund.

33. Guideline 2 of the Rules and Guidelines provides a list of the rights and obligations of each candidate running for a position at the Convention, including the right to:

- (a) receive the list of delegates eligible to participate at Convention;
- (b) send campaign literature through the "bulk mailing service" (if selected and paid for by the candidate) and the details of same;

- (c) an official agent;
- (d) make a speech; and
- (e) appoint and have scrutineers observe the balloting process during the election.

How a Party election is supposed to happen

34. Not everyone is entitled to vote in an Election for the Party Executive at a Convention as per the Rules. In a properly administered Party Executive Election, delegate eligibility criteria are established, and there is a process for eligible delegates to register (that includes the Convention Fee) and become Eligible Voters.
35. The final Eligible Voters List is created as an authoritative record of all Eligible Voters. Once finalized, the Eligible Voters List is provided to:
- (a) the candidates, who then use this list to:
 - (i) identify Eligible Voters who are supporters and potential supporters and “get out the vote”; and
 - (ii) scrutinize the Election; and
 - (b) Election officials overseeing the voting process are responsible for ensuring that only individuals on the Eligible Voters List are provided a ballot and permitted to vote, and that each Eligible Voter is only permitted to vote once.

36. Eligible Voters are required to present a registration card and provide identification both when registering to become an Eligible Voter and before receiving a ballot. Registration cards and ballots are to be unique, securely held, and difficult to reproduce. During the Election, Eligible Voters provide their signature on the Eligible Voters List maintained by the elections officials at each poll as a record of which Eligible Voters have already voted. Ballot boxes are to be supervised to ensure that illegitimate ballots are not inserted. Ballots are numbered. At the end of the Election, the number of cast and unused ballots are tallied to ensure that:

- (a) the number of ballots in ballot boxes is equal to the number of Eligible Voters who were actually issued and cast a ballot;
- (b) the number of cast and unused ballots is equal to the number of ballots that Election officials had at the outset.

37. Where Election results are close, they are scrutinized by means of a re-count and examination of ballots and review of the list of voters from the Eligible Voters List that voted. These are well-established Electoral Norms traditionally used by the Party in their internal elections that are designed to guard against election fraud, including voter identification fraud, voting more than once, and ballot box stuffing.

Eligible Voters at the Convention

38. To become an Eligible Voter at the Convention, a person was required to:

- (a) be elected as a delegate ("Delegate") at one of the Party's riding association delegate selection meetings, youth association meetings, or campus clubs, pay the

Convention Fee and register at the Convention by 12:00 p.m. on Saturday, November 17, 2018 (the "Registration Cut-Off");

- (b) be an alternate ("Alternate Delegate") for a Delegate from the same association who did not register by the Registration Cut-Off, provided that the Alternate Delegate paid the Convention Fee and registered at Convention by the Registration Cut-Off; or
 - (c) enjoy Delegate status by virtue of some other status, such as current Party leader, all former leaders, all current and former members of the Party's caucus in the Ontario Legislature, all of the Party's candidates from the last election, all candidates of the CPC from the last federal election prior to the Convention, all members of the Senate of Canada from Ontario representing the CPC, the members of the Party Executive going into a general meeting, and others ("Automatic Delegates") and pay the Convention Fee and register at the Convention by the Registration Cut-Off.
39. The list of all Delegates, Alternate Delegates and Automatic Delegates (the "Master Delegate List") was provided to the candidates during the campaign for the purposes of campaigning.
40. The Delegates, Alternate Delegates who are upgraded to Delegate status as a result of absent Delegates, and the Automatic Delegates, each of which pay the Convention Fee and duly register at the Convention prior to the Registration Cut-Off, are the Eligible

Voters that are supposed to make up the final Eligible Voters List. The Convention Fee was set by the Party at \$300. Per the Party's own Rules, providing Eligible Voter status to Delegates, Alternate Delegates, or Automatic Delegates who do not pay the Convention Fee, is not to be done, as this would give some candidates an advantage in Convention Elections over others.

Events preceding the Convention

41. In August 2018, Patrick Tuns ("Tuns") – a political operative, lobbyist, and member of Doug Ford's leadership campaign team – began holding himself out as a member of the Party's "Convention Committee". He also advised others that he had sold his services to recruit and arrange a slate of individuals to run as candidates for the Executive at Convention.
42. On or around September 6, 2018, Tuns told Karahalios that Dean French ("French"), then the Chief of Staff to Ontario Premier Doug Ford, did not want Karahalios to be President.
43. On September 20, 2018, Jenn Byrne (then the Principal Secretary to the Premier) greeted Karahalios for a previously scheduled meeting Karahalios was supposed to have with Premier Ford. Byrne advised Karahalios that the "Premier's Office" wanted Patterson to be the next President. Byrne also asked Karahalios "how do you want to serve this government?" Karahalios replied that he did not want to serve the government, he wanted to serve the Party as its President. Byrne then ended the meeting.
44. In his conversations with Tuns and Byrne, Karahalios stated that it was up to the Eligible

Voters to decide whether he would get the job and not any staff in the Premier's Office.

45. Karahalios became concerned that his campaign for President may be politically difficult, but throughout his campaign he was given reassurances from individuals running the Election that it would be held in compliance with the Rules and in a free, fair, and democratic manner.
46. Late in September, Karahalios learned that Andrew Brander (a then government staffer to Minister Rod Phillips) would be acting as the "Credentials Chair" of the Election. In a phone conversation, Brander assured Karahalios that the Election would be run fairly.
47. On September 21, 2019, Greg Harrington, the Special Advisor to French, telephoned Karahalios to inform him that he was appointed to be the "Elections Chair" for the Convention. The Elections Chair is defined in the Rules and Guidelines as "the Chair of the Elections Committee". The Election Chair has significant powers when it comes to the process of holding the Election and interpreting the applicable Rules and Guidelines.
48. Harrington advised Karahalios that he had signed a required oath of neutrality. Karahalios emailed Harrington later that day requesting to see the signed oath of neutrality. Harrington never provided it.
49. On October 2, 2018, Karahalios met with Michael Crase, Executive Director of the Party, at Party headquarters. Crase informed Karahalios that despite the fact that some people in the Premier's Office may have their favourites in the race, he was determined to ensure that a free, fair, and democratic Election would take place. Karahalios had previously

worked with Crase in 2014 as co-chairs of a CPC nomination election in the riding of Mississauga Centre. As a result, Karahalios knew Crase had full knowledge on how to conduct a free, fair, and democratic Election in accordance with the Rules.

50. The Rules and Guidelines provided to candidates for the Executive Election were approved by a "Convention Committee", which included Byrne, Tuns, Party lawyer Art Hamilton ("Hamilton"), the co-chairs of the Convention, lobbyists Chris Froggatt and Kory Tenyecke, and Jag Badwal ("Badwal"). Badwal had assumed the role of President after the resignation of the prior President, Rick Dykstra. Badwal had served as 1st Vice President of the Party Executive when the decision was made to bring the SLAPP Suit against Karahalios and revoke his membership.
51. Pursuant to section 12.2 of the Constitution, the Executive is responsible for establishing special committees as it sees fit and all such committees are to report to the Executive. Sometime after Convention, Karahalios was informed that the members of the Convention Committee were never ratified by the prior Executive – itself a breach of the Constitution.
52. Of the 22 positions on the Executive that were open for election, only 7 were contested. Patterson and Karahalios were the only candidates running for the office of President. In the weeks leading up to the Election the campaign got heated.
53. The Rules established that the Election would occur sometime during the Convention. Election candidates were permitted to campaign before and during the Convention. The

Party agreed to provide Election candidates with updates of the Master Delegate List incrementally as it was updated during the weeks leading up to the Convention.

54. It was eventually announced that voting would take place on Sunday, November 18 between 7 a.m. and 10 a.m. No alternate voting times were provided and no proxy voting was permitted. In order to vote in the Election, an Eligible Voter was required to vote in person between 7 a.m. and 10 a.m. on Sunday morning.
55. Not every Eligible Voter cast a ballot during the Sunday morning vote. Some left the Convention before Sunday morning. Others slept in, were otherwise occupied, declined to participate in the Election, or cast a ballot but declined to cast a vote for President.
56. Patterson had the public support of a slate of individuals running for every other position on the Executive with the exception of two (the "Slate").
57. On October 24, 2018, a day after Karahalios submitted his campaign literature for inclusion in the "bulk mailing service," Badwal informed Karahalios that the Convention Committee had met earlier that day, had reviewed Karahalios's campaign literature, and had decided, on the advice of Hamilton, to deny including it in the mailing. Karahalios would later learn that Patterson was himself in attendance at this meeting. Karahalios protested the decision to Badwal and Crase in separate telephone conversations. In response, Crase reassured Karahalios by stating that he and Badwal were committed to giving Karahalios a "fair shake."
58. A few days later, the Party sent out the bulk mailing without Karahalios's campaign

literature enclosed. This was in contravention of the agreement Karahalios had with the Party. Karahalios later learned that individuals on the Slate and members of the Convention Committee became angry that Karahalios's literature exposed Patteron's Slate as being comprised of six individuals who work at lobbying firms and five individuals who served under the prior Party Executive that had brought the SLAPP Suit against Karahalios and revoked his membership.

59. The decision forced Karahalios to incur additional costs to have his campaign literature (the version that the Party refused to send) directly mailed to the delegates on the Master Delegate List. When Karahalios received updates to the Master Delegate List he mailed the remaining delegates the campaign literature as well.
60. On the morning of Friday, November 16, 2018, candidates and their official agents attended a meeting with Election officials at the Toronto Congress Centre where Convention was being held. This meeting was run by Harrington and Brander, and was intended to provide the candidates and their agents with an overview of: how the Election would proceed, policies regarding the Convention and the Election, and balloting procedures. There would also be a draw for speaking order and display table placement for candidates.
61. Tuns attended the meeting in a non-neutral capacity advocating for Patterson and his Slate, and acting as an Official Agent and Scrutineer for one of the Slate's candidates. At the end of the meeting, Tuns's participation was challenged on the grounds that he was contracted by the Party for Convention and that he therefore was required, per the

Constitution and the Rules and Guidelines, to be neutral. Tuns replied that he did not work for the Party, but rather that he had a "contract" with the Party for Convention. To further his point, he also stated that he had never been given a T4 by the Party. Harrington and Brander left the room to convene with other Election officials.

62. The Election officials denied the challenge against Tuns. Karahalios responded that he disagreed with the decision and his lawyer would be in touch. Throughout Convention, it was observed that Tuns had repeated access to areas where only Election and Convention organizers should have access and where the Party officials were organizing and meeting to coordinate the Election.
63. At some point during the Friday meeting, Karahalios asked Brander for a brief conversation to clarify questions Karahalios had on how Eligible Voters were going to be tracked and how the voting was going to occur on Sunday. Tuns asked Karahalios if he could join the meeting advocating for Patterson's Slate and Karahalios obliged. During that exchange, Tuns approached Karahalios and stated to him that he wanted to clear his conscience, and wanted Karahalios to know that whatever happened during the weekend (at the Convention) was just business and not personal.
64. During the meeting, Brander appeared uncomfortable and uneasy about the straightforward questions Karahalios was asking him. Nevertheless, he reassured Karahalios that the Election was going to be run in accordance with the Rules and in a free, fair, and democratic manner.

65. During the Friday meeting, the Election officials also informed the candidates and their agents that there would be 7 polling stations in the Election divided by last name as follows: (1) A-C; (2) D-G; (3) H-L; (4) M-O; (5) P-S; (6) T-Z; and a "Credentials Desk," supervised by Brander, where people would be sent to if there were issues with their names or with their identification.

66. During the Friday meeting, the candidates, the agents and the Election officials also settled on extending the the Registration Cut-Off time for Delegates, Alternate Delegates, and Automatic Delegates, to arrive at Convention pay the Convention Fee, register, and receive their Convention badge, from 12:00 p.m. on Saturday, November 17, 2018 (as per section 3.5 of the Rules and Guidelines) to 2:00 p.m. on Saturday, November 17, 2018. In addition, it was agreed that those Delegates, Alternate Delegates, and Automatic Delegates, who had already paid the Convention Fee, would have until 7:00 p.m. on Saturday, November 17, 2018 to arrive, check in, and receive their Convention badge. This provided Election officials time on Saturday evening to identify vacancies of those Delegates who did not attend Convention and register, in order to "upgrade" Alternate Delegates, who had paid the Convention Fee and registered at Convention prior to the Registration Cut-Off, to Eligible Voter status.

67. The Registration Cut-Off was essential so that a final, up-to-date, Eligible Voters List could be prepared for the Election and used by both Election officials and by scrutineers to ensure that only Eligible Voters would be permitted to vote, and to keep track of who voted. Pursuant to the Rules, and in all the discussions held between the Election officials

and Karahalios and his official agent, Alex Katsabouris (“Katsabouris”), the Eligible Voters List was to be the final list of people who would be permitted to vote on the Election on Sunday barring minor exceptions that would be carefully scrutinized and tracked.

68. During the Friday meeting and throughout the weekend, Katsabouris reasonably requested from the Election officials that standard election procedures be followed including: (i) in order to ensure no ballot stuffing takes place and that the number of cast ballots match the number of Eligible Voters who voted, that at the end of the vote on Sunday, November 18, 2018 and in the presence of the scrutineers, the number of cast ballots from each polling station’s ballot box would be reconciled with the number of Eligible Voters who cast ballots at that polling station; and (ii) to provide details on the creation of the ballots, if the ballots would be uniquely numbered in order to keep track of how many were used, the total number of ballots created prior to the vote, and after the vote to count the total number of ballots used and the total number of ballots remaining.
69. The Election officials refused to answer most of the straightforward questions regarding the procedures and policies regarding the Election. On multiple occasions, they would leave the room and go into the adjoining room to deliberate with other Convention organizers including Hamilton. The Election officials informed the candidates and agents that the ballots would not be numbered, and they refused to state the total number of ballots that were prepared for the Election. The Election officials only agreed to do a global reconciliation of the total number of ballots cast with the total number of

individuals who had been marked as having voted according to what was supposed to be the signatures of the voters on the Eligible Voters List who voted (as opposed to one at each individual polling station). Not being able to challenge Harrington's final decision, Katsabouris accepted whatever answers he was provided in the hopes that it would not result in further negative rulings against Karahalios.

The Saturday of the Convention

70. On Saturday, the candidates delivered their respective speeches. Karahalios went first, and his speech was well received. During his speech, two Party cabinet ministers were overheard expressing concern that the reaction Karahalios was receiving was an indication that their publicly favoured candidate, Patterson, was going to lose. Patterson's speech was less well received.
71. After repeated requests from Karahalios, in order for the Karahalios team to prepare for their "get out the vote" effort, on Saturday evening, on or about 9:12 p.m., the Election officials sent an email to all candidates attaching what was supposed to be the final Eligible Voters List. Karahalios would later learn that the list provided was the 1179 List. Karahalios would also later learn that Election officials made no effort to properly compile the final Eligible Voters List.
72. In the email providing the list, Harrington noted that "alternate upgrades will stay open from 7-10am tomorrow." This last minute change was a contravention of the Rules that required every Eligible Voter to pay the Convention Fee by 2:00 p.m. on Saturday

afternoon and have attended Convention, registered, and received their Convention badge by 7:00 p.m. on Saturday evening.

73. The Karahalios campaign printed off and prepared to distribute the 1179 List to the Karahalios campaign scrutineers for their use when observing the Election on Sunday believing it was the final Eligible Voters List.
74. On Saturday, Karahalios team volunteers happened to make their way by the registration desk and observed Minister Rod Phillips attend the registration desk with his wife. Minister Phillips's wife was not a Delegate, Automatic Delegate, or Alternate Delegate, and thus received an "Observer" badge as she was ineligible to vote in the Election at Convention. A short time later, at the insistence of a staffer of Minister Phillips, Minister Phillips's wife received a Convention badge identifying her as a Delegate, despite not being eligible or having paid the Convention Fee.
75. This incident was brought to the attention of Election officials, and assurances were provided that this particular matter would be corrected and that no one would be issued a Convention badge identifying them as Delegate if they were not eligible and only Eligible Voters on the final Eligible Voters List would be provided with Convention badges identifying them as a Delegate or Automatic Delegate.

The Election and its numerous irregularities

76. None of the candidates were permitted in the voting room other than to vote during the Election that took place from 7:00 a.m. to 10:00 a.m. on Sunday, November 18, 2018.

77. At the outset of the Election, there were stacks of ballots on each polling station table. These ballots were in black and white and photocopied on regular stock paper and each ballot contained all of the choices of candidates for all seven positions up for Election. The ballots had no unique identifiers on them whatsoever and were easy to duplicate.
78. There was no accounting, or tracking of, the ballots. At the beginning of the vote, there was no pre-count to determine how many ballots each polling station was given. Throughout the Election, Karahalios's scrutineers observed Harrington or other Election officials provide the polling stations with stacks of additional ballots without tracking how many were being distributed.
79. Each polling station had two Election polling officials assigned to it that were either Party staff or government staff who were each experienced in running internal Party elections including the riding association delegate selection meetings that took place prior to Convention. The ballot boxes were a considerable distance behind the polling station and were largely unsupervised.
80. The Karahalios campaign was only permitted one scrutineer at each of the 7 polling stations. This made it difficult to simultaneously monitor the work of the polling officials who were checking the identification of those who came to vote, whether the name of individuals who appeared to vote was on the Eligible Voters List, to ensure that voters only received one ballot, and to ensure that only legitimate ballots were inserted into the ballot box.

A. *Issues with the registered voting list and the inability to properly scrutineer the Election*

81. Early in the Election, Karahalios was informed by Katsabouris that polling officials had a different voter list (the "First Voter List") from the 1179 List. The Karahalios campaign objected to the use of the First Voter List.
82. Approximately an hour into the voting, and without any prior notice or warning, Election officials came out and distributed – mid-election – a new voter list to the polling officials that was different from the 1179 List and different from the First Voter List (the "Second Voter List"). The Karahalios campaign objected.
83. At some of the polling stations the Karahalios scrutineers – despite loud and constant protests – were not given copies of the First Voter List or the Second Voter List until approximately an hour after each of these lists had been given to, and used by, the polling officials. When the First Voter List was removed by Election officials, they were also taken from the scrutineers.
84. At other polling stations the Karahalios scrutineers did receive the First Voter List and the Second Voter List in a more timely manner, but neither they nor the polling officials were given an opportunity to mark off the voters on the Second Voter List who had already voted and were marked off from the First Voter List. Thus, it made it impossible for polling officials and scrutineers to track whether individuals who had already voted were appearing a second time to vote again. At the M-O polling station, a third voter list was actually brought out by the Election officials and given to the polling officials to use that

was different from the First Voter List, Second Voter List, and the 1179 List.

85. In the middle of the Election, at approximately 8:33 a.m., Anastas distributed to the candidates the Master Delegate List of all possible Delegates, Alternate Delegates, and Automatic Delegates who were eligible to attend Convention. This confirmed to Karahalios and his team that the Party was not using the 1179 List, or the Eligible Voters List and polling officials were allowing any Delegate, Automatic Delegate, or Alternate Delegate, to vote whether or not they had registered and paid the Convention Fee by the Registration Cut-Off. This change of voters lists mid-way through the Election, and not preparing and using the final Eligible Voters List, was a material breach of the Rules as established by the Election officials.
86. At the Credentials Desk, polling officials had a computerized version of a voting list that they were using, and every single potential voter who appeared at the Credentials Desk was somehow found on the computerized list even though they were not on the 1179 List, the First Voter List, the Second Voter List, or the Master Delegate List.
87. Katsabouris protested to Harrington and other Election officials that he and his scrutineers were not provided with these lists that were being distributed to the polling officials and therefore they could not properly scrutineer the Election. After several requests that they do so, the Election officials finally provided Katsabouris with what they told him was the new voter list. However, upon inspection, he discovered that this was only a partial list and he again demanded the full new voter list. A new list was provided to him by the Election officials that was again not a complete voter list. Katsabouris again

complained and was given a third copy of a list he was told was the new voter list that had been given to the polling officials. Again, though, Katsabouris reviewed this list and saw that it was not the 1179 List or the Eligible Voters making up the Eligible Voters List. Amid the chaos of multiple voter lists being provided to polling officials, Karahalios scrutineers observed that voters and scrutineers were permitted to loiter around the ballot boxes unsupervised.

88. Conducting the Election without the Eligible Voters List, and with the use of multiple voter lists that were each different from one another and different from the 1179 List provided to the candidates was a breach of the Rules and made it impossible to: (i) allow for the Karahalios campaign to scrutineer the vote; (ii) ensure that the polling officials permitted only Eligible Voters cast a ballot; and (iii) ensure that individuals who voted once were not allowed to vote again.

B. Several issues with the Convention badges used for, and necessary for, voting

89. Throughout the Election, Karahalios's scrutineers observed and objected to individuals being permitted to vote who were not on the 1179 List, and in some cases were not even on the Master Delegate List. In some instances individuals were permitted to vote who were not on the First Voter List or the Second Voter List that the polling officials were working from. Even after the Second Voter List was distributed to the polling officials, this practice was permitted to continue by Harrington and other Election officials at the polling stations.

90. Katsabouris raised this with the Election officials and asked Harrington to provide the Karahalios campaign with a list of all the paid attendees at the Convention (including those who attended as "Observers" and who were ineligible to vote) in order to have the Karahalios team discern during the Election whether the individuals who were voting were in fact Eligible Voters were left off of the 1179 List. Harrington was visibly uncomfortable with this request.

91. In response to Katsabouris's repeated objections to the different lists that were being used during the Election, and to his additional request to see all paid attendees at the Convention, Harrington ruled that everyone in the building with a Convention badge that read "Delegate" on it was presumed to be an Eligible Voter and would be provided a ballot to cast in the Election. Katsabouris demanded that this ruling be put in writing. Harrington sent him a text message stating that both he (Harrington) and Badwal deemed that "this is a secure facility, we consider everyone who is present with a delegate badge has paid" and can therefore vote in the Election regardless of whether their name appeared on the 1179 List or even the Master Delegate List. However, as the Karahalios campaign was aware, and the example of Minister Phillips's wife discussed above demonstrates, this was not the case.

92. At one point during the Election, the Karahalios scrutineer at the Credentials Desk saw a person who claimed to be a lawyer enter and argue that anyone with a Convention badge that read "Delegate" on it must be given a ballot and be allowed to vote. Logically, this would apply to individuals that did not appear on any list whether that be the 1179 List,

the Master Delegate List, the First Voter List, or the Second Voter List, and whether or not they were identified as an Eligible Voter, or a Delegate, Alternate Delegate, or Automatic Delegate, who did not register and pay the Convention Fee by the Registration Cut-Off. Election officials accepted this argument. This was a breach of the Rules that once again made it impossible to ensure a free, fair, and democratic Election was taking place.

93. Early in the Election, under the instructions of Karahalios, Katsabouris demanded that all voters who were not on the 1179 List be sent to the Credentials Desk where the influence of possibly ineligible voters could be appropriately tracked and determined. Katsabouris reported to Karahalios that Election officials initially agreed to this request but after a period of time recanted and started allowing anyone with a Convention badge that read "Delegate" on it, to vote at polling stations and not necessarily at the Credentials Desk.
94. The Karahalios scrutineer at the Credentials Desk observed that approximately 120-130 individuals voted at the Credentials Desk throughout the Election. At the A-C polling station the Karahalios scrutineer identified approximately 50 individuals who appeared to vote who were not on the 1179 List and in some cases not on the Master Delegate List.
95. The Karahalios scrutineers attempted to object to each of these new voters who did not appear on the 1179 List and to individuals who did not appear on the Master Delegate List. The Karahalios campaign and scrutineers did not observe a single individual that was not permitted to vote as a result of an objection made by the Karahalios campaign. On each occasion, Harrington rejected the objections from the Karahalios team and ruled that ineligible individuals were permitted to vote in the Election.

96. At one point, in the face of several objections from the Karahalios scrutineer at polling station A-C, Harrington ruled that he would no longer consider any objections to individuals voting who did not appear on the 1179 List, or the Master Delegate List or even on the lists provided to the polling officials.
97. The Karahalios campaign eventually realized that individuals were being called in on Saturday night and Sunday morning, after the Registration Cut-Off, and were being given Convention badges that read "Delegate" on them, in contravention of the Rules, in order to cast a ballot in the Election for Patterson and his Slate, even though they were not Eligible Voters. For example:
- (i) A Karahalios scrutineer learned from an Alternate Delegate that she had appeared at the Convention on Sunday and had been given her Convention badge that read "Delegate" in order to cast a ballot in the Election despite not registering in time by the Registration Cut-Off;
 - (ii) A supporter of Karahalios's who was a Delegate and who had paid the Convention Fee prior to Convention, appeared at Convention on Sunday to register after the Registration Cut-Off and vote and was not permitted;
 - (iii) Karahalios scrutineers observed individuals with Convention badges that had different names printed on the front and back of the badge (each side identifying the unique name as a "Delegate") while all other regular Convention badges had the same name printed on the front and back. These individuals were apparently impersonating Delegates who were on the Master Delegate List but were absent from Convention and not participating in the Election;
 - (iv) A Karahalios scrutineer from polling station L emailed Karahalios on Friday, November 23, 2018, after the Convention, to let Karahalios know that someone at his voting station came back to vote a second time, with a fresh Convention badge even though their name had been marked off as having voted. Nevertheless, the polling official permitted them to vote a second time;
 - (v) Other Convention badges were observed that had names of individuals printed on Avery sticker labels with the title "Delegate." These Convention badges were different from the official Convention badges that were distributed prior to the Registration Cut-Off that had names printed directly on both the front and the back of the badge itself;

- (vi) Karahalios scrutineers reported that Premier Ford's wife and children, French, and Minister Rod Phillips's wife, all were provided with ballots to cast votes even though they were not Eligible Voters;
- (vii) During the count, Karahalios took a break at the convention centre's cafeteria and Anthony Koch sat with him. He was wearing a Convention badge that read "Delegate" on it. After Convention, Karahalios would learn that Koch was not a resident of Ontario, and thus could not have been a member of the Party, was not a Delegate, or Alternate Delegate, and was not an Eligible Voter. Yet, Koch was allowed to vote. Shortly after Convention Koch became an employee of the lobbying firm of which Tuns is a partner.

C. Dean French acts as a polling official despite being pro-"Slate"

98. With approximately 20 minutes of voting time left, a Karahalios scrutineer observed French, who was supporting Patterson and the Slate, and was not a neutral official, attend at the T-Z polling station and instruct the two polling officials at that station to go assist elsewhere in the voting room where their help was needed. French sat down and took over their role as the polling official for the last portion of the vote at this station.

D. Issues with the Election count

99. When the voting was over, the polling officials at each respective polling station counted their ballots in front of the scrutineers.
100. Katsabouris gathered the vote count from each of the polling stations from Karahalios's scrutineers and identified the final vote count for president was: 607 for Karahalios and 663 for Patterson, a difference of 56 votes. This total of 1270 ballots did not include spoiled ballots for the position of "president" and the ballots cast from individuals who voted for the other six Executive positions but who declined to cast a vote for President.

101. Katsabouris insisted at the end of the vote count that Election officials honour their agreement and conduct a global reconciliation count that they had agreed to in the Friday meeting in order to ensure that the total number of ballots cast equaled the Actual Voters. The Election officials ignored Katsabouris's request. Katsabouris insisted and continued the demand that scrutineers be present during the final count of Actual Voters. Election officials refused.
102. Before the winners were announced, Katsabouris overheard one Election official tell another that the count of total Actual Voters was 1230. Katsabouris confronted the Election officials about the 1230 number. They denied it and instead told him that the number of ballots cast matched the number of Actual Voters, but did not provide the figures.
103. Another Karahalios scrutineer heard that Harrington and an Election official at a polling station had attempted to count the total number of Actual Voters's signatures who signed the various registration lists used at that polling station in order to reconcile the number with the number of ballots cast at that polling station. When the Election officials noticed that the total number of signatures did not match with the number of ballots cast as per the total count, they returned the various registration lists into the bags and the total number of signatures was not shared with the Karahalios campaign.
104. After voting ended, Katsabouris asked Harrington that the ballots not be destroyed and Harrington provided assurances that they would not be.

105. The final announcement was made that Patterson had won the Presidency but the official results were never provided – another breach of the Rules, as Article 7.7 of the Rules stipulated that the tabulation of the results would then be announced to the Convention.
106. On the evening of Sunday, November 18, 2019, Karahalios was provided with a photograph of a piece of paper that was left behind in a private room away from the voting area following the close of the Election that contained the tally of all ballots cast and counted. In the private room, Byrne and Hamilton counted all of the ballots cast for any of the positions up for Election. The tally sheet showed that 1345 ballots were cast and counted, despite there being only 1230 Actual Voters.

The Party refuses to investigate identified irregularities

107. With several electoral irregularities including a questionable counting process at the end of the Election that he was not permitted to review, Karahalios reasonably wanted an opportunity to confirm what the final result was and how it was reached.
108. On multiple occasions starting from the day of the Election itself in the middle of the voting period, Karahalios's legal counsel wrote to the Defendant's counsel flagging the observed electoral irregularities, including various voter lists that were being distributed and used, conflicting numbers of people who actually voted and the number of ballots that were cast, and demanding that the Party take steps to preserve the electoral record to ensure that a proper review could take place.
109. These communications reasonably requested that the ballots be preserved and not

destroyed without the consent of all candidates. Requests were also sent for the Party to provide Karahalios's counsel with a list of all individuals that had been permitted to vote, and an opportunity to inspect the ballots and the ballot boxes themselves. The request also outlined a list of over 20 names from one polling station where individuals were permitted to vote that were not even on the Master Delegate List and could not have been Eligible Voters.

110. In its reply correspondence, the Party denied that there were any electoral irregularities, assured Karahalios's counsel that Karahalios's scrutineers were able to properly scrutineer the Election, and refused to permit Karahalios or his counsel to inspect the ballots or to provide them with a list of the individuals that had been permitted to vote. While Karahalios was attempting to dispute the results of the Election, on December 3, 2018, the Party went ahead and filed with Elections Ontario a P-1 Political Party Registration and Change Notice Form, signed by Patterson, Badwal, and Party CFO John Simcoe, notifying Elections Ontario that Patterson was the incoming Party President.
111. Not having received a response from the Party's legal counsel, and still not certain at that time who the members of the Party's Convention Committee were, Karahalios himself wrote to Premier Doug Ford, Crase, and Badwal on February 1, 2019. In this correspondence, Karahalios noted that he was writing to the Premier, Crase and Badwal to relay his appeal to the Convention Committee to review the electoral irregularities that had taken place and to permit him and his lawyers to inspect the ballots and the list of voters.

112. No response was ever provided to Karahalios or his legal counsel.
113. With all internal options exhausted, the Party refusing to provide him with the opportunity to review the ballots and the various lists used during the Election, and understanding that he was not provided with a free, fair, and democratic process in accordance with the Rules, Karahalios began the process of initiating this claim.
114. In the weeks and months following Convention, various individuals who work closely to the organizers of the Election confirmed to Karahalios that cheating had occurred at the Convention, through a variety of means, to prevent Karahalios from winning.

The Defendant is liable for breach of the Contract

115. The Contract was a binding contract between the parties.
116. Karahalios relied on the parties' contract, and on the representations that were made to him regarding the Election, and spent thousands of dollars in the performance of the agreement.
117. The Party failed, in multiple ways, as described above, to perform its contractual obligations to provide Karahalios with the opportunity to participate in a free, fair, and democratic election in accordance with the Rules. On multiple occasions, steps were taken that made the process leading up to the Election, and the Election itself, manifestly unfair.
118. This includes, for example, but not limited to, the Ontario Party:

(a) breaching the neutrality provisions mandated in the Constitution and the Rules and Guidelines for individuals responsible for the organization of the Convention and the Election;

(b) refusing to send Karahalios's campaign literature despite agreeing, and accepting payment, to do so, and allowing Karahalios's opponent in the Election to attend the meeting where this was decided;

(c) making no effort to properly track Eligible Voters and compile the Eligible Voters List in order to identify individuals who were eligible to cast a ballot in the Election and distinguish them from individuals at Convention who were not Eligible Voters;

(d) intentionally prohibiting the Karahalios scrutineers from being able to scrutineer the Election by changing the registered voter list used by Election Officials mid-election;

(e) allowing for individuals to vote in the Election who were not Eligible Voters;

(f) failing to provide for a proper reconciliation at the end of the Election of the ballots with the number of voters who cast a ballots, despite there being numerous inconsistencies;

(g) proceeding with the results of the Election where more ballots were cast than voters who voted and in which ineligible voters were permitted to vote contrary to the Rules established by the Party; and

(g) refusing to allow Karahalios to inspect the ballots and the various registration lists used by the Election officials in order to investigate the numerical inconsistencies between.

119. The core term of their Contract – for Karahalios to be provided with the opportunity to participate in a free, fair, and democratic election organized and administered by the Party – was fundamentally and deliberately breached.

120. Karahalios has suffered loss as a result of the Party's breach of the Contract.

The Defendant is liable for the breach of the common law duty of good faith contractual performance

121. The Party also breached the duty of good faith contractual performance that it owed Karahalios. The Party acted in a manner that was intended to, and did, harm Karahalios

by defeating the object of, and breaching, its Contract with him.

122. Particularly, it did so by entering a Contract for – and assuring Karahalios that he would have – the opportunity to participate in a free and fair election, and allowing Karahalios to expend significant resources on the basis of that Contract and those assurances. However, when it came to organizing and executing the Election, the Party instead made Karahalios participate in a process pre-designed to deliver a victory for Patterson.
123. The Party took, or permitted to be taken, several steps specifically designed to harm Karahalios's campaign efforts. Rather than letting the best candidate win through the course of a free, fair, and democratic election, the Party pre-selected the candidate it wanted to win for Presidency, Patterson, and took all steps that it could take to covertly facilitate that specific outcome.
124. The Party's actions substantially, and intentionally, deprived Karahalios of the benefit that he was to derive from the Contract, and of the Party's good faith performance of the Contract.

Damages and harm suffered by Karahalios

125. As a direct result of the wrongful acts of the Party as set out above, Karahalios has suffered and will continue to suffer losses and damages. This includes all costs associated with entering into the Contract and all costs that reasonably spent by Karahalios in performance of, and relying on, the Contract and his right to a free and fair Election, particulars of which will be provided prior to trial.

126. Additionally, the Party's bad faith breaches of the Contract, and particularly the attempts to prevent Karahalios from investigating the voting irregularities that took place, has been oppressive and high-handed. The Party's conduct deserves the censure of this Court. An award of punitive damages is appropriate.

127. Karahalios proposes that the trial of this action take place in the City of Toronto.

October 16, 2019

HENEIN HUTCHISON LLP
235 King Street East, First Floor
Toronto, ON M5A 1J9

Scott C. Hutchison (LSO #29912J)
shutchison@hhllp.ca

Mark Strychar-Bodnar (LSO #70764T)
mstrychar.bodnar@hhllp.ca

Tel: (416) 368-5000
Fax: (416) 368-6640

Lawyers for the Plaintiff,
Dimitrios "Jim" Karahalios

Cv-19-00629240-0000

DIMITRIOS ("JIM") KARAHALIOS
Plaintiff

-and- PROGRESSIVE CONSERVATIVE PARTY OF ONTARIO
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

HENEIN HUTCHISON LLP
235 King Street East, First Floor
Toronto, Ontario
MSA 1J9

Scott C. Hutchison (LSO #29912J)
shutchison@hhllp.ca

Mark Strychar-Bodnar (LSO #70764T)
mstrychar.bodnar@hhllp.ca

Tel: (416) 368-5000
Fax: (416) 368-6640

Lawyers for the Plaintiff,
Jim Karahalios