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FACSIMILE TRANSMISSION SHEET

DATE SENT: September 21, 2012

NO. OF PAGES: 4

FAX TO: The Honourable Gordon Wyant Q.C.
Minister of Justice and Attorney General

FACSIMILE NO.: 306-787-1232

TELEPHONE NO.:

RESPECTING:

FROM: Peter Rosenthal

COMMENTS: Please see attached.

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September 21, 2012

The Honourable Gordon Wyant Q.C.
Minister of Justice and Attorney General
Deputy Government House Leader
Government of Saskatchewan

By Facsimile to: 306 787 1232
And by Email to: minister.justice@gov.sk.ca

Dear Attorney General Wyant,

I have been retained by the Green Party of Saskatchewan to challenge the constitutionality of the deposits that your *Election Act* requires of candidates in provincial elections. I am writing with the hope of convincing you to amend the *Act* so that the time and expense of legal proceedings can be avoided.

Section 46 of the *Election Act* requires that each candidate in a provincial election post a deposit of \$100. Section 47 of the *Act* mandates forfeiture of the deposit unless the candidate is elected, receives at least half as many votes as are received by the candidate who is elected, or dies before the close of the polls. During each election, these provisions cost the Green Party of Saskatchewan a significant amount of money that it could otherwise use to promote its positions to the voters.

Very similar deposit provisions in Canada's and in Ontario's elections acts have been held to be unconstitutional in two separate decisions of Ontario's Superior Court of Justice: *Figueroa v. Canada (Attorney General)* (1999), 170 D.L.R. (4th) 647 and *de Jong v. Ontario (Attorney General)* (2007), 287 D.L.R. (4th) 90. The courts found that such deposit requirements interfered with the rights of candidates and supporters of small political parties to participate in elections and thus contravened the electoral fairness required by section 3 of the *Canadian Charter of Rights and Freedoms*.

The aspect of the deposit provisions that has been held to be unconstitutional is the inequity caused by the requirement of obtaining a certain number of votes

before the deposit is returned. It is constitutional to use a deposit to insure compliance with electoral rules. Thus it would be constitutional to maintain that a deposit is only returned if the requirements of section 47(5) of your *Act* are met: that the candidate and the candidate's business manager have complied with section 261 [candidate's election expenses return] of the *Act*. Thus I request that you amend section 47 of the *Act* so that compliance with section 261 is all that is required for return of the deposit.

The two Ontario decisions referenced above directly imply that your deposit provisions are unconstitutional. While decisions of Ontario courts are not binding in Saskatchewan, I would submit that the reasoning in those two judgments (differing from each other) is very compelling and should convince you (and would likely convince any Saskatchewan court) that your present deposit provisions violate section 3 of the *Charter*.

In *Figueroa*, other aspects of the *Canada Elections Act* were also challenged. The Attorney General of Canada did not appeal the decision that the deposit requirement was unconstitutional but did appeal holdings that other provisions of the *Canada Elections Act* were unconstitutional. In that case, the Supreme Court of Canada held that elections act requirements that interfere with the rights of smaller political parties to play a meaningful role in the electoral process contravene section 3 of the *Charter*: see *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912.

Decisions of the Supreme Court of Canada are, of course, binding. While the issue of candidate deposits was not directly before the Supreme Court, it is my submission that the *ratio* of the Supreme Court's decision in *Figueroa* clearly implies that your deposit provisions are unconstitutional.

I am requesting that you and your staff seriously consider this submission. I would be pleased to provide any further information that you may request and to discuss any aspect of this with you or your designate.

Several years ago, I was retained by the Green Party of Prince Edward Island to make similar representations to the Attorney General of P.E.I. The Government of P.E.I. amended their elections act so that no litigation was required.

I am instructed to commence preparation for a constitutional challenge to the deposit provisions unless you cure the unconstitutionality by amending the *Act*.

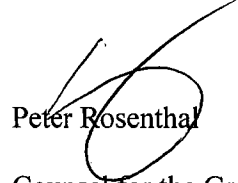
If we are forced to commence legal action, we will seek damages in addition to a finding of unconstitutionality, on the grounds that you have been negligent or

willfully blind with respect to your responsibility as Attorney General to recommend amendment of a clearly-unconstitutional provision.

I would appreciate your early acknowledgment of your receipt of this letter.

Thank you very much for your anticipated consideration of this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Rosenthal", written over the printed name.

Peter Rosenthal

Counsel for the Green Party
of Saskatchewan

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Fax Call Report

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