

THE CANADIAN JUDICIAL COUNCIL

**IN THE MATTER OF AN INQUIRY COMMITTEE CONSTITUTED
PURSUANT TO SECTION 63 OF THE JUDGES ACT R.S.C. 1985,
C. J-1 AS AMENDED INTO THE CONDUCT OF
THE HONOURABLE THEODORE MATLOW OF
THE SUPERIOR COURT OF JUSTICE OF ONTARIO**

* * * * *

**HELD BEFORE THE HONOURABLE CLYDE K. WELLS (CHAIRPERSON),
THE HONOURABLE FRANCOIS ROLLAND,
THE HONOURABLE RONALD VEALE,
MARIA LYNN FREELAND and DOUGLAS M. HUMMELL**
at Federal Court of Canada
180 Queen Street West, Courtroom No. 7C, Toronto, Ontario
on Tuesday, April 8, 2008 at 10:00 a.m.

* * * * *

APPEARANCES:

Douglas Hunt, Q.C.
Andrew Burns

Paul Cavalluzzo
Fay Faraday

Nancy Brooks

Independent Counsel appointed
pursuant to the *Complaints Procedure*

for The Honourable Theodore Matlow

for the Inquiry Committee

(ii)

INDEX

	PAGE
AFFIRMED: LIVIA SESSIONS	466
Examination-in-Chief by Mr. Hunt	466
Cross-Examination by Mr. Cavalluzzo	479
SWORN: ROSEMARIE SKRABAN	483
Examination-in-Chief by Mr. Hunt	483

1 Toronto, Ontario
2 --- Upon resuming on Tuesday, April 8, 2008,
3 at 10:00 a.m.

4 THE CHAIR: Thank you, ladies and
5 gentlemen, for being here this morning.

6 I should explain that in the
7 course of preparing our report and making our
8 findings, the Committee became aware of some
9 deficiencies in the evidentiary record, and perhaps
10 inconsistencies.

11 Those relate to the procedures of
12 the Superior Court in the process of deciding
13 whether an application will be heard by a single
14 judge or by a panel of the court, and how and by
15 whom the decision to have the SOS Save Our St.
16 Clair application heard by a panel was made.

17 They also relate to how and when
18 it was decided that the SOS Save Our St. Clair
19 matter would be heard of a panel consisting of
20 Justices Matlow, Greer and Macdonald, and how the
21 availability and willingness of that panel to hear
22 that matter was determined.

23 Those are essentially the issues,
24 and they arise out of the three emails exchanged by
25 the registrar and deputy registrar, and our

1 questions flow from that.

2 I would invite independent
3 counsel, Mr. Hunt, to call those witness and pursue
4 those questions for us.

5 MR. HUNT: Thank you, Chief
6 Justice.

7 I would just indicate that we did
8 receive on March 6, 2008, as did Mr. Cavalluzzo,
9 from counsel for the inquiry committee, Ms Brooks,
10 indicating that you wished to hear this evidence
11 relating to the three emails.

12 The emails are already in as
13 Appendix 42 to Exhibit No. 3, so we won't need to
14 file those again.

15 We have here today Livia Sessions,
16 the registrar of the Divisional Court, and
17 Rosemarie Skraban, assistant registrar. I will
18 call Ms Sessions first.

19 THE CHAIR: Is Ms Skraban in the
20 court?

21 MR. HUNT: No, we asked her to
22 wait outside.

23 AFFIRMED: LIVIA SESSIONS

24 EXAMINATION-IN-CHIEF BY MR. HUNT:

25 Q. I understand that you are the

1 registrar of Divisional Court here in Ontario.

2 A. Yes.

3 Q. When did you become the
4 registrar?

5 Q. I became the registrar in
6 June 2005.

7 Q. Had you worked in the
8 Divisional Court prior to that?

9 A. No, I was the executive
10 assistant to the deputy judges' counsel prior to
11 that.

12 Q. Can you please tell us, in
13 terms of setting down cases for hearings, what your
14 responsibilities included?

15 A. At that time, I was
16 responsible for all scheduling before the panel of
17 the Divisional Court.

18 Q. You are aware that we are
19 here today dealing with a matter that involved the
20 scheduling of the case generally referred to as the
21 SOS case, which took place in 2005.

22 A. Yes.

23 Q. I also understand that you
24 have searched your email files, and any other
25 documents you have.

1 Can you describe generally how you
2 became involved in the scheduling of that case?

3 A. I became aware of the case in
4 late September. At the Divisional Court, we
5 function in such a way that we work weeks in
6 advance.

7 As a result, we were preparing the
8 weekly list for the Divisional Court sittings the
9 week of October 3; so that would have been in late
10 September.

11 It was scheduled as a proceeding
12 to go before a single judge of the Divisional
13 Court. Coincidentally, the single judge who was
14 going to be hearing it was also the administrative
15 judge of the Divisional Court, and the principal I
16 report to with regards to scheduling.

17 When she became aware of it, we
18 had a discussion with regards to whether or not it
19 would be beneficial to have this matter heard by a
20 full panel as opposed to a single judge, pursuant
21 to Section 6(2) of the J.R.C. Act.

22 It was at that time that we were
23 both aware that our panel sitting in Sudbury would
24 only be sitting the Monday and Tuesday of the
25 following week, and therefore could be made

1 available to hear this matter as a second panel for
2 the Divisional Court.

3 Q. The single judge scheduled to
4 hear this matter, as I understand it, was Madam
5 Justice Swinton?

6 A. Yes, Madam Justice Swinton
7 was scheduled to hear it on Monday, October 3,
8 2005.

9 Q. Was there something about the
10 case that caused you to consider whether it might
11 better be dealt with by a panel, rather than by a
12 single judge?

13 A. When I first arrived as the
14 registrar in June 2005, there was a discussion with
15 the administrative judge in trying to facilitate
16 scheduling, specifically those urgent applications
17 that sometimes would go before a single judge that
18 would not meet the test of urgency, and then would
19 be bumped to a panel.

20 Her Honour felt that maybe if I
21 were to interject myself at the beginning and give
22 them that option, because we did have flexibility
23 in our calendar to allow counsel to come before a
24 full panel as opposed to bringing their urgent
25 applications.

1 This was one of those instances.

2 Q. The review of the case that
3 led to that conclusion, did that take place during
4 the week prior to the week in which it was actually
5 heard?

6 A. It would have taken place
7 around about the same time I would have sent the
8 email to the judges with regards to having it
9 scheduled before them in the week of October 3.

10 Q. We will look at it in a
11 moment, but you sent that email on Friday,
12 September 30, 2005, at about 3:24 p.m.

13 A. I would have had to have
14 spoken with counsel who were proceeding on the
15 application before a single judge, to ascertain if
16 they felt this was something they wanted to do, to
17 proceed before a panel.

18 I would not have unilaterally
19 decided that for them.

20 After I ascertained from all
21 counsel that they were agreeable to proceed before
22 a panel, we then had to develop a time frame as to
23 when they could possibly deliver their materials.

24 Once we were able to ascertain
25 that all counsel were available on the 6th and 7th,

1 the scheduling would have been finalized and we
2 would have advised the judicial members of that
3 panel that they would be required in Toronto to
4 hear the matter.

5 Q. Those discussions with
6 counsel obviously would have taken place prior to
7 the email that you sent on the 30th?

8 A. Indeed, yes.

9 Q. Would that have been the same
10 day, the day before, or days before?

11 A. It would have to have been
12 that week. But exactly when, I couldn't say.

13 Q. Prior to sending the email,
14 other than Madam Justice Swinton, did you have a
15 discussion about the case with any other judges?

16 A. This is three years that have
17 gone by, and I couldn't say for certain whether or
18 not I communicated with the judges prior.

19 I do know for certain that I sent
20 the email, because that is concrete; it is
21 something that I do have.

22 But I cannot say whether I did or
23 I did not.

24 Q. Perhaps we could turn to the
25 email, which is Appendix 42.

1 We see that it was sent with high
2 importance from you to Justices Greer, Matlow and
3 Macdonald, re SOS Save Our St. Clair Inc. v City of
4 Toronto with the file number, and this is Friday,
5 September 30, 2005, at 3:24 p.m.

6 A. That is correct.

7 Q. The email is copied to a
8 number of people. Madam Justice Swinton is the
9 first recipient, but then there is a list of names
10 that are not familiar to us in the context of this
11 hearing.

12 Is there any significance to the
13 people who were copied on this?

14 A. Yes, the significance has to
15 do with staffing the extra court, and also
16 obtaining a courtroom.

17 The Divisional Court in Toronto
18 only has two courtrooms assigned to it, so that if
19 we have two panels sitting, we would have to
20 acquire another courtroom because we have a panel
21 and a single judge sitting daily.

22 I sent a copy to John Reece, who
23 is responsible for compiling the materials and
24 delivering them to the judges. He is a staff
25 member in the Divisional Court office.

1 Rosemarie Skraban is assistant
2 registrar, and would also be aware of the filings
3 and the intake, and the fact this needed to go
4 before the panels.

5 Lynn McGregor at the time was the
6 EA to the RSJ, to advise them that this second
7 panel was going to be convened to hear this matter.

8 Susan Davieau is Lynn McGregor's
9 assistant.

10 Jacqui Soutar is trial coordinator
11 for civil matters, and also had some courtrooms at
12 Osgoode Hall. I copied her in the hope that she
13 might be able to free one up for this hearing.

14 Susan Mignardi was responsible as
15 a manager and supervisor for court staff, the court
16 reporting office.

17 Michael Fernandez was, at the
18 time, the manager and supervisor for court support,
19 meaning the registrar and the CSOs.

20 Christine Henderin was the group
21 leader for the court reporters' office, and Jeff
22 Hall was the group leader for court support
23 staffing.

24 So everyone was now aware that we
25 were not just using two courtrooms, but would be

1 using three, and that a second panel was going to
2 be convened.

3 In the body of the email, I am
4 asking for a second courtroom:

5 "By copy of this email to
6 Jacqui Soutar, may I request
7 the use of an additional
8 courtroom in Osgoode, as the
9 Divisional Courtrooms will be
10 in use for that day."

11 That was the reason for notifying
12 anyone and everyone who needed to be notified.

13 Q. This email you sent at the
14 top of a string of emails. If we go back to the
15 very first one, which was also sent on Friday,
16 September 30, 2005, at 2:42 p.m. from Rosemarie
17 Skraban, the assistant registrar, to Madam Justice
18 Swinton, with a copy to Helen Sessions and John
19 Reece, we see a little bit above that this was an
20 error, sending it to Helen Sessions, and that it
21 was meant to be sent to you.

22 A. Yes, she just picked the
23 wrong individual.

24 Q. Did Rosemarie Skraban have
25 any responsibilities, in respect of setting this

1 up, that preceded your email to the judges who were
2 going to be involved?

3 A. Rosemarie was responsible
4 from the outset, when counsel were bringing it
5 before a single judge as an urgent application
6 pursuant to Section 6(2).

7 She was responsible at that time
8 and scheduled it before a single judge. I believe
9 it was Madam Justice Lax that heard it sometime in
10 August.

11 At that time, counsel decided to
12 bring a motion to include another party, and it did
13 not proceed on the application. Madam Justice Lax
14 adjourned it to October 3, and Rosemarie, as the
15 trial coordinator for the single judge proceedings,
16 was dealing with that part of it.

17 When I had my discussions with
18 Madam Justice Swinton, who saw that this was coming
19 on her list as a single judge, about whether we
20 would put it before a second panel, Rosemarie was
21 involved with regards to communicating this option
22 to counsel and what their preference was.

23 Q. I notice that in the second
24 sentence of Ms Skraban's email, she indicates that
25 she:

1 "-- consulted with counsel
2 about adjourning the matter
3 to the panel. It has been
4 confirmed that all parties
5 are available on Thursday,
6 October 6, 2005."

7 Did you have any understanding as
8 to what was meant by "all parties"?

9 A. Probably all counsel, all of
10 the parties noted in the application, that they
11 would be available.

12 Q. In the next email in the
13 chain, she is now sending it to you with apologies
14 that she had sent the message to Helen Sessions in
15 error.

16 A. Yes.

17 Q. Her email advising Madam
18 Justice Swinton of the fact that it is going to go
19 before a panel on Thursday, October 30, was sent at
20 2:42 p.m., which is forty minutes or so before you
21 sent yours.

22 Does that suggest that this
23 decision to move it to a full panel and to pick
24 that date had been made sometime prior to 2:42?

25 A. If she is confirming it, I

1 would suspect that is the case.

2 Q. Do you have any recollection
3 of when on the 30th you made the decision to do
4 this?

5 We know when you notified the
6 three judges on the panel. But was this something
7 that had just been finalized within, let's say, the
8 forty-five minutes before you notified the judges,
9 or was it something decided earlier in the day?

10 A. Mr. Hunt, all I can say,
11 given the fact that it is now three years, is that
12 once we had confirmation that counsel were
13 available, that is when we would have sent the
14 email.

15 Q. Did you leave any voicemail
16 for anyone in respect of this?

17 A. It is three years ago, and I
18 couldn't say that I did, and I could not say that I
19 didn't.

20 Q. Is it your general practice
21 to rely only on emails, or do you rely on both
22 emails and voicemails when you were sending --

23 A. I would have to say that now,
24 having been the registrar for three years, I rely
25 on both.

1 At the time, I was very green and
2 I am not sure whether I had left voicemails for the
3 judges or not.

4 Q. You have indicated that you
5 are not able to say, one way or the other, whether
6 you spoke to the judges involved before you sent
7 the email.

8 After you sent the email, do you
9 have any recollection of speaking with any of the
10 judges on the panel, Matlow, Greer or Macdonald?

11 A. If anything, I would have
12 confirmed -- this is assuming that I did, but I
13 believe I may have confirmed that we had received
14 the materials from counsel, and those materials
15 were now waiting for them in their chambers.

16 Q. That would have been when?

17 A. That would have been prior to
18 the date of the hearing.

19 Q. I understand that most email
20 systems have a function which requires that a
21 receipt be received by the sender --

22 Q. Do you mean the tracking?

23 Q. -- that indicates when the
24 email has been read or opened?

25 A. I am familiar with that, but

1 I can tell you that it is my practice not to track
2 the judges' who sit on the Divisional Court, and
3 the emails that I send.

4 I just don't feel comfortable
5 doing that.

6 MR. HUNT: Thank you, those are
7 all the questions I have.

8 CROSS-EXAMINATION BY MR. CAVALLUZZO:

9 Q. I am looking at Tab 42, the
10 emails you were just referring to, and I note that
11 the email to you from Rosemarie came at 2:54 p.m.,
12 correct?

13 A. Yes.

14 Q. So 2:54 p.m., would that be
15 the first time you were aware that counsel were
16 prepared to have the matter heard before a panel,
17 rather than a single judge?

18 A. I would have to say yes.

19 Q. Subsequent to that time, at
20 3:24 p.m., you sent this email to the three
21 justices, as well as administrative staff?

22 A. Correct.

23 Q. The evidence before this
24 panel is that Justices Greer and Macdonald did not
25 know about them sitting on the panel until the

1 Monday or Tuesday, October 3 or 4. You have no
2 evidence to contradict that, do you?

3 A. No.

4 MR. CAVALLUZZO: Thank you, I
5 have no further questions.

6 THE CHAIR: The subpoena
7 requested that you bring whatever documents you had
8 relevant to this matter.

9 Are there any other documents that
10 we do not have, that might be relevant?

11 THE WITNESS: Your Honours, the
12 only thing I have is my annual calendar, that
13 indicates that Sudbury was only going to be sitting
14 Monday and Tuesday.

15 That gave us the option of using
16 the Sudbury panel for the SOS matter.

17 I have the calendar where I mark
18 the matters that are listed for the day when I do
19 the scheduling, and I indicate that October 6 will
20 be a full-day panel for the SOS matter.

21 Beyond that, I have nothing more.

22 THE CHAIR: In the ordinary
23 course, would you inquire of the judges as to the
24 availability to sit? Or would you just assume it
25 at the time?

1 THE WITNESS: When they are
2 scheduled to sit for the Divisional Court, whether
3 it be in Toronto or outside Toronto, they are
4 expected to sit the week.

5 If we need them for convenience,
6 where one of the panelists in Toronto may not be
7 available, then we go do those switches. So they
8 are expected to sit.

9 THE CHAIR: In this particular
10 case, it was Justice Matlow's evidence that he
11 received from you an inquiry as to whether he would
12 be willing -- I believe those were the words he
13 used -- to return from Sudbury on Tuesday night to
14 sit on this urgent matter on Thursday.

15 THE WITNESS: I probably would
16 have called the judges out of courtesy, to ask them
17 their availability -- specifically so, because I
18 know Madam Justice Greer hails from Sudbury and has
19 family members there.

20 So that may have been the case. I
21 just don't have that recollection at the moment, I
22 am sorry.

23 THE CHAIR: The reason I ask is
24 because one of the concerns the Committee has is
25 Justice Matlow's evidence that he received an

1 inquiry -- I believe he said specifically an email,
2 but it might have been otherwise -- as to whether
3 he would be willing to sit.

4 But the emails before us at Tab 42
5 simply schedule the date; there is not an inquiry
6 as to willingness.

7 If there was no email as to the
8 willingness to sit, was there some other means by
9 which that inquiry was made?

10 THE WITNESS: It would have
11 probably been via telephone, a global message for
12 the panelists that were going to Sudbury, to let
13 them know that we had this matter potentially, and
14 if they would be agreeable to sitting on the 6th,
15 with the possibility of it spilling over into
16 Friday, the 7th.

17 THE CHAIR: In the ordinary
18 course, would you just simply direct the panel that
19 was sitting in Sudbury to return to Toronto,
20 without asking about their availability to do so?

21 THE WITNESS: No.

22 JUSTICE ROLLAND: Would it be
23 part of your procedure to inquire as to not only
24 their availability to sit, but if they are in a
25 situation of a conflict of interest, or if there is

1 any reason why they could not sit or hear counsel?

2 Would you check if the members of
3 the panel would be in conflict with counsel or one
4 of the parties?

5 THE WITNESS: I can say that my
6 practice now is to determine whether there is a
7 conflict.

8 I cannot say for sure that I
9 contacted the judges and let them know that this
10 was the matter, and these were the counsel. I also
11 cannot say that I did not.

12 It is just that I do not remember
13 at this point.

14 THE CHAIR: Thank you. Do either
15 counsel have any questions arising out of the
16 panel's questions?

17 MR. HUNT: I do not.

18 MR. CAVALLUZZO: I don't either.

19 THE CHAIR: Thank you for your
20 courtesy in being here this morning. The panel
21 appreciates it.

22 MR. HUNT: I will now call
23 Rosemarie Skraban.

24 SWORN: ROSEMARIE SKRABAN

25 EXAMINATION-IN-CHIEF BY MR. HUNT:

1 Q. I understand that you are
2 assistant registrar of the Divisional Court.

3 A. Yes.

4 Q. When did you take on that
5 position?

6 A. It was about ten years ago,
7 and I have been employed with the Divisional Court
8 for twenty-five years.

9 Q. As assistant registrar, could
10 you describe what your duties and responsibilities
11 are when it comes to scheduling matters for the
12 court?

13 A. At that time, I was the
14 scheduling coordinator for single judge hearings.

15 Q. And by "that time", you are
16 referring to October 2005?

17 A. That is right.

18 Q. What kinds of hearings were
19 single judge hearings?

20 A. They were appeals from Small
21 Claims Court, appeals from a Master, motions, and
22 judicial reviews on an urgent basis under Section
23 6(2) of the Judicial Review Procedure Act.

24 Q. You are aware that part of
25 this hearing deals with a case called SOS Save Our

1 St. Clair Inc. versus the City of Toronto?

2 A. Yes, I am.

3 Q. Do you remember that case?

4 A. Yes, I do.

5 Q. We have heard that the case
6 was originally scheduled to be heard in front of a
7 single judge as a matter of urgency.

8 A. Yes.

9 Q. And we have heard that it was
10 scheduled to be heard before Madam Justice Swinton,
11 is that correct?

12 A. That is correct.

13 Q. Did you participate in
14 scheduling the matter before Madam Justice Swinton?

15 A. Yes.

16 Q. Do you remember the
17 circumstances of that?

18 A. I scheduled the SOS matter to
19 be heard on October 3, 2005, before a single judge
20 on an urgent basis.

21 Q. Before scheduling that case,
22 did you speak to counsel involved? How do you make
23 the determination that it should be before a single
24 judge?

25 A. Counsel would contact me to

1 schedule the hearing. We always have to obtain a
2 hearing date before they set up a judicial review
3 application.

4 The application has to list the
5 hearing date.

6 Q. We understand that it was
7 rescheduled to be heard on Thursday, October 6,
8 2005, before a full panel.

9 A. That is right.

10 Q. Do you recall the
11 circumstances leading up to that?

12 A. I don't recall, as it is a
13 long time ago. But based on the email that I sent,
14 Madam Justice Swinton was to preside over single
15 judge hearings for that date, October 3, 2005, and
16 I was given instructions to consult with counsel as
17 to their availability to attend the hearing on
18 October 6, 2005, before a panel.

19 I consulted with counsel, and they
20 confirmed that all parties were available to attend
21 October 6, 2005, before a panel.

22 Q. You say you were instructed
23 to consult with counsel; who gave you those
24 instructions?

25 A. Madam Justice Swinton.

1 Q. We know your email was sent
2 on Friday, September 30, at 2:42 p.m. How long
3 before that point did you consult with counsel, and
4 settle on a date and a new panel?

5 Was it on that day, or the day
6 before? When did that process start?

7 A. I do not remember when I
8 consulted with counsel.

9 Most likely, Madam Justice Swinton
10 would have consulted with the registrar as to the
11 first available date to go before a panel, to see
12 if there was an opening before she would ask me to
13 consult counsel about their availability.

14 There would have to be an opening
15 in order to adjourn the single judge matter to the
16 panel.

17 Q. Looking at your email, which
18 is Appendix 42 to Exhibit No. 3 -- we have a chain
19 of emails here, and the first one appears to be
20 from you on Friday, September 30, 2005, at 2:42
21 p.m. to Madam Justice Swinton.

22 You are telling her that you have
23 consulted with counsel about adjourning the matter
24 to the panel, and it had been confirmed that all
25 parties were available for Thursday, October 6,

1 2005.

2 When you say that you consulted
3 with counsel and all parties were available, what
4 did you mean by that?

5 A. That all counsel on this
6 matter were available for this hearing, and did not
7 have any conflict, such as another hearing to
8 attend.

9 Q. Prior to confirming that to
10 Madam Justice Swinton, did you have any discussions
11 with anyone else, other than counsel, about the
12 matter being adjourned to October 6?

13 A. I do not recall. It is so
14 long ago, I really don't recall the details.

15 Q. What would your practice be
16 when you are rescheduling a matter from a single
17 judge to a panel, in terms of who you would speak
18 to about it before you confirmed it?

19 A. It would have to be on
20 instruction of the judge, and I would have to -- it
21 could be that I consulted with the registrar as to
22 the availability of scheduling three panel cases.

23 But I would go on the instruction
24 of either the registrar or the single judge that is
25 hearing the matter.

1 Q. Is it part of your practice
2 to speak to the judges on the panel to whom the
3 matter is going to be adjourned?

4 A. No. That would not be my
5 part, no.

6 Q. We see that you sent this
7 email, it appears in error, to a Helen Sessions.

8 A. That is right.

9 Q. And you correct that in the
10 next email, which you sent at 2:54 p.m., to Livia
11 Sessions apologizing for the error.

12 A. Yes, I did.

13 Q. At any point, did you have
14 any communication with the judges on the panel that
15 was going to hear this matter on October 6 -- that
16 is Justice Matlow, Greer or Macdonald?

17 A. No, I did not.

18 Q. After confirming to Madam
19 Justice Swinton and the registrar that all of the
20 parties were available, did you leave any messages
21 for any of the judges?

22 A. I don't recall. I do not
23 think so, but I really don't recall.

24 MR. HUNT: Thank you, those are
25 my questions.

1 MR. CAVALLUZZO: I have no
2 questions.

3 THE CHAIR: You have told us you
4 consulted with counsel on instruction from Madam
5 Justice Swinton. Did you have any discussion with
6 Madam Justice Swinton as to why the matter was to
7 be referred to a panel?

8 I understood this was being
9 treated as an urgent matter, and generally urgent
10 matters went before a single judge. This would
11 have been a departure from that.

12 Was there any discussion between
13 you and Madam Justice Swinton as to why this was to
14 go before a panel, rather than a single judge?

15 THE WITNESS: I don't think so.
16 Generally, judicial reviews on an urgent basis need
17 leave of the court to be heard.

18 When there is a single judge
19 hearing under Section 6(2), the judge has to give
20 leave for the matter to be heard by the Divisional
21 Court, because it is considered a Superior Court
22 case until leave is given.

23 Then, if the judge does not give
24 leave, the single judge has the discretion to
25 adjourn it to the panel.

1 I do not recall having a
2 discussion with Madam Justice Swinton as to why she
3 wanted to adjourn this matter to the panel.

4 THE CHAIR: I am thinking of the
5 affidavits that were filed in this matter, which
6 you may or may not have seen, by Mr. Graham Rempe,
7 who was legal counsel for the City of Toronto in
8 this matter.

9 He states:

10 "When the matter was
11 adjourned to October 3, 2005,
12 it was understood that it
13 would be heard before a
14 single judge. I then
15 received a telephone call
16 from Mr. Gillespie and
17 Patrick Duffy, co-counsel for
18 the TTC, on September 29,
19 2005.
20 Messrs. Gillespie and Duffy
21 advised, and I verily
22 believe, that Mr. Duffy had
23 been contacted by a clerk of
24 the court. The court clerk
25 indicated that the court

1 thought that this matter
2 should be heard by a panel of
3 the Divisional Court, as
4 opposed to a single judge."

5 The reference to "the court"
6 there, I take it, is a reference to Madam Justice
7 Swinton.

8 THE WITNESS: That is right. I
9 am sorry, but I don't recall that conversation.

10 THE CHAIR: Your email to Madam
11 Justice Swinton refers to "the panel":

12 "I consulted with counsel
13 about adjourning the matter
14 to the panel."

15 Did you know at that time who
16 would be the members of "the panel"?

17 THE WITNESS: No, I did not.

18 THE CHAIR: So the use of the
19 word "the", the very definite article, did not
20 refer to a specific panel?

21 THE WITNESS: No.

22 THE CHAIR: It simply means "a
23 panel"?

24 THE WITNESS: That is right.

25 MS. FREELAND: I am wondering if

1 you can indicate how the scheduling duties were
2 divided between Livia Sessions, the registrar of
3 the Divisional Court, and yourself.

4 THE WITNESS: Single judge
5 hearings were appeals from a Master, appeals from
6 Small Claims Court, any single judge motions, and
7 judicial reviews on an urgent basis under Section
8 6(2) of the Judicial Review Procedures Act.

9 All appeals expecting to go before
10 a panel were scheduled by Livia Sessions, the
11 registrar.

12 MS FREELAND: What role, if any,
13 would you play in considering whether a panel was
14 appropriate, or referring a scheduling matter to
15 another person to consider if a matter to be set
16 before a single judge was appropriate for a panel?

17 THE WITNESS: I do not play a
18 role in that.

19 THE CHAIR: That role, I take it
20 from what you have told us, would have been played
21 by Madam Justice Swinton?

22 THE WITNESS: That is correct.

23 THE CHAIR: Do counsel have any
24 questions arising from the questions asked by the
25 panel?

1 MR. HUNT: No, thank you, Chief
2 Justice.

3 MR. CAVALLUZZO: No questions,
4 thank you.

5 THE CHAIR: Thank you very much,
6 Ms Skraban, we appreciate your coming here today.

7 The panel proposes to adjourn for
8 a few minutes, to see whether there is anything
9 else we require today.

10 --- Recess at 10:46 a.m.

11 --- Upon resuming at 10:55 a.m.

12 THE CHAIR: The panel has no
13 further questions at this time, so we will adjourn
14 this session and proceed with preparing our final
15 report.

16 MR. CAVALLUZZO: Chief Justice, I
17 was going to file with you another letter, from
18 Justice Peter Howland, who was out the province at
19 the time.

20 He just responded to my letter to
21 him very recently, and has supplied us with another
22 letter concerning Justice Matlow, which I would
23 propose become part of Exhibit No. 6.

24 THE CHAIR: Mr. Hunt, you have no
25 objection?

1 MR. HUNT: No objection.

2 THE CHAIR: That will be part of
3 Exhibit No. 6.

4 Thank you, gentlemen.

5 --- Whereupon the hearing was adjourned
6 at 11:02 a.m.

I HEREBY CERTIFY THAT I have, to the best of my skill and ability, accurately recorded by Stenomask and transcribed therefrom, the foregoing proceeding.

Nancy Greggs, CCR