

**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. 7A, Toronto, Ontario  
on Tuesday, January 8, 2008 at 10:05 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

Counsel to the Inquiry Committee

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1 Toronto, Ontario  
2 --- Upon commencing on Tuesday, January 8, 2008  
3 at 10:05 a.m.

4 THE CHAIR: Please be seated.  
5 This is an inquiry committee constituted pursuant  
6 to section 63 of the Judges Act to conduct an  
7 investigation into a complaint made by the city  
8 solicitor of the City of Toronto against the  
9 Honourable Mr. Judge Ted Matlow of the Ontario  
10 Superior Court of Justice.

11 Are counsel ready to proceed?

12 MR. HUNT: Yes.

13 MR. CAVALLUZZO: Yes, we are.

14 THE CHAIR: Mr. Hunt.

15 SUBMISSIONS BY MR. HUNT:

16 MR. HUNT: Thank you, Chief  
17 Justice. I believe the first matter of business  
18 this morning relates to a letter that both Mr.  
19 Cavalluzzo and I received on December 4th of 2007  
20 from inquiry committee counsel, Nancy Brooks,  
21 indicating that at the hearing today the committee  
22 would like to hear from counsel with respect to  
23 whether or not the committee, in order to carry out  
24 its mandate under the Judges Act, should consider  
25 four particularized items.

1                   We have had some discussion, my  
2 friend and I. I don't believe we are in complete  
3 agreement on the answer to that question so I think  
4 perhaps it might require some submissions to the  
5 committee on that issue.

6                   THE CHAIR: Did you wish to make  
7 submissions?

8                   MR. HUNT: Yes. I think perhaps  
9 for the purposes of this issue, some material  
10 should be filed with the committee. I think you  
11 have perhaps most of it, but I think the record  
12 should reflect it.

13                   I think perhaps we should file on  
14 this issue the complaint letter, which is dated  
15 January 30, 2006, addressed to the Canadian  
16 Judicial Council by Ms. Anna Kinastowski, the city  
17 solicitor for Toronto, and that complaint letter  
18 was accompanied by a binder containing a number of  
19 documents, and I suggest that that should be  
20 Exhibit 1 on this, call it, an application, I  
21 guess.

22                   THE CHAIR: Do you agree, Mr.  
23 Cavalluzzo?

24                   MR. CAVALLUZZO: Yes, I do. For  
25 my own information, does the panel or committee

1 have a copy of this book of documents, as well as  
2 the complaint?

3 THE CHAIR: Yes, we do have that.

4 MR. CAVALLUZZO: You do have that?

5 THE CHAIR: Yes. That is filed as  
6 Exhibit 1.

7 MR. HUNT: Exhibit 1 on this  
8 application.

9 EXHIBIT NO. 1: Letter to the  
10 Canadian Judicial Council  
11 from Anna Kinastowski, city  
12 solicitor, dated January 30,  
13 2006.

14 MR. HUNT: I would suggest that  
15 Exhibit 2 on the application should be the letter  
16 of December 4th, 2007 that I referred to that sets  
17 out the four particularized issues.

18 THE CHAIR: Again, you agree, Mr.  
19 Cavalluzzo?

20 MR. CAVALLUZZO: Yes.

21 THE CHAIR: That will be Exhibit  
22 2.

23 EXHIBIT NO. 2: Letter to  
24 counsel from Nancy Brooks  
25 dated December 4, 2007.

1 MR. HUNT: The question that was  
2 asked of counsel was, essentially:

3 "-- whether the committee in  
4 order to carry out its  
5 mandate under the Judges Act  
6 should consider --"

7 And then there are four items.

8 The first was:

9 "Whether the conduct of  
10 Justice Matlow in taking the  
11 role he did in the Thelma  
12 Road Project controversy, and  
13 making out of court  
14 statements in relation to  
15 same, constituted conduct  
16 which, in the mind of a  
17 reasonable, fair minded and  
18 informed person, would  
19 undermine confidence in his  
20 impartiality with respect to  
21 the City of Toronto and  
22 issues relating to the City  
23 of Toronto that could come  
24 before the courts."

25 A second issue raised was whether

1 the committee should consider that:

2 "Given Justice Matlow's  
3 participation in the Thelma  
4 Road Project controversy, his  
5 failure to take steps to  
6 ensure that he did not sit on  
7 any matter involving the City  
8 of Toronto."

9 I think those two are linked. It  
10 is my understanding, and I don't speak for my  
11 friend, but in our discussions over the last week,  
12 I don't believe that items 3 and 4 are in issue.  
13 In other words, I believe my friend agrees, but I  
14 will leave that to his submissions.

15 In the submission of independent  
16 counsel, all four items raised are appropriate for  
17 the committee to consider, particularly in light of  
18 the mandate that it is required to carry out, which  
19 under the Judges Act is to investigate the  
20 complaint. The complaint itself, which the letter  
21 -- I don't intend to refer to the documents in the  
22 brief.

23 The letter itself, which is  
24 Exhibit 1 on this application, makes reference to a  
25 number of specific items, but, in particular, if I



1 could direct your attention to page 3 of Ms.  
2 Kinastowski's complaint letter. Does everyone have  
3 one, because we have some extras?

4 THE CHAIR: If we could have a  
5 copy of it?

6 MR. HUNT: As I understand my  
7 friend's objection, and, again, I won't put his  
8 argument forward, but I believe it is to this  
9 effect, that items 1 and 2, issues 1 and 2 in the  
10 letter of December 4th, 2007, really go beyond the  
11 complaint as set out in Ms. Kinastowski's letter of  
12 January 30th, 2006, and, therefore, are beyond the  
13 jurisdiction of the panel because they are not part  
14 of the complaint.

15 What I would suggest is they are  
16 part of the complaint, and at page 3 of Ms.  
17 Kinastowski's letter, the penultimate paragraph,  
18 the second last sentence beginning with the words,  
19 "Given these unfortunate circumstances", Ms.  
20 Kinastowski complained that:

21 "Given these unfortunate  
22 circumstances, the public,  
23 particularly the public that  
24 the City is charged to  
25 represent, can no longer be

1                   confident that Justice Matlow  
2                   will be fair and impartial in  
3                   adjudicating matters  
4                   involving the City or indeed  
5                   in other matters in which he  
6                   may take a personal  
7                   interest."

8                   In my submission, that is  
9                   essentially what is set out in items 1 and 2 of the  
10                  December 4th letter. It is covered by the  
11                  complaint, simply as particularized in item 1 and  
12                  further particularized in item 2, and that the  
13                  panel is entitled and, indeed, should consider  
14                  those issues in the context of discharging its  
15                  mandate under the Judges Act.

16                  We received notice of this from  
17                  Ms. Brooks on December 4th, 2007. To the extent  
18                  that items 1 to 4 might be considered to be further  
19                  particulars of the allegations, I would suggest  
20                  that we have certainly had enough time to consider  
21                  this matter and to take into account the  
22                  possibility that these may become additional  
23                  particulars, and we are certainly ready to address  
24                  them in the context of the hearing.

25                  Those are the submissions that I

1 would make. They are premised, of course, on the  
2 fact that items 3 and 4 are not in issue as per our  
3 discussions. Thank you.

4 THE CHAIR: Thank you, Mr. Hunt.  
5 Mr. Cavalluzzo.

6 SUBMISSIONS BY MR. CAVALLUZZO:

7 MR. CAVALLUZZO: Thank you, Chief  
8 Justice. As a point of procedure, how would you  
9 prefer to be referred to during these proceedings,  
10 as Chief Justice or Commissioner?

11 THE CHAIR: Chief Justice is fine.

12 MR. CAVALLUZZO: Thank you. In  
13 response to my friend's submissions, our submission  
14 relating to the letter of December the 4th is  
15 somewhat more complicated than he states. We are  
16 in agreement that paragraphs 3 and 4, matters 3 and  
17 4, as found in that letter are part of your mandate  
18 and, indeed, are part of the notice of hearing.

19 Certainly we have four grounds as  
20 to why we respectfully submit that the committee  
21 should not hear evidence and argument relating to  
22 the general question as to whether Justice Matlow  
23 should sit on any City of Toronto matter, and that  
24 really focuses on paragraphs 1 and 2 of the letter  
25 of December 4th.

1                   Really now in response to my  
2 friend's submissions, I have five arguments now.  
3 Dealing first with his argument that the complaint  
4 of the city solicitor raises the question as to  
5 whether he should have sat on the five cases in  
6 which he did sit and which is part of the evidence,  
7 you will see that what the city solicitor is  
8 referring to is a future direction, and that is  
9 that he should no longer sit on City of Toronto  
10 cases.

11                   We have evidence that Justice  
12 Matlow did sit on five City of Toronto cases, and  
13 there is not one issue in that complaint letter  
14 relating to the fact that he did sit on five cases  
15 before the SOS application came before the panel of  
16 the Divisional Court.

17                   So that we submit that it is not  
18 referred to in the letter of complaint, but there  
19 are more important reasons as to why you should not  
20 consider this additional matter. For example,  
21 referring to the letter itself of December 4th,  
22 and, for example, paragraph 1 states as a result of  
23 his activities:

24   "Whether that constituted  
25   conduct which in the mind of

1 the reasonably fair minded  
2 and informed person, would  
3 undermine confidence in his  
4 impartiality with respect to  
5 the City of Toronto and  
6 issues relating to the City  
7 of Toronto, that could become  
8 before the courts."

9 And (ii):

10 "Given his participation in  
11 the Thelma Road Project  
12 controversy, his failure to  
13 take steps to ensure that he  
14 did not sit on any matter  
15 involving the City of  
16 Toronto."

17 As I said before, there is no  
18 complaint whatever from the city in the complaint  
19 that he did sit on those five cases previous to the  
20 SOS application.

21 Let me go on to provide four other  
22 grounds as to why the committee should not consider  
23 what I view to be expanded grounds. The first  
24 point is whether Justice Matlow should sit on any  
25 case involving the City of Toronto as a result of

1 his past activities in the Thelma Road project is  
2 really a question of recusal which falls within his  
3 individual discretion as a judge, and for the  
4 arguments I presented in the motions in November of  
5 2007, is a matter over which the Court of Appeal of  
6 this province has jurisdiction, but not this  
7 committee.

8                   So the first point is that it  
9 isn't really a recusal issue which falls within the  
10 individual discretion of the judge.

11                   The second point I would raise is  
12 that Justice Matlow's actions throughout the Thelma  
13 Road project were public and transparent and were  
14 well known, were well known to the City of Toronto,  
15 which of course is the person or party which would  
16 be directly affected by his activities.

17                   If they did not object to his  
18 presence on any panel, including the SOS panel, we  
19 submit it is difficult to see how that can be an  
20 issue before this committee. In other words, if a  
21 party directly impacted didn't raise an issue, then  
22 we submit that that should not be an issue before  
23 this panel.

24                   THE CHAIR: Wouldn't that be a  
25 matter for the Court of Appeal, not us?

1 MR. CAVALLUZZO: Absolutely.

2 THE CHAIR: Items 1 and 2 refer  
3 to, in particular, Justice Matlow's conduct.

4 MR. CAVALLUZZO: That is correct,  
5 but it is once again related to whether he should  
6 sit on matters where the city is a party, and we  
7 respectfully submit that no matter how you slice  
8 that matter, that it is a question of recusal over  
9 which this committee has no jurisdiction and over  
10 which the Court of Appeal does have jurisdiction if  
11 an error has been made.

12 It is important to note that in  
13 the evidence before you in the statement of facts  
14 which will be filed is that when it came to the SOS  
15 application, the city did not take the position  
16 that he should not have sat on the five previous  
17 cases. The city took the position that there was a  
18 similarity of issues between the SOS matter and the  
19 Thelma matter. That was the city's position.

20 There was no general attack that  
21 he should never have sat on any City of Toronto  
22 matter.

23 The third point, additional point,  
24 is a matter of procedure and fairness, and this is  
25 the only operating procedures requirements

1 respecting this panel or the committee, of course,  
2 is that it is a question of fairness, and that is  
3 that the issue of Justice Matlow sitting on City of  
4 Toronto cases, per se, not SOS, the SOS case, was  
5 never an issue before the panel which was struck in  
6 order to determine whether an investigation should  
7 be made, and it was never an issue before the  
8 Canadian Judicial Council that made a determination  
9 as to whether an investigation should be made  
10 pursuant to section 63 of the Judges Act.

11                   If you read the complaint  
12 procedures of the Canadian Judicial Council, you  
13 will see it is premised on a panel being struck, a  
14 panel doing an investigation, a panel making a  
15 report, the report going to the counsel for the  
16 justice or the judge making representations to the  
17 Canadian Judicial Council on the basis of the  
18 panel's report.

19                   JUSTICE VEALE: When you say  
20 "panel", do you mean the inquiry committee?

21                   MR. CAVALLUZZO: No. Do you have  
22 the complaints procedure before you? If you do, I  
23 would like to take you to it.

24                   JUSTICE VEALE: You are referring  
25 to the inquiries and investigation bylaws?



1 MR. CAVALLUZZO: I'm referring to  
2 something that is called the procedures for dealing  
3 with complaints made to the Canadian Judicial  
4 Council about a federally employed judge and  
5 generically called "complaints procedures".

6 JUSTICE VEALE: Thank you.

7 MR. CAVALLUZZO: If you have that  
8 in front of you, I can just briefly take you to the  
9 points. For example, if you refer to page 7 or  
10 paragraph 9, and that is called "consideration by a  
11 panel", and this is a panel which has been  
12 appointed by the executive director to investigate.  
13 You will see that in paragraph 9.6(d), and that is  
14 what happened in this case that:

15 "The panel shall review the  
16 file, including the council's  
17 report, if any, and may --"

18 And (d):

19 "Make a recommendation to the  
20 council that an inquiry  
21 committee be constituted  
22 under 63.3 of the Judges  
23 Act."

24 If you move now to paragraph 10 or  
25 section 10, you will see that this is how this

1 particular committee was created. In 10.1, it  
2 states that:

3 "Before the council considers  
4 the panel's report, the  
5 chairperson shall name those  
6 council members who will be  
7 members of the inquiry  
8 committee and designated  
9 chair."

10 Et cetera. And then if you move  
11 to 10.3, it says:

12 "The judge shall be entitled  
13 to make written submissions  
14 to the council as to why  
15 there should or should not be  
16 an investigation under 63.2."

17 And then 10.4 is:

18 "What will happen after  
19 considering the panel's  
20 report and the submissions of  
21 the judge, the council shall  
22 decide --"

23 And (b) that:

24 "An investigation shall be  
25 held under of 63.2 of the

1 Act." (As read)

2 It is our respectful submission  
3 that the basis of the creation of this committee is  
4 that the matters or the issues were determined by  
5 the panel, and indeed ultimately by the council,  
6 which made its decision based on the panel's  
7 report, as well as the written submissions of  
8 counsel for Justice Matlow, and that to expand the  
9 grounds, in my respectful submission, now would be  
10 outside that procedure and that as a result of the  
11 procedure which has been adopted by the Canadian  
12 Judicial Council, we submit that the committee  
13 should not review the matters 1 and 2 in that  
14 letter.

15 The final point, your honours, is  
16 a question of fairness, and that is that the five  
17 cases upon which Justice Matlow did sit all raised  
18 separate and distinct issues. We don't have a  
19 detailed background of each of these cases. We  
20 don't have ideas of who the counsel were, what the  
21 nature of the issues were, what the nature of the  
22 application was, what the court was, and certainly  
23 on behalf of Justice Matlow, we are in no position  
24 today to give a detailed response or defence to  
25 these five particular cases.

1                   This wasn't part of the case, in  
2 my respectful submission, that Justice Matlow was  
3 called upon to defend against.

4                   I will make one final comment. If  
5 your position is, Well, we will not review those  
6 five cases, but, based upon the evidence that we  
7 have heard in the agreed statement of fact, as well  
8 as the vivo voice evidence which you will hear, we  
9 will recommend that Justice Matlow never sit on a  
10 City of Toronto case in the future, then I can deal  
11 with that in argument and legal submissions to you  
12 as to whether you should or whether you have  
13 jurisdiction to make that recommendation, but as  
14 far as the five past cases are concerned, we submit  
15 that you should not review them, as this is not  
16 appropriately a matter before you.

17                   Unless you have any questions,  
18 your honours, that will complete the submissions on  
19 behalf of Justice Matlow.

20                   THE CHAIR: No, we have no  
21 questions for you, Mr. Cavalluzzo. Do you wish to  
22 say anything in reply, Mr. Hunt?

23 REPLY SUBMISSIONS BY MR. HUNT:

24                   MR. HUNT: Yes, thank you, Chief  
25 Justice, just briefly, if I might. I certainly

1 didn't take the issue raised by questions 1 and 2  
2 as an indication that the five cases that are  
3 referred to in paragraph 53 of the agreed statement  
4 of fact were now issues that were going to be  
5 examined in the course of this inquiry, nor did I  
6 take it as an indication that Justice Matlow needed  
7 to be prepared to defend his conduct in relation to  
8 those cases.

9                                 Rather, I took it, items 1 and 2,  
10 as simply a particularized statement of the  
11 complaint that was raised by the city solicitor in  
12 her letter of January 30th, 2006, and I have  
13 referred you to that.

14                                 In my submission, as framed, they  
15 are matters of conduct of the judge and that this  
16 hearing is governed by really two things. One, it  
17 is the Judges Act, part 2, dealing with the  
18 Canadian Judicial Council, and, in particular,  
19 section 63.2, which says:

20   "The council may investigate  
21   any complaint or allegation  
22   made in respect of a judge of  
23   the Superior Court."

24                                 The complaint here is Exhibit 1 on  
25 this application, the letter from Ms. Kinastowski.

1                   The second governing provision is  
2 the text of the resolution adopted by the Canadian  
3 Judicial Council on the 3rd of April 2007, and if  
4 you don't have that, we can certainly make it  
5 available, but it says that:

6                   "Having considered the report  
7 and recommendations of the  
8 panel convened pursuant to  
9 the complaints procedure, and  
10 having considered the  
11 submissions made on behalf of  
12 the Honourable Ted Matlow of  
13 the Ontario Superior Court of  
14 Justice, the Canadian  
15 Judicial Council hereby  
16 constitutes an inquiry  
17 committee to investigate the  
18 conduct of Justice Matlow in  
19 accordance with the  
20 provisions of the Judges  
21 Act." (As read)

22                   Those provisions state that the  
23 council may investigate any complaint or allegation  
24 made in respect of a judge of the Superior Court.  
25 It takes us, in my submission, right back to the

1 complaint letter, Exhibit 1 on this application.  
2 The items 1 and 2 simply raise issues of conduct on  
3 the part of Judge Matlow and that they come  
4 directly from the portion of the complaint letter  
5 that I referred to.

6 JUSTICE VEALE: To clarify for  
7 myself, Mr. Cavalluzzo, is the issue you are  
8 raising with respect to questions 1 and 2 in the  
9 December 4, 2007 letter going only to the issue of  
10 the five previous cases that Justice Matlow sat on?

11 MR. CAVALLUZZO: No, it is  
12 somewhat broader than that, because there was never  
13 an issue in any of the matters up to this point in  
14 time, in my respectful submission, relating to  
15 almost like a general direction that because of his  
16 activities in the Thelma matter, Justice Matlow  
17 should never sit or should never have sat on any  
18 City of Toronto cases.

19 Everything was focussed on the SOS  
20 application and that was the position --

21 JUSTICE VEALE: So I understand it  
22 clearly, if those five cases are not in the mix,  
23 they are not on the record, they are not before us,  
24 the question is: I understand your position is  
25 that you have no difficulty with that, because you

1 can make submissions on it?

2 MR. CAVALLUZZO: Right. Yes, my  
3 position would be -- I don't want to surprise you.  
4 My position would be that you shouldn't, because  
5 you don't have jurisdiction, for the reasons I  
6 gave.

7 THE CHAIR: Before you sit down,  
8 Mr. Cavalluzzo, you agree that the appendix that  
9 was attached to the letter is part and parcel of  
10 the letter, in that it sets out the factual details  
11 to support the allegations made in the letter?

12 MR. CAVALLUZZO: That is the book  
13 of documents, if we can call it that?

14 THE CHAIR: I was thinking more  
15 particularly of the first segment styled  
16 "appendix", which was referred to in the letter, as  
17 I recall it.

18 MR. CAVALLUZZO: Yes, Chief  
19 Justice.

20 THE CHAIR: You agree that that is  
21 part of it?

22 MR. CAVALLUZZO: Yes.

23 THE CHAIR: Would you not agree  
24 that item 2 of the letter makes no reference to any  
25 one or all of the five cases to which you refer?



1 They don't become part of the issue. The content  
2 of them or what they dealt with is a matter for the  
3 Court of Appeal, not for us.

4 MR. CAVALLUZZO: Chief Justice, in  
5 my respectful submission, the matter that is raised  
6 in the letter of December 4th is broader than that.  
7 It seems to me the point is should Justice Matlow  
8 have ever sat on a City of Toronto case after the  
9 Thelma situation, and it is not just the five cases  
10 on which he sat, of course. A factual point is  
11 very relevant. There was absolutely no objection  
12 to him sitting on any City of Toronto case prior to  
13 his judgment in the SOS application.

14 THE CHAIR: We understand that  
15 reflects historically what the situation was. I am  
16 going to ask you to turn now to appendix 47 of  
17 volume 5 of the five volumes attached to the agreed  
18 statement of facts. This is the e-mail sent by  
19 Justice Matlow on October 2nd, 2005 to Mr. John  
20 Barber.

21 MR. CAVALLUZZO: I think, Chief  
22 Justice, I will respond to that, but before we get  
23 into that, perhaps as a matter of jurisdiction we  
24 should have these made as exhibits in this hearing.

25 THE CHAIR: Do you have a view on

1 that, Mr. Hunt?

2 MR. HUNT: At any point we can  
3 make them exhibits. It had been my intention  
4 before the hearing proper started to file the  
5 agreed statement of fact and the appendices as an  
6 exhibit for this panel.

7 THE CHAIR: If you want to do it  
8 now, if Mr. Cavalluzzo wishes it, the next number  
9 of the exhibit is Exhibit 3. Would this whole  
10 agreed statement of facts and five back-up volumes  
11 constitute Exhibit 3?

12 MR. CAVALLUZZO: That is fine.

13 THE CHAIR: Do you agree, Mr.  
14 Hunt?

15 MR. HUNT: Yes, I do.

16 THE CHAIR: That is submitted as  
17 Exhibit 3.

18 EXHIBIT NO. 3: Agreed  
19 statement of facts and five  
20 back-up volumes.

21 THE CHAIR: If you will turn to  
22 tab 47 of Exhibit 3, which is a copy of what is  
23 expressed to be an e-mail sent by Justice Matlow to  
24 Mr. John Barber on October 2nd, 2005, this, as I  
25 recall, would have been at least a year after the

1 Thelma Road/Spadina matter came to a halt in the  
2 Municipal Board and the Ontario Superior Court.

3                   In that letter, it appears that  
4 Justice Matlow started out by saying that he lived  
5 on Thelma Avenue and Spadina Road and he was a  
6 Superior Court judge. He then describes what had  
7 been the issue at Thelma Road. He then says:

8                   "My story is far from over.  
9                   Strange things continue to  
10                  happen. Perhaps now that you  
11                  know and have written about  
12                  what goes on at City Hall,  
13                  you might like to hear my  
14                  story."

15                  Does that not constitute some  
16 basis on which this committee carrying out its  
17 duties under the Judges Act might consider items 1  
18 and 2, item 2 in particular?

19                  MR. CAVALLUZZO: Respectfully,  
20 Chief Justice, once again, my point is that the  
21 general question as to whether he should ever have  
22 sat on a City of Toronto case after Thelma was  
23 never raised before this time, either before the  
24 panel or before the Canadian Judicial Council.

25                  When you hear evidence regarding

1 this e-mail where it refers to "strange things  
2 continue to occur", that will be in reference, that  
3 is in reference to what is called the Bellamy  
4 report. The Bellamy report was published about two  
5 weeks before that, which related to many similar  
6 acts of misconduct by city officials, and that is  
7 what is being referred to by "strange things  
8 continue to occur", because Mr. Barber had written  
9 extensively on the Bellamy report and on the  
10 inquiry.

11 THE CHAIR: Do you want to say  
12 anything about the phrase, "my story is far from  
13 over", and the further phrase, "you might like to  
14 hear my story"?

15 MR. CAVALLUZZO: His story relates  
16 back, once again, to the Thelma project which, as  
17 you say, was over by that time.

18 THE CHAIR: In light of that, is  
19 your argument that the committee ought not to  
20 consider whether or not Justice Matlow ought to  
21 have sat on any particular case because it is a  
22 matter of recusal?

23 MR. CAVALLUZZO: No. Certainly as  
24 far as the SOS application is concerned, that is  
25 what we are here to deal with, and I have made my

1 arguments on whether you should look at those  
2 issues of whether he should have notified his  
3 colleagues, and so on and so forth, in the  
4 preliminary motion on jurisdiction, but certainly  
5 as far as the SOS matter is concerned, that is what  
6 we are here to deal with and are prepared to deal  
7 with that, subject to submissions I may make at the  
8 end of the day relating back to my preliminary  
9 arguments related to recusal, but we are prepared  
10 to meet this issue head on. Thank you.

11 THE CHAIR: Did you wish to  
12 comment on anything arising out of that, Mr. Hunt?

13 MR. HUNT: No, thank you.

14 THE CHAIR: We will adjourn to  
15 consider the application.

16 --- Recess at 10:44 a.m.

17 --- Upon Resuming at 11:11 a.m.

18 DECISION:

19 THE CHAIR: Please be seated.

20 The members of the panel retired  
21 to consider the application. We are agreed that  
22 the complaints letter clearly raises the issues  
23 identified in items 1 and 2 of the December 4th  
24 letter. Secondly, subsection 63.2 of the Act and  
25 Regulation 5.(1) authorizes investigation into any

1 relevant complaint or allegation brought to the  
2 committee's attention.

3                   These matters, having been brought  
4 to counsels' attention on December 4th, there has  
5 been adequate time to fully prepare to respond to  
6 them or to address them.

7                   I should incidentally advise you,  
8 Mr. Cavalluzzo, that you need have no concern about  
9 addressing specifically the five other cases  
10 involving the City of Toronto prior to the SOS  
11 matter. In those circumstances, the committee will  
12 consider argument related to the four items  
13 specified in the December 4th letter.

14                   Are you ready to proceed now?

15                   MR. HUNT: Yes, I am. I would ask  
16 the committee for guidance whether, in light of  
17 your ruling, the appendix A to the notice of  
18 hearing, which is the particulars, should be  
19 amended to reflect the four issues raised in the  
20 letter of December 4th?

21                   I don't know if my friend has a  
22 view on that.

23                   THE CHAIR: Do you have a  
24 particular view, Mr. Hunt?

25                   MR. HUNT: I believe that it

1 probably should be amended to reflect that, so that  
2 there is no question that those are four items that  
3 have been added, and I would suggest that they  
4 should be added, if the committee so desires, as  
5 subparagraphs to paragraph 35, and they would be  
6 subparagraphs (k), (l), (m) and (n) to 35.

7                                 We are certainly prepared to do  
8 that without any delay. I think they would have to  
9 be worded consistent with the particulars set out  
10 in that paragraph.

11                                 THE CHAIR: Do you have a view,  
12 Mr. Cavalluzzo?

13                                 MR. CAVALLUZZO: I have no  
14 position on that.

15                                 THE CHAIR: We are agreed, Mr.  
16 Hunt. We will leave it to you, having first  
17 consulted with Mr. Cavalluzzo, to express them in a  
18 manner that would be consistent with the structure  
19 of paragraph 35, and also to reflect specifically  
20 what is in the four items in the letter.

21                                 MR. HUNT: In order to be prepared  
22 so that there was no loss of time, I prepared them  
23 in such a manner. I haven't yet consulted with my  
24 friend. I could do that now, if the committee  
25 wishes.

1 THE CHAIR: Yes.

2 MR. CAVALLUZZO: That is fine,  
3 Chief Justice. By taking your position in respect  
4 of these four particulars, I am not abandoning my  
5 position on jurisdiction.

6 THE CHAIR: We understand your  
7 position, Mr. Cavalluzzo.

8 MR. HUNT: I am wondering, then,  
9 if we ought to file the document entitled "Notice  
10 of Hearing" dated October 9th of 2007, which has  
11 attached to it as appendix A the particulars, and  
12 then a document entitled "Amended Particulars"  
13 which will supersede those that were attached.

14 THE CHAIR: You are filing that  
15 document now as amended particulars?

16 MR. HUNT: Yes, if I could.

17 THE CHAIR: Do you want to give it  
18 a separate exhibit number, Mr. Hunt?

19 MR. HUNT: I believe the next  
20 exhibit is number 4, and again that would be  
21 appropriate. There are actually two documents  
22 here. There is the notice of hearing, and then the  
23 amended particulars. It could be 4-A and 4-B, if  
24 that is satisfactory.

25 THE CHAIR: The notice of hearing



1 is 4-A.

2 EXHIBIT NO. 4-A: Notice of  
3 hearing.

4 THE CHAIR: The amended  
5 particulars is Exhibit 4-B.

6 EXHIBIT NO. 4-B: Amended  
7 particulars.

8 THE CHAIR: So the record is  
9 absolutely clear, we have just designated the  
10 original notice of hearing that you filed as  
11 Exhibit 4-A and filed the amended particulars to be  
12 Exhibit 4-B.

13 MR. HUNT: Yes, thank you.

14 MS. FREELAND: Chief Justice, did  
15 Exhibit 4-A include the particulars attached prior  
16 to the amendment?

17 MR. HUNT: Yes, it does.

18 THE CHAIR: Are you ready to  
19 proceed?

20 MR. HUNT: Yes, thank you, Chief  
21 Justice. I would like to call the witness Mr. John  
22 Barber.

23 SWORN: JOHN BARBER.

24 THE CHAIR: The witness is sworn.

25 MR. HUNT: Thank you, Chief

1 Justice.

2 EXAMINATION-IN-CHIEF BY MR. HUNT:

3 Q. Mr. Barber, to assist you and  
4 to expedite this, I am going to put in front of you  
5 volume 5 of the appendices. That is Exhibit 2, I  
6 think. Exhibit 3.

7 THE CHAIR: Which volume is it?

8 MR. HUNT: Volume 5 of Exhibit 3.

9 THE CHAIR: Just before you do  
10 proceed, Mr. Hunt, are there any other witnesses in  
11 the room that either of you feel ought to be  
12 excluded?

13 MR. HUNT: I can say that the only  
14 witness I intend to call is Mr. Barber.

15 MR. CAVALLUZZO: I have two  
16 witnesses, other than Justice Matlow, who will not  
17 deal with this aspect of the case. They are not  
18 dealing with the e-mails to Mr. Barber.

19 BY MR. HUNT:

20 Q. Mr. Barber, I will take you  
21 to several tabs momentarily, but, just by way of  
22 background, you are a columnist with the Globe and  
23 Mail?

24 A. I am.

25 Q. And have been for some

1 considerable number of years?

2 A. Twelve years, I believe.

3 Q. The area in which you focus  
4 primarily, I think exclusively, is municipal  
5 affairs?

6 A. Yes, it is.

7 Q. We will come to, momentarily,  
8 a column that you wrote in October of 2005, and  
9 perhaps just to set the stage, if I could ask you  
10 to turn to tab 51, you will see there a document on  
11 the globeandmail.com heading entitled "Strange  
12 developments are afoot in a judge's battle with  
13 city hall". It is dated Thursday, October 20th,  
14 2005 and indicates in the byline that it is written  
15 by you?

16 A. Yes.

17 Q. You wrote that article at  
18 that time?

19 A. I did.

20 Q. If we could just move back  
21 from that, do you recall receiving an e-mail from  
22 Judge Matlow some time prior to writing that  
23 article?

24 A. Yes, I do.

25 Q. If I could ask you to turn to

1 tab 47, we see there an e-mail which purports to be  
2 from Ted Matlow to John Barber dated Sunday,  
3 October 2nd, 2005 sent at 10:31 a.m. Do you  
4 recognize that?

5 A. I do.

6 Q. Is that the e-mail that you  
7 received at the beginning of October that really  
8 leads to the story that we just looked at?

9 A. It didn't inspire me to write  
10 the story, no. It is part of the documentation.

11 Q. The history of this  
12 particular story goes back, I think, prior to this  
13 point in time, but you received that on October  
14 2nd?

15 A. Yes, that is right.

16 Q. When you received this, it is  
17 noted in the first paragraph that Mr. Matlow is a  
18 Superior Court judge and had been, until recently,  
19 president of the Friends of the Village. Was this  
20 the first time that you had heard from Judge Matlow  
21 about this matter?

22 A. No, I had received other  
23 correspondence from him earlier.

24 Q. If I could ask you to go to  
25 tab 52, and on the second page at tab 52, there is

1 an index of e-mails, and I believe you researched  
2 your system and came up with this previous  
3 correspondence?

4 A. Globe and Mail staff  
5 researched this. I did not do it personally.

6 Q. What we see there as the  
7 first indexed e-mail is one to you from Ted Matlow  
8 in August of 2002?

9 A. Yes.

10 Q. To the best of your  
11 recollection, is that the first time that you had  
12 received an e-mail from Judge Matlow in connection  
13 with the Thelma Road matter?

14 A. Yes, it is.

15 Q. Did you know him or know of  
16 him prior to that time?

17 A. I did not.

18 Q. It is indicated in the second  
19 last paragraph of that e-mail that he is a Superior  
20 Court judge, and he indicates the role that he is  
21 playing is unusual for a judge to assume, but in  
22 these circumstances is justified.

23 Did that, at the time you received  
24 this, cause you to pay any particular attention to  
25 the e-mail?

1                   A.    It was a notable fact in the  
2 e-mail and I did note it, yes.

3                   Q.    If I could ask you to flip  
4 over the page, we see that you are sent an e-mail  
5 on August the 28th of 2002.  It is forwarded to you  
6 from Patrick Martin, and I take it he is a  
7 colleague of yours at the Globe and Mail?

8                   A.    Yes, he is.

9                   Q.    And he had received an e-mail  
10 from Judge Matlow that Mr. Martin forwarded on to  
11 you?

12                  A.    Yes.

13                  Q.    In that e-mail, it is  
14 indicated in the first paragraph by Judge Matlow  
15 that this is something entirely new, his entry into  
16 municipal politics, on a single issue.  That would  
17 be consistent with the area in which you focus?

18                  A.    Yes, it would.

19                  Q.    In the third paragraph, the  
20 description of the story is:

21                                "One of an absurd proposal,  
22                                including elements of  
23                                stupidity, political intrigue  
24                                and perhaps dishonesty.  I  
25                                have never before seen

1 anything like it."

2 Did you make any particular note  
3 of that at that time?

4 A. I did.

5 Q. In the final paragraph, it is  
6 indicated that, "my story is one of broad public  
7 interest". Did that strike your attention at that  
8 time?

9 A. Yes.

10 Q. Those were sent to you in  
11 August of 2002. Did you write on the matter at  
12 that time?

13 A. No, I did not.

14 Q. You also found, then, if I  
15 could ask you to flip to the next exhibit, which  
16 would appear to be December 6th of 2003, and this  
17 is an e-mail from -- purports to be an e-mail from  
18 Ted Matlow to undisclosed recipients.

19 Did you come by this as one of the  
20 recipients of it, or was this provided to you in  
21 some other way; do you recall?

22 A. I am sorry. I don't recall.

23 Q. This makes reference in the  
24 second paragraph in connection with this Thelma  
25 Road matter and Forest Hill Village to:

1                   "-- a scandal similar to the  
2                   well-known computer leasing  
3                   scandal, but larger in  
4                   scope."

5                   Did that strike you at that time?

6                   A.    I can't say that it did, in  
7                   particular.

8                   Q.    The leasing scandal that is  
9                   referred to as the well-known computer leasing  
10                  scandal is the one generally known as the MFP  
11                  affair?

12                  A.    Yes.

13                  Q.    Which you later wrote on  
14                  after --

15                  A.    Yes, I believe I was writing  
16                  on it at the time this message was sent.

17                  Q.    If I could ask you to go to  
18                  the final page, we have another e-mail from Ted  
19                  Matlow dated, it appears to be, February 14th,  
20                  2004, again to undisclosed recipients. Do you have  
21                  any recollection of how you came to be in  
22                  possession of this?

23                  A.    I have no particular  
24                  recollection, but it was dug out of my e-mail box,  
25                  so I am assuming that it was sent from Mr. Matlow



1 to me.

2 Q. In the last paragraph, it  
3 indicates:

4 "We regard what City Council  
5 did as a betrayal and a  
6 whitewash of the actions of  
7 those city and parking  
8 officials who had taken  
9 matters into their own hands  
10 and acted contrary to the  
11 authority conferred by City  
12 Council." (As read)

13 Did the reference to "a whitewash"  
14 attract your attention at that time?

15 A. Not in particular, no.

16 Q. These additional e-mails that  
17 you had researched out of your system that came  
18 into your possession between August of 2002 and  
19 February of 2004, did any of them persuade you to  
20 write a story on the subject?

21 A. No.

22 Q. Did you know at that time  
23 what the purpose of you getting those e-mails was?

24 A. Yes.

25 Q. What was that?

1                   A.    He wanted me to write a story  
2 about this issue.

3                   Q.    If we then scroll ahead to --  
4                   THE CHAIR:  I am sorry.  Can you  
5 clarify for me what you mean by "this issue"?

6                   THE WITNESS:  It appeared to me  
7 that Judge Matlow wanted me to write an article  
8 about the parking garage on Thelma Avenue and  
9 supposed misconduct.

10                  THE CHAIR:  I am sorry, Mr. Hunt.

11                  MR. HUNT:  That is quite all  
12 right, Chief Justice.

13                  BY MR. HUNT:

14                  Q.    If we could go back to tab  
15 47, then, and I think you had indicated that this  
16 wasn't the first time, on October 2nd, 2005, when  
17 you received communication from Judge Matlow?

18                  A.    No.

19                  Q.    Between the dates that you  
20 received the prior e-mails that we have just looked  
21 at and this one, had you received any other  
22 communication from Judge Matlow?

23                  A.    Not to my knowledge.

24                  Q.    Had you spoken to him --

25                  A.    I have never spoken to him.

1                   Q.    I suppose the purpose in you  
2 receiving this e-mail was obvious to you?

3                   A.    He seemed to be renewing the  
4 case that I should write an article about the  
5 Thelma Road matter.

6                   Q.    Was that an issue of public  
7 interest in your judgment at that time?

8                   A.    No, it wasn't.

9                   Q.    Why was that?

10                  A.    I didn't understand the issue  
11 and I saw no evidence supporting the allegations.

12                  Q.    Had it been a matter of any  
13 public notoriety recently; that is, at the time you  
14 got this in October 2005?

15                  A.    I believe there had been an  
16 article written in a competing newspaper, but I am  
17 not sure I was aware of it at the time.

18                  Q.    If I could ask you to turn to  
19 appendix 48, we see here at the bottom two-thirds  
20 of this page what appears to be a response e-mail  
21 from you to Judge Matlow on October 4th of 2005 in  
22 which you indicated that you were sorry you hadn't  
23 gotten back to him earlier on this and that you are  
24 routinely inundated with e-mails and have no  
25 clerical help, et cetera. That was your response,

1 was it, to the October 2nd e-mail?

2 A. That is it, yes.

3 Q. You ask for relevant  
4 documents. Why was that?

5 THE CHAIR: Are you referring to  
6 appendix 48?

7 MR. HUNT: Yes.

8 THE CHAIR: I see it now. There  
9 are three there together.

10 MR. HUNT: Yes, the way this chain  
11 works, it is the original, and then the response.

12 THE CHAIR: Yes.

13 BY MR. HUNT:

14 Q. I am sorry, the question was  
15 why you were asking for relevant documents?

16 A. Judge Matlow had persisted in  
17 trying to get me to write about this and I felt at  
18 this point some obligation to allow him to present  
19 his case.

20 Q. Why did you feel that  
21 obligation?

22 A. Because he said in the  
23 previous e-mail "I never received any  
24 acknowledgment or reply from you", and I felt that  
25 he was making a demand on me that I responded to.

1 Q. Do you have demands  
2 frequently made on you?

3 A. Oh, yes.

4 Q. Do you always respond that  
5 way?

6 A. No.

7 Q. Why did you respond that way  
8 this time?

9 A. One reason was that Judge  
10 Matlow was being persistent and he was a figure of  
11 authority that I felt I had an obligation to  
12 humour.

13 Q. You receive a response on  
14 Tuesday the 4th from Judge Matlow that he was  
15 working in Sudbury and when he returned, he would  
16 get a package ready for you.

17 If I could ask you to turn, then,  
18 to appendix 49, this is Wednesday, October the 5th,  
19 so this is the day following your response on the  
20 Tuesday, and it is an e-mail from Ted Matlow to you  
21 indicating that:

22 "I am going to drop by the  
23 Globe in about an hour and  
24 drop off an envelope for you  
25 containing the bare

1 essentials."

2 Then it goes on to outline, in  
3 part, some of the story of the Thelma Road  
4 controversy. You received that from Judge Matlow  
5 on the 5th?

6 A. I did.

7 Q. The third last paragraph from  
8 the bottom of that page, there was a sentence:

9 "We no longer believe that  
10 the new mayor was interested  
11 in uncovering dishonesty at  
12 City Hall and in preserving  
13 existing neighbourhoods as he  
14 so often proclaimed."

15 Did that strike you in any  
16 particular way in this e-mail?

17 A. I can't remember reading that  
18 sentence at the time.

19 Q. Did you, in fact, receive a  
20 package of documents as referred to in the opening  
21 paragraph of that e-mail?

22 A. I believe I did.

23 Q. If I could ask you to turn to  
24 appendix 50, we there have a number of documents  
25 separated by pink sheets with a covering card on

1 the Ontario Court of Justice letterhead with the  
2 compliments of the Honourable Mr. Justice Ted  
3 Matlow. It appears to read:

4 "If you are not going to use  
5 this, please don't throw it  
6 out."

7 A. Yes.

8 Q. Following underneath that  
9 cover sheet is a newspaper article on the Forest  
10 Hill Villagers' fight from February of 2004, and  
11 then it appears the e-mails of October 5th and  
12 October 4th, and then some other documentation  
13 relating to the City of Toronto and some opinions  
14 relating to this.

15 Did that come to you on the 5th of  
16 October?

17 A. No, I believe it came to me  
18 some days later.

19 Q. How would it normally come to  
20 you within the Globe and Mail system?

21 A. I believe Judge Matlow  
22 indicated in an earlier e-mail he was dropping it  
23 off at the Globe and Mail. I work in the remote  
24 bureau in Toronto City Hall. That material would  
25 have been taken to the mail room and distributed in

1 the regular distribution of mail to the bureau.

2 So as much as a week later, or  
3 maybe two or three days later.

4 Q. On the 5th when you received  
5 this -- sorry, when the e-mail indicated it was  
6 being dropped off, did you know anything about any  
7 other hearing that was taking place that week that  
8 involved the city in the Superior Court?

9 A. Yes.

10 Q. What was that?

11 A. The St. Clair hearing.

12 Q. You knew about that?

13 A. Yes.

14 Q. Did you know anything about  
15 who was sitting on that hearing at that time?

16 A. No, I did not.

17 MR. HUNT: I then have an e-mail  
18 which isn't in the appendices, my friends are aware  
19 of it, which I would ask, I guess, to be filed as a  
20 separate exhibit, which would be Exhibit No. 5.

21 THE CHAIR: Do you have any  
22 objection to it being admitted as Exhibit No. 5,  
23 Mr. Cavalluzzo?

24 MR. CAVALLUZZO: No.

25 EXHIBIT NO. 5: E-mail from



1                                 John Barber to Judge Matlow,  
2                                 dated Friday, October 14,  
3                                 2005.

4                                 BY MR. HUNT:

5                                 Q.    This is an e-mail from you to  
6    Judge Matlow dated Friday, October 14, 2005.  This  
7    would appear to be about a little more than a week  
8    after the package was dropped off on the 5th.  This  
9    appears to me to be you indicating that you had  
10   looked at the material, or had considered it at  
11   least, and that you didn't really see anything  
12   newsworthy in the story?

13                                A.    That is correct.

14                                Q.    Would that suggest, then,  
15   that by the 14th you had received the package?

16                                A.    That is right.

17                                Q.    The e-mail speaks for itself,  
18   but on looking at the material, did you see  
19   anything at that time you thought might be  
20   interesting news to write about?

21                                A.    In the package?

22                                Q.    Yes.

23                                A.    No.

24                                Q.    Why was that?

25                                A.    As I explained in this

1 letter, it was wrapped up. It wasn't news, and I  
2 never understood what the fraud or the misconduct  
3 was that would be the basis of an article that I  
4 could write. I didn't understand the story.

5 Q. From your perspective, then,  
6 on October the 14th, was this a dead issue?

7 A. I was hoping it would die.

8 Q. Why was that?

9 A. As I said, I didn't see that  
10 it was a relevant issue. I felt it was awkward to  
11 be solicited by a judge and I preferred that -- I  
12 tried to put an end to it.

13 Q. I take it as you tried to put  
14 an end to it, you are trying to do it in a  
15 reasonably nice way?

16 A. I am trying to be very  
17 respectful and friendly, but make myself clear.

18 Q. If I could ask you to turn to  
19 appendix 51, which is the article that you wrote on  
20 October 20th, 2005, so about a week after the  
21 October 14th e-mail that you sent, so now you  
22 decide to write a story at this point, and why was  
23 that?

24 A. The afternoon before this, I  
25 believe on Wednesday, October 19th, the city had

1 issued a press release saying that it was going to  
2 ask Judge Matlow to step down because he had a  
3 conflict of interest relating to his activities on  
4 the Thelma issue.

5 Q. This was the issue that he  
6 had communicated with you about earlier in the  
7 month?

8 A. Yes. It was, yes.

9 Q. The article certainly speaks  
10 for itself, and I don't intend to go through it  
11 with you, but about halfway down in the article you  
12 write:

13 "But he was also a judge,  
14 something that gave me more  
15 than pause when e-mails began  
16 coming. I mean, what does  
17 one do when a Superior Court  
18 judge presumes to prod you  
19 into covering his story?"

20 Why did you comment that way?

21 A. It happens all the time that  
22 people ask you to do a story that may or may not  
23 have any merit, but when a person of this authority  
24 takes a position like that and persists in it, it  
25 creates an awkwardness. In this case, in

1 particular, you don't see the merit in the story.

2 Q. I take it that the sum and  
3 substance of your article is you still didn't see  
4 any merit in the story?

5 A. No.

6 Q. The story, in effect, was  
7 that the judge was now in a controversial position?

8 A. The city had issued its press  
9 release and was making its motion in court. That  
10 was the story.

11 Q. Did you know whether anyone  
12 else other than you knew that you had received  
13 material from him in early October?

14 A. No.

15 Q. Thank you. Those are the  
16 questions I have.

17 THE CHAIR: Mr. Cavalluzzo.

18 MR. CAVALLUZZO: Thank you, Chief  
19 Justice.

20 CROSS-EXAMINATION BY MR. CAVALLUZZO:

21 Q. Mr. Barber, I represent Judge  
22 Matlow and I have some questions for you.

23 You testified that you received  
24 some e-mails in August of 2002?

25 A. I believe.

1 Q. Did you or did you not?

2 A. What was the file? What was  
3 the tab number?

4 Q. The tab is 52.

5 A. Yes, I received that e-mail  
6 August 19th, 2002.

7 Q. Judge Matlow indicated in  
8 that that he was a Superior Court judge?

9 A. Yes, he did.

10 Q. And also indicated that he  
11 had participated in the Thelma project?

12 A. Yes.

13 Q. And yet you didn't feel that  
14 newsworthy enough to write an article about it?

15 A. No.

16 Q. You also said that you didn't  
17 understand the issue. Did you not understand the  
18 issue in August of 2002 when you were sending those  
19 e-mails?

20 A. I wasn't sending e-mails.

21 Q. Excuse me, when you received  
22 the e-mails?

23 A. No, I didn't understand.

24 Q. You didn't understand the  
25 issue?

- 1 A. No.
- 2 Q. Did you ask anybody about the  
3 issue?
- 4 A. I don't believe so.
- 5 Q. Did you do any research about  
6 the issue?
- 7 A. No.
- 8 Q. Yet you didn't understand it?
- 9 A. I hadn't looked into it, so I  
10 couldn't have understood it.
- 11 Q. It would seem that you still  
12 didn't understand the issue in 2005?
- 13 A. Yes.
- 14 Q. Did you do any research into  
15 the issue?
- 16 A. No. Pardon me, in the  
17 documents that Mr. Judge Matlow sent me there was  
18 an article from the National Post, which I did read  
19 with interest.
- 20 Q. Did you read the other  
21 documents?
- 22 A. I have skimmed them.
- 23 Q. Did you read them?
- 24 A. Yes.
- 25 Q. Did you highlight them?

1 A. I might have.

2 Q. Did you understand --

3 A. No, I didn't. No, no, no,  
4 no.

5 Q. You didn't?

6 A. No.

7 Q. Do you normally not highlight  
8 things when you are reviewing documents like city  
9 documents?

10 A. I sometimes use a  
11 highlighter, yes.

12 Q. But you didn't on this  
13 occasion?

14 A. I don't believe so, no.

15 Q. Did you ask anybody to help  
16 you understand what the issue was, because you had  
17 the documents?

18 A. No.

19 Q. Once again, you received an  
20 e-mail from Justice Matlow on October the 2nd,  
21 2005, once again identifying himself as a Superior  
22 Court judge?

23 A. I believe so.

24 Q. Once again, you didn't feel  
25 that newsworthy enough to write an article about?

1 A. That is right.

2 Q. He did refer to his actions  
3 in the Thelma project and indeed filed documents  
4 with you?

5 A. Subsequent to that e-mail,  
6 yes.

7 Q. And you still didn't feel  
8 that that was newsworthy to write an article about?

9 A. That is right.

10 Q. But you did write an article,  
11 which we can find at tab 51 or appendix 51, and I  
12 would ask you to refer to that.

13 A. Yes, I did.

14 Q. This article is dated October  
15 20th, correct?

16 A. Yes.

17 Q. When would you have written  
18 this article?

19 A. October 19th.

20 Q. Correct. And what time on  
21 October 19th would you have written this article?

22 A. In the afternoon.

23 Q. At this point in time when  
24 you wrote the article in the afternoon of October  
25 the 19th, had you spoken to anybody in the city?



1 A. No.

2 Q. Are you sure of that?

3 A. Yes.

4 Q. You had seen the press  
5 release?

6 A. That is right.

7 Q. Is that all you had seen?

8 A. That is right.

9 Q. You had seen nothing else?

10 A. Nothing.

11 Q. Let's look at your article.

12 In the fourth paragraph, it says:

13 "And the devastating  
14 affidavit that accompanied  
15 the motion, which documented  
16 Judge Matlow's notably  
17 injudicious behaviour in his  
18 cranky, ongoing battle  
19 against city hall was even  
20 stranger."

21 Mr. Barber, it appears that you  
22 had the affidavit.

23 A. Umm-hmm.

24 Q. Where did you get the  
25 affidavit?

1 A. I believe from the city press  
2 office.

3 Q. So you did speak to somebody  
4 in the city?

5 A. No, I didn't.

6 Q. Who did you speak to?

7 A. Nobody.

8 Q. Just the city press office?

9 A. They issue press releases and  
10 documents all the time.

11 Q. You got the press release?

12 A. Yes.

13 Q. Did the affidavit and the  
14 notice of motion come with the press release?

15 A. I believe so.

16 Q. Are you sure of that?

17 A. No.

18 Q. I am putting it to you that  
19 you spoke to somebody in the city and got that  
20 affidavit?

21 A. You are wrong.

22 Q. In terms of the press  
23 release, if we have somebody from the city saying  
24 that the affidavit did not accompany the press  
25 release, would that surprise you?

1 A. It might do, yes.

2 Q. Then where would you have  
3 gotten the affidavit if the affidavit didn't come  
4 with the press release?

5 A. I have no idea. I didn't  
6 phone anybody. I am assuming it came with the  
7 press release. If there was anything else, I might  
8 have asked them, Is there anything else, and they  
9 would have handed it over to me.

10 Q. In respect of the allegation  
11 which you have referred to in the article, which  
12 you referred to as devastating allegations, these  
13 were allegations made about Mr. Justice Matlow,  
14 correct?

15 A. Yes.

16 Q. Did you call Justice Matlow  
17 about the allegations that were made against him?

18 A. No.

19 Q. Do you normally not do that?

20 A. I don't know what "normally"  
21 means.

22 Q. You don't know what  
23 "normally" means?

24 A. That is what I said.

25 Q. You were telling us that a

1 Globe and Mail reporter -- and the Globe and Mail  
2 of course being the national newspaper of record --  
3 has a report written with what you refer to as very  
4 serious allegations about something, and you don't  
5 call the subject of those allegations for at least  
6 a response. Is that normally done at the Globe and  
7 Mail?

8 A. I was under the  
9 understanding, Chief Justice, that I was here to  
10 help this panel establish the contact I had with  
11 Mr. Matlow, not to go undergo an investigation into  
12 my journalistic behaviour, and if that is where it  
13 is going, I would ask you to allow me to consult  
14 with my lawyer.

15 THE CHAIR: Mr. Barber, it is  
16 important that counsel for Justice Matlow have a  
17 full and fair opportunity to cross-examine all of  
18 the evidence that is to be considered in this  
19 matter, so we wouldn't want to curtail that unless  
20 there was some good reason to do so.

21 If you feel the necessity to  
22 consult with your lawyer, I am sure we can take the  
23 time to allow you to do that.

24 THE WITNESS: I think that would  
25 be appropriate, because I am not prepared to

1 discuss the journalistic practice of the Globe and  
2 Mail at this hearing without legal advice. I just  
3 don't think it is proper for you to ask me to do  
4 that. It certainly wasn't the basis of  
5 understanding in which I was called.

6 THE CHAIR: Every day in  
7 courthouses all across this country persons who are  
8 witnesses give evidence and almost invariably they  
9 are cross-examined, and the purpose of  
10 cross-examination is to seek to establish both the  
11 veracity or the credibility of the evidence that is  
12 being given.

13 Counsel are normally allowed a  
14 fairly broad range to do that. We have no desire  
15 to have this committee trespass on your rights, and  
16 if you feel you want to consult with a lawyer, we  
17 will make opportunity available for you to do that.

18 I would think that Mr. Cavalluzzo would  
19 sufficiently restrain his questioning to be fair to  
20 you and not to in any manner be unfair.

21 So I will leave it to you to  
22 decide whether you still want to consult with a  
23 lawyer.

24 THE WITNESS: Of course I do. I  
25 mean, this is not an issue of my veracity or

1 credibility. This is an issue of the e-mails that  
2 this judge sent to me.

3 THE CHAIR: I am not going to  
4 argue with you about the issue. I just explained  
5 to you --

6 MR. CAVALLUZZO: Chief Justice,  
7 perhaps if I could expedite this, I can move on.  
8 The questions weren't directed to the journalistic  
9 practices of the Globe and Mail, but they were  
10 directed to the practices of one particular Globe  
11 and Mail journalist.

12 THE WITNESS: You asked me how  
13 things were normally done at the Globe and Mail. I  
14 am not prepared to answer that or go there.

15 BY MR. CAVALLUZZO:

16 Q. Then let's withdraw that  
17 question and ask: Is it normally done by you?

18 A. As I say, this is not a  
19 normal circumstance.

20 Q. Do you normally not give a  
21 subject an opportunity to respond to serious  
22 allegations that are made about them?

23 A. Yes.

24 Q. Why didn't you in this  
25 circumstance?

1                   A.    He was sitting on the bench  
2 and there was a motion brought. I have never  
3 interviewed a judge in my life.

4                   Q.    You weren't aware of the  
5 motion at this point in time. Were you aware of  
6 the motion?

7                   A.    Yes, of course.

8                   Q.    You never spoke to a judge?

9                   A.    No.

10                  Q.    At this point?

11                  A.    No.

12                  Q.    Have you ever spoken to Judge  
13 Bellamy?

14                  A.    Yes.

15                  Q.    Is she a judge?

16                  A.    Yes. I said I had never  
17 interviewed a judge.

18                  Q.    But you spoke to Judge  
19 Bellamy?

20                  A.    Two years after the inquiry  
21 concluded, I had my first conversation with Judge  
22 Bellamy after I covered it for about approximately  
23 three years. I don't interview judges as a rule,  
24 never have.

25                  Q.    Let's look at your e-mail --

1 excuse me, your article, and this, once again, is  
2 appendix 51. You say in the article, and I am  
3 referring to now to about the fifth paragraph:

4 "Previously, I had been  
5 disinclined to believe much  
6 of what Judge Matlow had  
7 written to me about a  
8 development in Forest Hill  
9 Village."

10 Could you tell us why you would be  
11 disinclined to believe much of what he said, when  
12 you hadn't even spoken to him or didn't understand  
13 the issue?

14 A. It is very typical that  
15 people will send me letters asking me to write  
16 about something in which they are interested which  
17 they claim to be a matter of public interest. A  
18 typical pattern is that people will make very large  
19 general statements, and then they will either back  
20 them up with facts or they won't.

21 In this case, Judge Matlow made a  
22 lot of general statements of misconduct, but  
23 offered no evidence to back it up that I could see.

24 Q. You go on in your article and  
25 it says, and this is three or four paragraphs down:



1 "I couldn't just brush him  
2 off, but I sure didn't want  
3 to follow him down the rabbit  
4 hole he had dug into the  
5 large pile of 'documents' he  
6 invited me to study. (The  
7 larger the pile of  
8 'documents' offered in such  
9 cases, I have learned from  
10 experience, the more  
11 bedeviled the story.)"

12 You are talking about this large  
13 pile of documents. These are documents that are  
14 part of appendix 50. If you would go to appendix  
15 50?

16 A. Yes.

17 Q. And you call this a large  
18 pile of documents?

19 A. I did.

20 Q. Do you view this to be a  
21 large pile of documents?

22 A. Perhaps not.

23 Q. Perhaps not. Why did you put  
24 it in your article?

25 A. It seemed large to me at the

1 time. I didn't actually measure it.

2 Q. In fact, the reason why you  
3 put it in your article is because you wanted to  
4 follow on with the larger the pile, as you put it,  
5 the larger the pile offered, the more bedeviled the  
6 story; isn't that correct?

7 A. That's what I did.

8 Q. Then you went on in the  
9 article:

10 "So I bravely did nothing,  
11 hoping that Judge Matlow and  
12 his allegations would just go  
13 away.

14 "No such luck: 'I never  
15 received any acknowledgment  
16 or reply from you,' the judge  
17 complained when he resumed  
18 his crusade on October 4,  
19 once again complaining about  
20 the development."

21 Et cetera. Just dealing with  
22 that, on October the 4th, Mr. Justice Matlow did  
23 not resume his crusade with you, using your words,  
24 did he?

25 A. No, it was October the 2nd

1 that occurred.

2 Q. What happened on October the  
3 4th, Mr. Barber, is that you asked Judge Matlow for  
4 documents; isn't that correct?

5 A. Yes.

6 Q. Don't you think that is very  
7 unfair to put it that way, to misstate what in fact  
8 happened?

9 A. It was an innocent error. I  
10 got the date wrong and in my earlier affidavit or  
11 my earlier deposition, I took pains to correct that  
12 error.

13 Q. Did you ever correct it in  
14 the Globe and Mail?

15 A. No.

16 Q. Did you put anywhere in this  
17 article that it was you that requested documents?

18 A. No.

19 Q. Don't you think that would  
20 have been fair?

21 A. I only requested documents to  
22 get him off my back. I didn't request documents to  
23 -- I requested documents in order to get him to  
24 stop sending them to me. There is no reason for me  
25 to put that in the article, although I could have.

1 Q. But the way it sounds in your  
2 article is that, unsolicited, Judge Matlow leaves  
3 you with a huge pile of documents. That is the way  
4 it reads.

5 A. I was referring to the  
6 earlier e-mails that were part of the pile.

7 Q. No, he left you no documents  
8 earlier in 2002?

9 A. 2004.

10 Q. No, 2002 were the earlier  
11 e-mails?

12 A. There is a whole pile of  
13 documents. This is the pile, and here they all are  
14 and there are a lot of e-mails from Judge Matlow  
15 trying to get me to write an article which has no  
16 merit that I am trying to avoid writing.

17 Q. Which has no merit because  
18 you don't understand the issue, right?

19 A. I don't understand the  
20 question.

21 Q. You didn't understand my  
22 question?

23 A. No.

24 Q. I am putting it to you, once  
25 again, you have come to the conclusion that the

1 issue had no merits because you didn't understand  
2 it?

3 A. No.

4 Q. Because you didn't research  
5 it?

6 A. No.

7 Q. We will leave that for the  
8 panel. Would you like a break?

9 A. No.

10 Q. We go on in the same  
11 paragraph, and let me read it again, "No such luck  
12 --" This is Judge Matlow:

13 "No such luck: 'I never  
14 received any acknowledgment  
15 or reply from you,' the judge  
16 complained when he resumed  
17 his crusade on October 4..."

18 And then he goes on:

19 "-- once again complaining  
20 that the city-sponsored  
21 development on Spadina Road  
22 was somehow crooked -- the  
23 very week he was hearing a  
24 case involving allegations of  
25 impropriety about another

1 city-sponsored development in  
2 the very same neighbourhood  
3 (his own)."

4 What other city-sponsored  
5 development are you talking about here?

6 A. The St. Clair streetcar.

7 Q. And you would refer to that,  
8 the St. Clair streetcar, as a city-sponsored  
9 development?

10 A. Yes.

11 Q. You said, "the development in  
12 the very same neighbourhood (his own)", correct?

13 A. Yes.

14 Q. How far is the St. Clair  
15 streetcar? How far is the St. Clair streetcar  
16 line?

17 A. Six kilometers.

18 Q. It goes from Yonge Street to  
19 Keele, correct?

20 A. Gunns Road.

21 Q. Gunns Road, fair enough. Yet  
22 you described in your article that being,  
23 "-- another city-sponsored development in the very  
24 same neighbourhood (his own)".

25 That is because he lived at 0.6 of

1 a kilometer from St. Clair Avenue?

2 A. I am not sure of the  
3 distance. It is pretty close.

4 Q. But that is what you were  
5 referring to?

6 A. Yes.

7 Q. Do you think it would have  
8 been --

9 THE CHAIR: Whoever has the  
10 telephone ringing, I would appreciate it if you  
11 would turn it off, and anybody else who has  
12 telephones that are turned on, please turn them  
13 off. Thank you. Sorry, Mr. Cavalluzzo.

14 MR. CAVALLUZZO: Thank you, Chief  
15 Justice.

16 BY MR. CAVALLUZZO:

17 Q. Do you think it would have  
18 been fairer to refer to the fact that this wasn't a  
19 development within his neighbourhood?

20 A. No.

21 Q. The article goes on:

22 "Inspired by stories about  
23 cronyism in the city  
24 licensing department, he once  
25 again volunteered the dreaded

1 documents."

2 That is not quite right, is it?

3 A. I would have to go through to  
4 the -- I don't know the e-mail from which that  
5 quotation was taken. Perhaps you could direct me  
6 to it.

7 Q. Once again, your date was  
8 out, but I assume you were talking about appendix  
9 47, which was the initial 2005 e-mail where he said  
10 you didn't respond to it.

11 A. I don't think so.

12 Q. You show us what e-mail you  
13 are referring to.

14 A. It is the e-mail that  
15 includes the quotation:

16 "Perhaps that now you know  
17 and have written about what  
18 goes on at City Hall you  
19 might like to hear my story."

20 (As read)

21 Q. Right. Where is he offering  
22 the documents once again?

23 A. I don't know when that e-mail  
24 was. I am sorry.

25 Q. If you could find it for us,



1 because we have every e-mail before us.

2 A. October 4th.

3 Q. "I am working in Sudbury.

4 When I return, I will get a  
5 package for you."

6 A. Yes. October 2nd, pardon me.

7 Q. October 2nd. Where is that?

8 A. I am looking at it in tab 48.

9 Q. Tab 48 is October 4th.

10 A. I am looking at the attached  
11 document dated October 2nd.

12 Q. Once again, your article  
13 says, "once again he volunteered the dreaded  
14 documents", right?

15 A. Umm-hmm.

16 Q. And this is what you are  
17 relying on for that, the October 4th e-mail from  
18 Mr. Matlow saying, "I will get a package ready for  
19 you"?

20 A. Yes.

21 Q. Do you not think it might  
22 have been fairer, Mr. Barber, to state that Justice  
23 Matlow was not necessarily volunteering the dreaded  
24 documents, but it was in response to a request from  
25 you?

1 A. No.

2 Q. You don't think it would have  
3 been fairer to let the public know that Justice  
4 Matlow was bringing documents to you because you  
5 asked for them?

6 A. No.

7 Q. You don't think that is fair?

8 A. I don't think it is, because  
9 I think it is irrelevant.

10 Q. You think it is irrelevant?

11 A. That is what I said. You  
12 heard me.

13 Q. Let's go to the next  
14 paragraph. You say:

15 "I didn't -- taxi drivers  
16 were offering more credible  
17 tips at the time about  
18 stories that I could actually  
19 understand --"

20 Once again, noting that you were  
21 having trouble understanding the issue:

22 "-- but he had trapped me. In  
23 reply, I lied about not  
24 having seen his previous  
25 e-mails and asked him to

1 forward 'the relevant  
2 documents'".

3 Do you normally admit in your  
4 columns that you lie?

5 A. No.

6 Q. You go on and admit another  
7 lie:

8 "Soon after, in the middle of  
9 him hearing the St. Clair  
10 case, they landed on my  
11 desk --"

12 You are talking about the  
13 documents obviously:

14 "-- where I let them steep  
15 for a few days before typing  
16 up another lie-filled  
17 letter."

18 You told us that the documents  
19 were received on October 5th at the Globe and Mail  
20 mail room, and you didn't get them for a couple of  
21 days after?

22 A. That is right.

23 Q. What this says is that, "they  
24 landed on my desk where I let them steep for a few  
25 days", but you said earlier "Soon after, in the

1 middle of him hearing the St. Clair case".

2                               The Globe and Mail got it on  
3 October the 5th, right? The case started on  
4 October the 6th, right?

5                               A. I will take your word for it.

6                               Q. So it wasn't in the middle of  
7 the case?

8                               A. What wasn't in the middle of  
9 the case? Sorry, I don't understand.

10                              Q. When the documents were  
11 delivered.

12                              A. I didn't say when they were  
13 delivered. I said when they landed on my desk in  
14 the middle of the case. It is exactly as I said.  
15 It is true. I don't understand really what we are  
16 talking about, frankly.

17                              Q. You told us before that when  
18 they landed on your desk would have been maybe a  
19 week after, right?

20                              A. I couldn't tell you.

21                              THE CHAIR: In fairness to Mr.  
22 Barber, he said it might have been two or three  
23 days, perhaps as much even as a week's delay in the  
24 ordinary mail, but he didn't know exactly when they  
25 got there. He was giving his evidence as to what

1 happens in a normal circumstance.

2 MR. CAVALLUZZO: Thank you, Chief  
3 Justice.

4 BY MR. CAVALLUZZO:

5 Q. You have no notation of when  
6 you received the documents on your desk?

7 A. No.

8 Q. Would you admit that when you  
9 responded to Justice Matlow, this is the last  
10 paragraph on the first page, that it was another  
11 lie-filled letter?

12 A. I believe that is how I  
13 characterized it.

14 Q. Were you wrong?

15 A. I don't know if it was  
16 actually filled with lies, but it was certainly  
17 insincere.

18 Q. On the final page of the  
19 article, you refer to "a pretty slick note, a  
20 candy-coated brush-off" that you sent him. That is  
21 referring to your October 14th e-mail? I just want  
22 to be sure of that.

23 A. What is the tab?

24 Q. It is not a tab. It is a new  
25 exhibit, the single document --

1 A. Yes.

2 Q. After you wrote this article,  
3 did you speak to anybody in the city about it or  
4 about the issues?

5 A. I received a call from Mr.  
6 Cherniak.

7 Q. And he was counsel for the  
8 city?

9 A. Yes.

10 Q. Did you speak to anybody from  
11 the city about this?

12 A. Not to my knowledge.

13 Q. Did you speak to Graham  
14 Rempe?

15 A. No.

16 Q. Did you speak to Anna  
17 Kinastowski?

18 A. Not to my knowledge.

19 Q. What do you mean, not to your  
20 knowledge?

21 A. I can't remember.

22 Q. You can't remember. Is it  
23 possible you did?

24 A. It is possible, but I am 85  
25 percent sure I didn't talk to Anna about this. I

1 talk to Anna all the time about various things, but  
2 I can't tell you I did not talk to her about this.

3 I have no recollection at all.

4 Q. You talk to Anna all the  
5 time?

6 A. Yes.

7 Q. Are you that friendly with  
8 her that you call her "Anna"?

9 A. No.

10 Q. You said that when you wrote  
11 the article on October 19th, that you weren't aware  
12 that Judge Matlow had sat on the SOS case?

13 A. That is right.

14 MR. CAVALLUZZO: I wonder if you  
15 might show the witness volume 4, please. It is the  
16 new volume, perhaps.

17 MR. HUNT: Perhaps what we could  
18 indicate at this time is that volume 4 that you  
19 have was a series of newspaper articles. There  
20 were no numbers on it, and in consultation with my  
21 friends we have produced another number 4 that is  
22 numbered. The pages are numbered, which will make  
23 it easier to find the article.

24 MR. CAVALLUZZO: I wonder if you  
25 could refer to and the witness refer to the

1 pagination on the bottom right-hand part of the  
2 page on page 70.

3 BY MR. HUNT:

4 Q. Mr. Barber, would you refer  
5 to page 70, please? What I am looking at here, Mr.  
6 Barber, is a Globe and Mail article written by Ms.  
7 Gandhi, with reports from Jennifer Lewington and  
8 Paul Choi, and it is dated October 12th. In the  
9 second paragraph, it says:

10 "Justices Greer, Matlow and  
11 Macdonald of the Ontario  
12 Superior Court --"

13 Et cetera, et cetera,  
14 "set aside the resolution". This is an article in  
15 the Globe and Mail on municipal affairs on October  
16 12th, and are you saying that you didn't read this  
17 article?

18 A. I am not aware. I can't  
19 recall.

20 Q. If you read the article, you  
21 would have known that Justice Matlow sat?

22 A. If I read the article, which  
23 I have no recollection of doing, it is not at all  
24 likely that I would have noticed that Judge Matlow,  
25 who is someone I wasn't thinking about and I didn't



1 know, that I would have noticed it, even if I had  
2 read the article.

3 Q. But you sent an e-mail to  
4 Justice Matlow two days later. I am putting to you  
5 that if you read that, you would have known this.

6 A. I didn't know.

7 THE CHAIR: Mr. Cavalluzzo, I am  
8 not sure that I understand your question and I  
9 would like to have it clarified. Is it your  
10 suggestion that Mr. Barber indicates he didn't  
11 know, at the time that he wrote the article that it  
12 appeared in the Globe and Mail on October 20th,  
13 that Justice Matlow sat on the St. Clair case?

14 Would you take a look at the last  
15 paragraph on the first page of that article at tab  
16 52? Doesn't that say:

17 "Soon after, in the middle of  
18 him hearing the St. Clair  
19 case, they landed on my  
20 desk."

21 MR. CAVALLUZZO: I am sorry, Chief  
22 Justice?

23 THE CHAIR: The last sentence I  
24 have of that article, it says:

25 "Soon after, in the middle of

1                                   him hearing the St. Clair  
2                                   case, they landed on my  
3                                   desk."

4                                   I understood your question to be  
5                                   in respect of a suggestion that Mr. Barber didn't  
6                                   know when he wrote that article that Justice Matlow  
7                                   sat on the St. Clair case. How could that be if he  
8                                   wrote it?

9                                   MR. CAVALLUZZO: No. What he was  
10                                   saying is that it would have been prior to not  
11                                   writing the article, but prior to seeing the city  
12                                   press release which gave rise to the article. Let  
13                                   me clarify that.

14                                   BY MR. CAVALLUZZO:

15                                   Q. Is it fair to say that you  
16                                   had --

17                                   THE CHAIR: You had better clarify  
18                                   it for the witness. I ended up with a confused  
19                                   understanding.

20                                   BY MR. CAVALLUZZO:

21                                   Q. Is it fair to say that in the  
22                                   past you have stated that prior to seeing the city  
23                                   press release relating to the motion to recuse the  
24                                   panel, that you did not know that Justice Matlow  
25                                   sat on the SOS panel?

1 A. That is correct.

2 Q. Once again, the question that  
3 I have related to October the 12th, and there was  
4 an article citing that, and you just have no  
5 recollection reading that article?

6 A. No.

7 Q. Thank you.

8 I have no further questions.  
9 Thank you, Chief Justice.

10 THE CHAIR: Mr. Hunt, do you have  
11 any questions arising out of that?

12 MR. HUNT: Very briefly.

13 RE-EXAMINATION BY MR. HUNT:

14 Q. Mr. Barber, I would ask you  
15 to turn to tab 51, which is your article. Perhaps  
16 you have it open at that page. My friend asked you  
17 some questions about the fourth paragraph up from  
18 the bottom. I think it is this portion here:

19 "-- when he resumed his  
20 crusade on October 4, once  
21 again complaining that the  
22 city-sponsored development on  
23 Spadina Road was somehow  
24 crooked - the very weak he  
25 was hearing a case involving

1                   allegations of impropriety  
2                   about another city-sponsored  
3                   development in the very same  
4                   neighbourhood (his own)."

5                   I notice in Exhibit 5, which is  
6                   your October 14th e-mail, the one that you sent --  
7                   I think you have indicated you were trying to be  
8                   amicable -- that you knew this area well.

9                   A.     Yes.

10                  Q.     In your P.S., you indicate  
11                  that at one time you worked at an Esso station on  
12                  the north side of Thelma and that your brother and  
13                  sister lived in an apartment on Thelma?

14                  A.     Yes.

15                  Q.     It is a very small street,  
16                  isn't it?

17                  A.     One block.

18                  Q.     So when you wrote that he was  
19                  complaining about another city-sponsored  
20                  development in the very same neighbourhood as his  
21                  own, you were aware of his neighbourhood?

22                  A.     Absolutely.

23                  Q.     And you were aware of where  
24                  this St. Clair streetcar line was going by the end  
25                  of --

1                   A.    It is a local stop I took  
2 every day to school in that neighbourhood.

3                   Q.    The distance between Thelma  
4 Road and this streetcar construction was how far?

5                   A.    Three or four blocks, three  
6 short blocks.

7                   Q.    How long would it take to  
8 walk that?

9                   A.    Less than five minutes.

10                  Q.    Is that what you were  
11 referring to, then, when you talked about the very  
12 same neighbourhood?

13                  A.    Yes.

14                  Q.    Thank you.

15                  THE CHAIR: Mr. Barber, thank you  
16 very much for your attendance today. The committee  
17 appreciates it.

18                  THE WITNESS: Thank you.

19                  THE CHAIR: Mr. Hunt, it is now  
20 12:20. In the ordinary course, we would break for  
21 lunch at 12:30. I have no desire to interrupt  
22 examination of your next witness, or are you not  
23 calling any more?

24                  MR. HUNT: Perfect timing for a  
25 break at this point. I don't believe I will be

1 calling any further witnesses after lunch.

2 THE CHAIR: You will give us a  
3 time when we return?

4 MR. HUNT: I will, thank you.

5 THE CHAIR: Mr. Cavalluzzo.

6 MR. CAVALLUZZO: Chief Justice,  
7 the press has been asking about the agreed  
8 statement of fact. It is now an exhibit and I  
9 wonder perhaps if we could distribute it to them if  
10 they would like to read it.

11 THE CHAIR: By all means. It is a  
12 public document. We shall adjourn, then, until  
13 2:00 p.m.

14 --- Luncheon Recess at 12:23 p.m.

15 --- Upon resuming at 2:02 p.m.

16 THE CHAIR: Mr. Hunt?

17 MR. HUNT: Thank you, Chief  
18 Justice, I have no further witnesses to call.

19 THE CHAIR: Mr. Cavalluzzo?

20 MR. CAVALLUZZO: We have obtained  
21 a number of character letters from other judges and  
22 lawyers, and we would like to file those at the  
23 commencement of our case.

24 THE CHAIR: No objection, Mr.  
25 Hunt?

1 MR. HUNT: No, but if we could  
2 have a copy, that would be helpful.

3 MR. CAVALLUZZO: I should point  
4 out that there are a number of letters that have  
5 redactions, Tab 7 being an example.

6 The reason for the redactions is  
7 that they were comments on the particular facts of  
8 the dispute before you, and both counsel felt it  
9 appropriate to remove those comments.

10 THE CHAIR: This will be accepted  
11 as Exhibit No. 6.

12 EXHIBIT NO. 6: Character  
13 letters re Justice Matlow

14 MR. CAVALLUZZO: I would like to  
15 start with a roadmap as to where I am headed.

16 We spent a great deal of time  
17 working on the agreed Statement of Facts, and  
18 hopefully that will save us some time.

19 I intend to call three witnesses,  
20 the first is Mr. Lieberman, who will talk about the  
21 background and context of the Friends of the  
22 Village and the local residents.

23 There will be a second local  
24 resident called as well, and there may be some  
25 discussions of law as to the admission of part of

1 her evidence.

2 Thirdly and finally, we will be  
3 calling Justice Matlow.

4 I wanted to make a brief opening  
5 statement to give some context to the Statement of  
6 Facts, and focus on what the essence of the dispute  
7 was in this little part of Toronto called The  
8 Village, which is located on Spadina Road between  
9 St. Clair and Eglinton.

10 In 1999, the residents of The  
11 Village were advised that a 20-unit residential  
12 development was going to be put on a parking lot at  
13 the corner of Spadina and Thelma Road.

14 Thelma Road is a very short street  
15 in Toronto, on which Justice Matlow lived.

16 The residents were called to a  
17 public meeting and advised of this 20-unit  
18 residential development, which would be not more  
19 than 20,000 square feet.

20 Since it was within zoning, there  
21 was really nothing local residents could do about  
22 it, and they assumed there were going to be ten  
23 townhouses put on the corner of the street.

24 In April 2002, there was another  
25 public meeting called for the residents, this one



1 called by their new councillor, Michael Walker.

2                                 At this time, Mr. Walker announced  
3 that the City and the Toronto Parking Authority  
4 intended to put up a six-storey, mixed residential  
5 and commercial development.

6                                 This created a furor amongst the  
7 local residents of The Village for many reasons,  
8 the most important of which was that this new  
9 development would be very out of scale with The  
10 Village.

11                                There was unanimous opposition to  
12 this development, and that gave rise to the  
13 creation of the group known as Friends of the  
14 Village.

15                                There were two essential disputes  
16 with the City. The first one was between April  
17 2002, at the public meeting announcing the six-  
18 story development, and November 2002, when the  
19 residents thought they had stopped that  
20 development.

21                                The second dispute really takes  
22 place between March or April 2003 and January 2004,  
23 and relates to a smaller development. It is not  
24 six-storeys, but was still mixed-use, and the  
25 residents had a number of concerns with the second

1 development.

2                               You will see there are variations  
3 in size; sometimes it is referred to as 30,000  
4 square feet, sometimes 37,000, and so on. But  
5 essentially that is the second dispute we are here  
6 about.

7                               There were various legal concerns  
8 that the local neighbours had. One is they were  
9 concerned that City Council had not authorized the  
10 agreement with this joint venture development.

11                              They were concerned that there  
12 wasn't any transparency, and that there seemed to  
13 be a cloak of secrecy and secret negotiations which  
14 were going on behind their backs.

15                              Third, that there was a conflict  
16 of interest, when City officials were called upon  
17 to review the propriety of their own conduct.

18                              Fourth, they were concerned that  
19 the development did not make practical or business  
20 sense, either in terms of revenue and in terms of  
21 whether it would provide additional parking space,  
22 which was the original rationale for the  
23 development.

24                              This dispute, for all intents and  
25 purposes, finally ends in late January 2004, when

1 the City of Toronto Council passed a bylaw, a  
2 resolution in effect retroactively authorizing the  
3 development agreement at that point in time.

4 The residents in effect felt that  
5 the fight was over. There was an application for  
6 judicial review, which was discontinued. There was  
7 an application, and Justice Matlow participated in  
8 an OMB hearing and withdrew from it at that point  
9 in time.

10 The residents felt that if you  
11 don't have City Council, you can probably win the  
12 legal battle in court or wherever, but then City  
13 Council could simply pass another bylaw authorizing  
14 the activity.

15 The final event would be in July  
16 2004, with the Ontario Municipal Board approving  
17 the development agreement.

18 The only events which I think are  
19 relevant would be the Bellamy Report, which came  
20 out in September 2005, and then we have the email  
21 correspondence with Mr. Barber in October 2005.

22 Hopefully, that will give you some  
23 kind of context for the Statement of Facts, as well  
24 as the viva voce evidence.

25 In terms of the viva voce

1 evidence, I will try to stay in line with the  
2 agreed Statement of Facts, but there may be times  
3 when I may lead in terms of referring to the  
4 Statement of Fact.

5                                 With that in mind, I would like to  
6 call our first witness.

7 AFFIRMED:     RONALD LIEBERMAN

8 EXAMINATION-IN-CHIEF BY MR. CAVALLUZZO:

9                                 Q.     Mr. Lieberman, you presently  
10 live on Thelma Road?

11                                A.     I do.

12                                Q.     How long have you lived  
13 there?

14                                A.     Since June 1982.

15                                Q.     I understand you are a  
16 retired lawyer?

17                                A.     I am.

18                                Q.     You have a law degree from  
19 Osgoode 1970, which was a great year.

20                                A.     The year of the law degree, I  
21 will agree with. Whether it was a great year or  
22 not, I will have to leave that to others to decide.

23                                Q.     Subsequent to that time, you  
24 taught contract law and equity in law in New  
25 Zealand?

1 A. Yes, at the University of  
2 Auckland.

3 Q. You were called to the  
4 Ontario Bar in 1973?

5 A. I was.

6 Q. After being called to the  
7 Bar, you received an L.L.M. from University of  
8 Toronto in 1976?

9 A. Yes.

10 Q. Your thesis was on  
11 Parliamentary privilege?

12 A. Yes.

13 Q. In terms of private practice,  
14 you had a general civil litigation practice?

15 A. Initially, I did a lot of  
16 real estate for a development company, and I also  
17 did a lot of criminal law, which is where I first  
18 met Mr. Hunt.

19 I then transferred my practice  
20 into basically corporate commercial, with a lot of  
21 litigation in that area.

22 THE CHAIR: Are you seeking to  
23 establish a particular expertise? I just don't see  
24 this as relevant to the issues before us, but I  
25 will leave it to you to keep things to the

1 necessary elements.

2 MR. CAVALLUZZO: Yes, I was just  
3 trying to fill in a bit of background.

4 MR. CAVALLUZZO:

5 Q. You retired from the practice  
6 of law in 1990?

7 A. Yes.

8 Q. Prior to your involvement  
9 with the Friends of the Village in about 2002, did  
10 you know Mr. Ted Matlow?

11 A. No. I had seen him around  
12 The Village, but I did not know his name or where  
13 he lived.

14 Q. In October 1999, according to  
15 the Statement of Facts, there was a community  
16 meeting about an announcement of a certain  
17 development.

18 A. Yes, I remember that.

19 Q. Did you attend?

20 A. I did.

21 Q. What was announced at that  
22 meeting?

23 A. They announced that the  
24 parking lot at the corner of Thelma and Spadina  
25 would be developed as a ten-unit townhouse

1 residential-only development.

2                   They showed us drawings of it, and  
3 it was a very tasteful development. They were  
4 going to put a parking lot under it, and add twenty  
5 spaces.

6                   They basically told us this was  
7 what they were going to do, and that it was within  
8 the bounds of what was permitted in the area and  
9 they did not have to get approvals.

10                   That was about it.

11                   Q. Do you know the total square  
12 footage this development was to be?

13                   A. They told us 24,000 square  
14 feet.

15                   Q. That meeting was also  
16 attended by the local councillor, Mr. John Adams?

17                   A. Yes.

18                   Q. I would like to refer you now  
19 to Appendix 22, Volume 2, Tab 3C, which is a  
20 memorandum within the Toronto Parking Authority  
21 from Mr. Persico to Mr. Adams in February 1999.

22                   On page 2, the background there  
23 refers to a joint venture with the Toronto Parking  
24 Authority to construct a nine to ten-unit housing  
25 project above a proposed sixty-three space garage,

1 and a few lines down it says:

2 "We have had discussions with  
3 Councillors Adams and Bussin,  
4 and they are supportive of  
5 the Parking Authority's  
6 decision with the joint  
7 venture, subject to the  
8 Parking Authority meeting  
9 with the local businesses and  
10 residents to determine that  
11 report."

12 That was the meeting held in  
13 October 1999, to the best of your information?

14 A. Yes.

15 Q. At page 3 of that letter, we  
16 see that it states that the proposed residential  
17 development is permitted under the existing zoning,  
18 et cetera:

19 "... and I believe that it  
20 would supported by the local  
21 councillors, businesses and  
22 residents. We will, however,  
23 consult with the local  
24 community to determine their  
25 support prior to entering



1                   into formal negotiations of  
2                   the agreement."

3                   A.    Yes, that is a very important  
4 sentence, the one you have just pointed out.

5                   Q.    You did not see that document  
6 at that point in time, but it did subsequently come  
7 to your attention?

8                   A.    No, I did not see it at the  
9 time. I went down to the Toronto Parking Authority  
10 -- which I will call the TPA, if no one minds --  
11 looked through their records, and extracted this.

12                  Q.    After the October 1999  
13 meeting at which the development was announced,  
14 what was the next notice you received relating to  
15 this particular development?

16                  A.    That would have been in April  
17 2002.

18                  Q.    You received notice at that  
19 time from the new Councillor, Michael Walker, that  
20 there would be an announcement concerning this  
21 development?

22                  A.    Yes, we received notice that  
23 there would be a public meeting at the junior high  
24 school up the road, and they were going to tell us  
25 about the new development they had decided to put

1 in there.

2 Q. How many people attended the  
3 meeting in April 2002?

4 A. It was a good turnout,  
5 probably thirty to forty people.

6 Q. And what announcement was  
7 made?

8 A. They announced they were  
9 going to put in a six-storey, a roughly 50,000  
10 square foot building that would have some  
11 residential units, and then shops on the bottom  
12 level.

13 Q. What was the reaction of the  
14 local neighbours to that announcement?

15 A. We were gob-smacked. We were  
16 quite outraged, and voices were raised. Everyone  
17 was quite excited.

18 Q. Had there been any  
19 consultation up to that point in time when you  
20 heard the announcement of this new development?

21 A. Not that I am aware of.  
22 There were no further notices sent to the residents  
23 that I was aware of.

24 Subsequent inquiries indicated  
25 that no, it was all done on the quiet, in a dark

1 room somewhere.

2 Q. And Councillor Michael  
3 Walker, who was the elected representative for the  
4 residents, was he opposed to this new development?

5 A. Yes, and so was -- Spadina  
6 divides two constituencies. The one on the east  
7 side has Michael Walker as its representative, and  
8 Joe Mihevc is the local councillor on the west  
9 side.

10 So even though it fell within the  
11 bailiwick of Mr. Walker, some of Joe Mahavek's  
12 constituents also had an interest, and he was also  
13 opposed to the development.

14 Q. I would like to move now to  
15 the Friends of the Village. Did you attend at the  
16 initial meeting of the Friends of the Village?

17 A. No.

18 Q. How did you come to be  
19 involved with that group?

20 A. I was walking up Thelma Road,  
21 and was basically lassoed by some people, one of  
22 whom was Ted Matlow.

23 Someone said, "Well, he used to be  
24 a lawyer," and my immediate instinct was to duck  
25 for cover. They said, "Can you help us out?"

1                   I said I didn't think so, that I  
2 was busy travelling and didn't think I could do  
3 much. But they said, "Well, you can do something,  
4 so join in."

5                   Q. At that time, how many  
6 neighbours would have been involved in the Friends  
7 of the Village?

8                   A. When I went to my first  
9 meeting, I think there were eight or ten present.

10                  Q. Where was the first meeting  
11 at which you attended?

12                  A. It was at the home of Mr.  
13 Matlow.

14                  Q. What was the essential  
15 purpose of the Friends of the Village?

16                  A. We tried to figure out a way  
17 to stop this six-storey development; that was the  
18 essence of it.

19                  Q. What was the modus operandi?  
20 How were you going to stop this development which  
21 the City was proposing?

22                  A. For this six-storey  
23 development, the initial discussion was that we had  
24 to find out what the approval process was, and stop  
25 it.

1                   The feeling was that it would  
2 somehow end up in the OMB, so we should do our best  
3 to stop it there.

4                   There was, in my view, no way of  
5 really doing that effectively. But that was the  
6 direction in which we were initially heading.

7                   Q.    What happened after the  
8 initial --

9                   A.    The Friends of the Village  
10 was a very casual organization; people were  
11 throwing out ideas, and someone said that what we  
12 needed to do was to raise the level of  
13 consciousness of the local community, and that  
14 maybe we could exert political pressure.

15                   At the same time we were speaking  
16 to Michael Walker, and he said, "You know, that is  
17 a good idea. Let's try to do that, and try to put  
18 some political wheels in motion to stop it."

19                   He started educating us about how  
20 the City works, because no one in the group really  
21 knew very much about how municipal government  
22 works.

23                   Q.    Did Michael Walker take you  
24 around and introduce you to other councillors, and  
25 so on and so forth, in the course of this

1 endeavour?

2                                   A.    That came a bit later;  
3 initially, no.

4                                   Q.    Could you briefly tell us  
5 what the objections were to this six-storey  
6 development from the neighbours' perspective?

7                                   A.    The Village is an actual  
8 village.  When I grew up and went to school in The  
9 Village, it was its own municipality.  It later  
10 amalgamated with Toronto, probably in the mid-  
11 sixties.

12                                   The lower Village, which is the  
13 part below Eglinton and north of St. Clair, is  
14 basically a residential area with very nice houses  
15 that surrounds this little commercial area.  In  
16 Toronto, that is quite unique.

17                                   The buildings in The Village,  
18 basically two blocks on Spadina and a half-block on  
19 Lonsdale either side, were quite small shops of one  
20 or two stories.  The Village Restaurant is one-  
21 storey, and it has been there since the year one.

22                                   They do have some older  
23 residential buildings that are four or five-  
24 storeys, but basically it is a low-rise area,  
25 particularly in the centre.

1                   We were concerned that if we  
2 dropped a six-storey building on the northern  
3 perimeter, the other owners would say, "Well, we  
4 might as well apply for six stories."

5                   As we understood how the OMB  
6 worked, they would say, "If we gave the City six  
7 stories, we can hardly deny you six stories,"  
8 especially when, as we understood it, development  
9 should be lighter on the edges and higher in the  
10 centre.

11                   We thought that our little village  
12 would all of a sudden evanesce into something that  
13 was quite a bit different, and that would have a  
14 profound effect on what we had bought our houses  
15 for, and the value of those houses, as well as the  
16 uniqueness of this little area.

17                   Q.    What about from the  
18 perspective of residents on Thelma?

19                   A.    It would have a profound  
20 effect on the way that street worked. We were  
21 afraid that the intensification would create  
22 significant problems with respect to traffic.

23                   We have had accidents on that  
24 street as it is, with just a flat parking lot.  
25 There is a light at Lonsdale and Spadina, and a

1 short block up is Thelma, which is a one-way  
2 street.

3                               So all of the traffic coming out  
4 will either turn left or right. There is a bank  
5 opposite with a parking lot, and people go in there  
6 and we have had situations where there is complete  
7 gridlock with cars coming in and out and getting  
8 blocked in.

9                               So if you stick a six-storey  
10 building there, you profoundly increase the amount  
11 of traffic, and it would have been very hard for us  
12 to get in and out. I think it would have caused a  
13 lot of trouble.

14                           Q. Is Thelma a dead-end street?

15                           A. We like to think of it as a  
16 cul-de-sac, but you could call it that.

17                           If you go down Thelma, you end up  
18 turning around in my driveway. We have had people  
19 drive right through our mutual driveway to the  
20 back, and park in front of my garage. And when I  
21 come out and ask people why they are there, they  
22 curse me for not posting proper signs.

23                           Q. In any event, there were  
24 local concerns about traffic, and sunlight, and so  
25 on for those people closest to the development?



1                   A.    Yes.  I was far away, so that  
2 would not bother me as much.  But those were all  
3 factors.

4                   Q.    After this meeting in April,  
5 and joining the Friends of the Village, did you  
6 start working with Mr. Matlow?

7                   A.    Sometime along the way -- I  
8 was not very interested in this OMB thing.  I did  
9 not really think there was any hope of doing that.  
10                   The one thing I knew about was the  
11 law, even though I hadn't practiced for a while.  
12 So I started coordinating between Michael Walker  
13 and the Friends of the Village, and decided I would  
14 explore how this thing had changed from what we  
15 were told in 1999 to this development that had  
16 morphed into a six-storey building.

17                   I coordinated it through Ted, who  
18 was coordinating most of our different projects.

19                   Q.    He is referred to in the  
20 Statement of Facts as the president of the Friends  
21 of the Village.  Do you know how that came about?

22                   A.    I do indeed.  We were trying  
23 to raise a bit of money, and had to get a bank  
24 account.  When we made our inquiries, we realized  
25 that if we opened an ordinary bank account, the

1 fees would suck up the few dollars we were  
2 gathering.

3                               So one of the banks said they  
4 could offer us an account without fees, if we had  
5 an organization.

6                               We got the banking documents,  
7 which said we had to have a president and a vice  
8 president. Someone said that Ted should be the  
9 president, and someone else said that one of the  
10 other members should be the treasurer, and that is  
11 how it came about.

12                              Q. You said earlier that you  
13 obtained that 1999 TPA document about consultation  
14 as part of your own research, is that correct?

15                              A. Yes, although the TPA thing  
16 was, I think, the following year. But I did start  
17 asking how these things happen, and finding out the  
18 municipal procedure of approval and change.

19                              Q. You were working closely with  
20 Michael Walker and his assistant?

21                              A. That is right.

22                              THE CHAIR: Mr. Cavalluzzo, I  
23 believe the members of the panel are generally of  
24 the view that they are not required to get into  
25 this much detail.

1                   Could you give us some indication  
2 of what it is you are seeking to establish by this  
3 level of detail?

4                   If there is some clear purpose  
5 that you want to establish, that is fine. But we  
6 are not here to decide the merits of the Thelma  
7 Road project.

8                   MR. CAVALLUZZO: Absolutely not,  
9 Chief Justice. The only purpose is to provide some  
10 context, so that you have an idea of what the  
11 concerns were in the local community, and what  
12 people were doing, how people were working with  
13 Justice Matlow in the local community.

14                  THE CHAIR: Is there any reason  
15 why you think there is an issue about whether or  
16 not it was appropriate or justified for Justice  
17 Matlow to have some involvement in resisting these  
18 changes, these proposals?

19                  Do you feel there is an issue  
20 before the Committee we will have to decide as to  
21 whether or not there was some reasonable  
22 justification for Justice Matlow joining with other  
23 residents to oppose this proposed development, Mr.  
24 Cavalluzzo?

25                  Is there something in particular

1 you are seeking to address with this point?

2 MR. CAVALLUZZO: Yes, for example  
3 the particulars that were added this morning: (1)  
4 participation in the Thelma Road project  
5 controversy, while failing to take steps to ensure  
6 that he did not sit on any case involving the City.

7 THE CHAIR: I can understand  
8 that, the involvement in the Thelma Road project in  
9 issue, the justification for it, or the correctness  
10 or propriety of the involvement -- but simply  
11 resisting it, is that in issue?

12 MR. CAVALLUZZO: Certainly, I  
13 don't think there is anything improper in itself.  
14 But from the particulars, it would appear that his  
15 involvement in the Thelma Road project, because he  
16 is a judge, had certain implications.

17 All I am trying to do with this  
18 evidence is to give you some context as to what was  
19 happening amongst these members.

20 THE CHAIR: I am just trying to  
21 deal with time, and I don't know whether we really  
22 need this kind of detail.

23 MR. CAVALLUZZO: Excuse me.

24 I agreed to this Statement of  
25 Facts, and it took months to agree to that. I

1 believe we saved days and days of hearing.

2 I agreed to these facts on the  
3 basis that there would be some brief supplemental  
4 evidence to add flesh to that Statement of Facts.

5 That is all we are doing with Mr.  
6 Lieberman, and his direct examination will not take  
7 more than a few hours.

8 THE CHAIR: All right, Mr.  
9 Cavalluzzo, please proceed.

10 MR. CAVALLUZZO:

11 Q. Mr. Lieberman, I understand  
12 that in July 2002, through the efforts of Michael  
13 Walker, you obtained the original agreement dated  
14 November 2001, is that correct?

15 A. Yes, that is the agreement of  
16 purchase and sale.

17 Q. In Volume 1 of the documents,  
18 Appendix 6, we have the agreement of purchase and  
19 sale dated November 8, 2001, correct?

20 A. Yes.

21 Q. The first time you saw this  
22 document was in or about July 2002?

23 A. Yes.

24 Q. Can you tell me, as a  
25 resident and a member of Friends of the Village,

1 what your concerns were when you reviewed this  
2 document?

3                   A.    First of all, at the meeting  
4 we had back in 1999, they were talking about  
5 townhouses and residential only. We also got hold  
6 of the Council minutes that approved the project.

7                   If you turn back to Tab 5, this is  
8 the way it was approved.

9                   What happens is someone writes a  
10 report -- in this case, Mr. Anderson, president of  
11 the Toronto Parking Authority -- and he presents it  
12 to the Administration Committee, which consists of  
13 about ten councillors who look at a particular  
14 area. This particular area was the mounting of  
15 this project.

16                   The Committee makes a decision;  
17 they can receive the report, which is not an  
18 approval, or they can approve the report.

19                   It then goes to the Council, who  
20 makes the final decision at their next meeting.

21                   In this case, this is the report  
22 that was presented. If you read this as an  
23 ordinary person, not a judge or a lawyer, what this  
24 says is, "We want to build a ten-unit residential  
25 complex with approximately 62 or 63 public parking

1 spaces."

2                                 As you read all through this, it  
3 talks about the 10-unit residential development.  
4 But in the conclusion, they say, "We believe that  
5 the proposed joint venture with Spadina Place is  
6 consistent with developing our obligations to meet  
7 parking needs. We had a public meeting, where most  
8 of the residents and businesses who attended were  
9 supportive. So give us permission to proceed with  
10 this deal."

11                                 City Council approved the report  
12 and at a meeting of Council, it was not reversed.  
13 So this is the basis for what would happen.

14                                 We all know from a FIPA  
15 application that the negotiations for the rest of  
16 that year proceeded on the basis of a 10-unit,  
17 residential-only townhouse deal.

18                                 We also know that in January 2001,  
19 there was a strange letter -- could you refer me to  
20 that letter, please?

21                                 Q. I believe it is at Tab 22K.

22                                 A. Yes, this came out on January  
23 26, and the essence of this letter is this: The  
24 developer, First Spadina Place, writes to the  
25 Toronto Parking Authority saying that if they go

1 ahead with the ten-unit townhouse deal, they can  
2 make a profit of about \$363,000. But if they build  
3 a single, multi-use building, they can make a  
4 profit of \$1.1 million.

5 It is peculiar that you would have  
6 a developer discussing its own internal profit with  
7 the other side.

8 What is even more odd is when the  
9 Toronto Parking Authority says, "What a great idea.  
10 And you know what? Don't pay us anything extra.  
11 We are going to give you that extra \$700,000."

12 It was around Christmas, so maybe  
13 they were feeling generous. I wish someone had  
14 exercised this kind of municipal benevolence for  
15 me; I could use lower taxes.

16 But to all of a sudden say, "If  
17 you can make more money, let's go. And we won't  
18 ask you for anything more."

19 Q. So when it came to the  
20 agreement of November 8, 2001, your concern was the  
21 definition of the development at page 2, which  
22 describes it as a mixed-use commercial-residential  
23 development of approximately 30,000 square feet?

24 A. Yes. In fairness, you  
25 earlier said that there were two disputes. We did



1 find out in 2002 that that wasn't the essence of  
2 our fight.

3                                 In 2002, we were talking about  
4 whether this was an appropriate development for The  
5 Village. We were not talking about authorizations.  
6 We mentioned it from time to time, but it was not  
7 a big deal. The question was the six-storey  
8 building.

9                                 You might ask yourself how did it  
10 get to six storeys, when we have an agreement here  
11 for four storeys at 30,000 square feet? How did it  
12 get up to the 50,000 square foot level?

13                                It appears the ink was hardly dry  
14 on this November 2001 agreement when they started  
15 renegotiating, jacking up the size of the building  
16 to six storeys.

17                                The City was to get more,  
18 depending on how high they got in their approvals.

19         So the higher the building, the more money the  
20 City would get by way of cash on closing.

21                                Q.     So it morphed into a six-  
22 storey development in April of 2002, and that was  
23 the first phase of the dispute, where the Friends  
24 of the Village were trying to stop this six-storey  
25 mixed-use development?

1 A. That is exactly right.

2 Q. That meant, according to the  
3 Statement of Facts, petitions were obtained from  
4 local residents and business?

5 A. Yes.

6 Q. There was a great deal of  
7 support for the Friends of the Village?

8 A. Yes.

9 Q. There were interactions with  
10 politicians that you were involved with, along with  
11 Justice Matlow?

12 A. Local councillors, yes,  
13 initially on the Administration Committee. We  
14 wanted to explain our position, because this was  
15 coming up for approval in the Committee.

16 Q. It came before the  
17 Administration Committee on November 5, 2002?

18 A. Yes, sir.

19 Q. And that is the committee of  
20 eight or ten members of Council that looks at  
21 business propositions like this, and either yea it  
22 or nay it?

23 A. Yes.

24 Q. Did you and Justice Matlow  
25 make representations to the Administration

1 Committee?

2 A. We did.

3 Q. Presumably, you were against  
4 the six-storey development?

5 A. We were.

6 Q. I understand that the  
7 Administration Committee, in November 2002, decided  
8 to receive the report, is that correct?

9 A. Yes.

10 Q. What does that mean in City  
11 parlance?

12 A. They don't approve it.

13 Q. This non-approval of the  
14 Administration Committee then went before City  
15 Council on November 28, 2002, correct?

16 A. Yes, sir.

17 Q. And City Council agreed that  
18 there would be no six-storey deal?

19 A. Yes.

20 Q. So the local residents won  
21 that battle?

22 A. Yes.

23 Q. Did you think the war was  
24 over?

25 A. Yes.

1 Q. Why?

2 A. In the application for the  
3 50,000 square foot development, which would have  
4 been the March 2002 document. That is at Appendix  
5 7, Volume 1.

6 Q. This is a memorandum from the  
7 Toronto Parking Authority to the Administration  
8 Committee, dated March 6, 2002?

9 A. Yes. If you look at page 75,  
10 which is page 2 of the document, under  
11 "Amendments", it says -- you can read it as well as  
12 I can.

13 Basically, they said, "Look, we  
14 cannot go ahead unless we get 50,000 square feet."  
15 At this meeting, one of the City's solicitors was  
16 asked about this, and the solicitor said, "We might  
17 as well give it to them, because even if we don't  
18 give it to them, they can still apply for it and  
19 get it."

20 That is because once they had the  
21 land, they could go to the OMB and say, "Well, we  
22 can get whatever we want."

23 Q. So you walked away from that  
24 meeting feeling the battle was over. But it was  
25 not, was it?

1 A. No.

2 Q. When did you discover that  
3 there would have to be a second dispute with the  
4 City?

5 A. In the beginning of 2003, I  
6 had asked for a meeting between various people to  
7 discuss how we could deal with the parking  
8 situation in The Village.

9 At the end of the meeting, Mr.  
10 Persico, representing the Toronto Parking  
11 Authority, casually mentioned that the project was  
12 going ahead, and was going to be 33,000 square  
13 feet.

14 I remember asking him how he got  
15 to 33,000 square feet, and he said, "Well, more or  
16 less 30,000 square feet."

17 I now had to go back and tell  
18 everyone that we were looking at this development  
19 going ahead at this level.

20 That began the second chapter, the  
21 second fight as it were.

22 Q. According to Paragraph 26 of  
23 the Statement of Facts, in April 2003 the developer  
24 applied to the City to amend the zoning bylaws to,  
25 in effect, authorize this four-storey mixed, 33,000

1 square foot development?

2 A. Yes. The reason for that is  
3 that it was only zoned to accommodate roughly  
4 30,000 square feet. The moment they went over that  
5 level -- which they had, because now they were at  
6 33,000 -- they had to get all kinds of zoning  
7 approvals and bylaw changes, and things like that.

8 Now they had to go through a  
9 zoning process, which they would not have had to do  
10 were they within the guidelines.

11 Q. Did the Friends of the  
12 Village regroup to deal with this second  
13 phenomenon?

14 A. Yes.

15 Q. Were you working with Mr.  
16 Matlow and other members of the Friends of the  
17 Village in respect of this second issue?

18 A. Yes.

19 Q. This involved another  
20 committee of Council called the Midtown Community  
21 Council -- this is referred to at Paragraph 27 of  
22 the Statement of Facts -- in June 2003?

23 A. Yes. The reason this went to  
24 the Midtown was because they said that the deal had  
25 already been approved, and now they had to deal

1 with zoning.

2                                 There is a preliminary zoning  
3 report which then goes to the Midtown Community  
4 Council, which is a committee of about five or six  
5 councillors who have the area around proposed  
6 development.

7                                 Q.    That report is also referred  
8 to in Paragraph 27 of the Statement of Facts, and  
9 can be found behind Appendix 14?

10                                A.    This is the report from the  
11 director of Community Planning - South District.

12                                 When they made their application,  
13 the first thing that happened is that the director  
14 reports that; this is his preliminary report.

15                                Q.    On page 5 of that report, in  
16 the last sentence in the paragraph above  
17 "Conclusion", it states:

18   "Planning staff will be  
19   consulting with Legal  
20   Services staff to determine  
21   if the application as  
22   submitted remains consistent  
23   with the standing direction  
24   of City Council."

25                                 Do you see that?

1                   A.    Yes, that is as a result of  
2 the discrepancy between the authorizing resolution  
3 back in April 2000, which spoke about ten  
4 townhouses, and the current application for a  
5 multi-use 33,000 square foot development.

6                   Q.    So that issue appeared to be  
7 up in the air, even in the Planning Department?

8                   A.    It certainly was noted by the  
9 Planning Department.

10                  Q.    And your concern was whether  
11 this particular development was authorized by the  
12 City Council's decision?

13                  A.    Yes.  As you indicated  
14 earlier, the second part only dealt with  
15 authorization.  It didn't deal with whether this  
16 was appropriate or not; although there was some  
17 talk at the OMB, it was very cursory.

18                  What we were really dealing with  
19 was trying to get the City to take a look at this  
20 authorizing resolution and the project, and saying  
21 that this does not justify this.  So shouldn't it  
22 go back to Council for proper approval?

23                  That is what it was all about.

24                  Q.    Moving along in the  
25 chronology, the Midtown Community Council meeting



1 takes place in July 2003?

2 A. Yes.

3 Q. Did you make a presentation  
4 at that meeting?

5 A. At that one? No.

6 Q. Did you make a subsequent  
7 presentation?

8 A. Not at that one. I think I  
9 made one at one of these, but I don't think it was  
10 that one.

11 Q. All right. In July 2003, I  
12 understand that the Friends of the Village wanted  
13 this to be resolved by having the City appoint an  
14 independent lawyer to hear submissions, and  
15 hopefully resolve this dispute, correct?

16 A. Yes. We did not want to  
17 fight. We wanted to (a) find out what was going  
18 on, and (b) to settle this thing somehow.

19 We didn't want to get into a  
20 situation where we had to spend a lot of money in  
21 court.

22 We were searching for things to  
23 help us. I was trying to get information; Ted was  
24 trying to get information. It was very hard to get  
25 information.

1                   The moment they saw we were  
2   questioning the way they had run things,  
3   particularly one person in the City's Solicitor's  
4   office and the City Solicitor herself, we were  
5   blocked.

6                   I was asking questions, but not  
7   getting any answers.

8                   Q.   I want to refer you now to  
9   Volume 2, Appendix 22, Tabs 3L and M.   Dealing  
10   first with Tab L, it is a letter from you to the  
11   Treasurer dated July 7, 2003.

12                  A.   This is an example.   I had no  
13   idea how they authorized these things.   This was  
14   supposedly authorized by the Clerk.

15                  The Clerk says that this contract  
16   was approved in furtherance of this Report 87 of  
17   the Administration Committee of April 2000.   That  
18   is the one that authorized the ten townhouses.

19                  I asked them what they do.   Do you  
20   speak to the Solicitor's office, or --

21                  Q.   I am referring to page 2 of  
22   that letter, the third last paragraph; you have a  
23   series of questions there for the Treasurer?

24                  A.   Yes.

25                  Q.   This is what you were trying

1 to find out?

2 A. Yes, I say:

3 "Your early reply to this  
4 letter would be of assistance  
5 in enabling us to formulate  
6 our response to the issue, as  
7 well as our future course of  
8 action."

9 We just wanted to find out what  
10 was going on. Michael Walker wanted to find out  
11 what was going on. He couldn't figure it out  
12 either, and he is an experienced councillor.

13 Q. At Tab M is another letter to  
14 the Treasurer and City Clerk, dated August 14,  
15 2002. Did you send this letter to the City?

16 A. Yes, I did.

17 Q. There is a reference there to  
18 a discussion you had with someone on the City's  
19 Legal Services staff?

20 A. Yes. I received a call from  
21 Barbara Cappell. She advised me that she worked  
22 for Legal Services, and that the matter had been  
23 sent to her for response.

24 She wanted clarification of a  
25 couple of issues, and she asked me a couple of

1 questions, which I answered.

2 I then asked her a couple of  
3 questions, and she became very defensive, guarded  
4 and sort of angry.

5 I said, "Why are you angry? What  
6 does this have to do with you?" I remember there  
7 was a long and rather loud silence.

8 It finally hit me. I said, "Did  
9 you approve this contract?" She then said, "Yes, I  
10 did."

11 Q. This is the November 2001  
12 contract?

13 A. She told me she had been  
14 appointed by the City Solicitor to investigate this  
15 thing, and the first thing I thought was that if  
16 she was the one that approved it, and if I am  
17 questioning its validity, why would the City  
18 Solicitor appoint the very person whose behaviour  
19 was being inquired into to conduct the  
20 investigation.

21 Q. So that raised her concern,  
22 and you moved on?

23 A. She told me she would reply  
24 to me; that was it.

25 Q. In that same month, July 2003

1 according to Paragraph 28 of the Statement of  
2 Facts, the developer applied to the OMB for an  
3 amendment to the zoning bylaw?

4 A. Yes. Under Ontario law, if  
5 the City does not grant the zoning approvals within  
6 a certain time, the developer can go directly to  
7 the OMB.

8 They can bypass the City  
9 procedure; the City has no standing, other than as  
10 a party to the OMB hearing for determining that  
11 particular issue.

12 Q. I understand that according  
13 to Appendix 15, the Planning Department reported  
14 back to the Midtown Community Council in August  
15 2003.

16 Can you briefly tell us what the  
17 essence of this document was, from your perspective  
18 and the Friends of the Village?

19 A. I was told this was the  
20 response to my letters to the City Clerk and the  
21 City Treasurer.

22 It was a report prepared by  
23 Barbara Cappell, signed by Anna Kinastowski, the  
24 City Solicitor, that said everything is fine.  
25 Everything is just terrific; no problems.

1                   Q.    The lawyer who drafted this  
2 report in August 2003 in effect was saying that the  
3 contract she negotiated in November 2001 was  
4 authorized and proper?

5                   A.    No, excuse me.  Our research  
6 indicates that the City had outside council  
7 negotiating the November 2001 agreement.

8                   Q.    But the City staff approved  
9 it?

10                  A.    Yes.  In particular, it looks  
11 like it was signed off by Barbara Cappell.  In  
12 fairness, we never got an answer to how the signing  
13 off went --

14                  Q.    We need not get into that.  
15 In September 2003, according to Paragraph 29, the  
16 Friends of the Village obtained a legal opinion as  
17 to whether the development agreement was  
18 authorized.

19                        I am referring now to Appendix 16  
20 from Mr. Miller, and his conclusion was that there  
21 was no legal authorization?

22                  A.    Correct.

23                  Q.    According to Paragraph 30, in  
24 late September 2003, the City Council adopted a  
25 resolution to appoint an outside counsel, to get an

1 opinion on the authority as well as prescribing  
2 options the City could take in respect of this  
3 dispute?

4 A. The City retained outside  
5 counsel to provide it with its own advice, not to --  
6 we had made another offer in the interim to retain  
7 an independent counsel, like a mediator who would  
8 hear our arguments and give an opinion.

9 But they chose instead to retain  
10 their own counsel.

11 Q. It was at that point you  
12 decided to file an application for judicial review?

13 A. Yes.

14 Q. That is Appendices 21 and 22.  
15 There were twenty-four applicants to that  
16 application?

17 A. Yes.

18 Q. Were you the chief  
19 spokesperson for that application?

20 A. Yes.

21 Q. I note that Justice Matlow is  
22 not an applicant, is that correct?

23 A. Correct.

24 Q. Can you tell us why?

25 A. I didn't want him to be part

1 of it. I thought it would complicate matters. I  
2 was handling the matter, was pretty well briefed on  
3 it, and didn't think it necessary to drag him into  
4 it.

5 Q. By this point in time, you  
6 had dealt with Justice Matlow since shortly after  
7 April 2002, and we are now in September 2003.

8 Did you raise concerns with  
9 Justice Matlow about his involvement in the Friends  
10 of the Village?

11 A. Yes. It was shortly after we  
12 had started working together more intensely, which  
13 would have been in 2002.

14 I was curious from an academic  
15 standpoint about whether a judge could participate  
16 in these things, and I asked him about it.

17 He said, "I have thought about it,  
18 and have investigated the matter. I have a  
19 directive that seems to deal with this kind of  
20 thing," and he read it to me, and it sounded about  
21 right.

22 He had thought about it, and I was  
23 satisfied -- not that it mattered. But he seemed  
24 to have thought about it, so that was it.

25 Q. Coming back to the



1 application for judicial review, you decided it  
2 would be better not to have him as a party because  
3 of complications or --

4 A. He was a member of the court  
5 that would be deciding it, and we didn't need him.

6 We had participants, and I had a fairly good idea  
7 of what the situation was.

8 Q. In terms of these applicants,  
9 did you get financial support from the twenty-four  
10 applicants?

11 A. From twenty-three of them.

12 Q. According to the Statement of  
13 Facts, counsel was retained, a notice of  
14 application was filed, and your affidavit was  
15 drafted.

16 I would like to know whether  
17 Justice Matlow played any role in the application  
18 for judicial review.

19 Did you consult him at all in  
20 respect of the application?

21 A. He played a role in the  
22 following ways: he had information that was  
23 uniquely in his hands, in particular the FIPA  
24 application that he made, and the documents that  
25 came.

1                   You will see in the affidavit that  
2 I refer to being advised by him, and verily  
3 believing these documents, in order to have a basis  
4 for including them.

5                   The second way he played a role  
6 was a person who knew about affidavits. I was kind  
7 of rusty, and I had never had the opportunity to  
8 sit beside a judge and talk to him about a document  
9 I was drafting.

10                  They should include that in all  
11 law schools, a moment or two where you can sit with  
12 a judge and ask, "Well, what do you want to hear?"

13                  He explained to me that judges  
14 like to have, right up front, a short description  
15 of what it is all about. So he helped me get a  
16 feel for what it was.

17                  But it was my affidavit, and every  
18 word of it is my own and not his.

19                  He also assisted when I was  
20 retaining counsel. I would ask what he thought of  
21 that counsel, and did he know anything.

22                  Q. I am not going to get into  
23 the claims or the merits of the application; the  
24 document is there in Appendix 21.

25                  At the same time, there was an

1 Ontario Municipal Board application going on in  
2 January 2004, and I understand that as a result of  
3 this application, the Friends of the Village  
4 discovered new information and new documentation,  
5 much to your surprise, is that correct?

6 A. Yes, sir.

7 Q. Let's go now to Appendix 19,  
8 Tab D. First of all, can you summarize your  
9 reaction when you saw this document, and why?

10 A. The City was applying for an  
11 adjournment of the OMB proceedings, so they could  
12 determine what the City was going to do. Were they  
13 going to ratify, let it go before the court,  
14 whatever.

15 The Solicitor for the City filed  
16 an affidavit in support of the application for an  
17 adjournment, and one of the documents included was  
18 this document, entitled "Amending Agreement".

19 The amending agreement basically  
20 has two parts. The first is a redefinition of  
21 "development"; I will come back to that in a  
22 minute. The second part was an extension of time  
23 periods.

24 You will notice that on the second  
25 page, this was approved as to form for Anna

1 Kinastowski, the City Solicitor, and there are  
2 initials there.

3                   Those are the same initials that  
4 appeared on the November 2001 agreement that upped  
5 the level of the development to 30,000 square feet.  
6 So we knew that was Barbara Cappell.

7                   You will also see that it was  
8 authorized by Report 1413 of the Administration  
9 Committee. That is the same meeting where the six-  
10 storey building was defeated.

11                   We remembered there was another  
12 motion introduced at that time. I asked Michael  
13 Walker about it, and he said that had to do with  
14 expanding the time periods of the original  
15 agreement, because the City feels that they have  
16 involved these people in this six-storey thing and  
17 if that fails, they will need extra time to regroup  
18 and see which way they are going to go.

19                   We couldn't see that particular  
20 report, because it was submitted sub rosa; it was a  
21 confidential report.

22                   But when we got hold of this, we  
23 went to Michael Walker and said, "You told us this  
24 had to do with time periods, but look at the  
25 definition of 'development' here."

1                   It is the 30,000 square feet,  
2 fine. But right at the bottom, it says:

3                   "Provided that any increase  
4                   in gross floor area or number  
5                   of storeys above grade shall  
6                   require the TPA's prior  
7                   written consent, which may be  
8                   withheld at the TPA's sole  
9                   and exclusive discretion."

10                  This is signed not only by the TPA  
11 and the developer; it is also signed by the City of  
12 Toronto. It looks a lot like they have just  
13 delegated the discretion to increase the size to  
14 the TPA.

15                  Notwithstanding the fact that  
16 Council had just knocked out this six-storey thing,  
17 it looks like they can revise it at their own  
18 discretion.

19                  Q. I understand that this  
20 document, that you saw for the first time in  
21 January 2004, was not part of the City's response  
22 to the FIPA request that had been made.

23                  A. You are quite right. They  
24 are obliged to list all documents, even if they  
25 don't give them to us.

1                   This is a document that clearly  
2 should have been listed. It was not, and that is a  
3 violation of the law.

4                   Q.    Well, we will leave that for  
5 others.

6                   Did you bring this document, once  
7 you discovered it, to your councillor Michael  
8 Walker?

9                   A.    Yes.

10                  Q.    What was his reaction?

11                  A.    He went ballistic. He was  
12 quite upset, and he fished out the report that --  
13 this agreement is approved as being authorized by  
14 Report 1413, so he fished it out and showed it to  
15 us.

16                  THE CHAIR:   Mr. Cavalluzzo, would  
17 this be a convenient time for us to take our mid-  
18 afternoon adjournment?

19                  MR. CAVALLUZZO:   Yes, and I will  
20 probably only be a few more minutes with Mr.  
21 Lieberman after we resume.

22                  THE CHAIR:   Thank you, we will  
23 adjourn for ten minutes.

24    --- Recess at 3:21 p.m.

25    --- Upon resuming at 3:34 p.m.

1 THE CHAIR: Mr. Cavalluzzo?

2 MR. CAVALLUZZO:

3 Q. Before the break, we were  
4 discussing Michael Walker and his reaction to the  
5 document.

6 I just want to make it clear that  
7 the parking lot at Thelma and Spadina is owned by  
8 the City of Toronto?

9 A. That is true.

10 Q. It is operated by the Toronto  
11 Parking Authority, or TPA?

12 A. Yes.

13 Q. What you have been referring  
14 to as the joint venture agreement would be an  
15 agreement between the TPA, the City, and the  
16 developer, First Spadina Place?

17 A. Yes.

18 Q. That is why there were City  
19 resolutions which had to approve certain things  
20 along the way?

21 A. Yes.

22 Q. Could you go to Appendix 27,  
23 please? I understand from Paragraph 38 that Mr.  
24 Walker sent a letter to all members of Council,  
25 dated January 16, 2004?

1 A. Yes, he did.

2 Q. That is in Volume 3, Tab 27,  
3 and he opens by saying:

4 "I have received new  
5 information that further  
6 demonstrates that City  
7 Council's authority appears  
8 to have been usurped again by  
9 City staff."

10 A. Yes.

11 Q. This is a good letter, from  
12 your perspective, in that it gives the history of  
13 the whole dispute, and deals with the both the 2002  
14 and 2003 disputes.

15 A. Yes.

16 MR. CAVALLUZZO: I would say to  
17 the panel that this is, in our respectful  
18 submission, a very important letter because it  
19 does, from the councillor's point of view, point  
20 out the problems he saw with the whole process  
21 which was part and parcel of the essence of the  
22 neighbours' complaints in this regard.

23 THE WITNESS: At Tab 3, if I may?  
24 You may recall that this was the contract that  
25 redefined "development" as being 30,000 square



1 feet, providing that any increase in the gross  
2 floor area or number of storeys above grade shall  
3 require the TPA's consent.

4 This is supposedly authorized by  
5 Report 1413 of the Administration Committee on  
6 November 26, 27 and 28.

7 If you look at Tab 3, we have  
8 Report 1413, and this was the authorizing document  
9 for this.

10 The recommendation is that  
11 authority be granted to extend conditional dates,  
12 and that "the appropriate City and Toronto Parking  
13 Authority be authorized to take the necessary  
14 action to give effect to the foregoing."

15 There is nothing about conveying  
16 to the Toronto Parking Authority the broad  
17 discretion they seem to have had, according to this  
18 agreement, which is signed by the City. It is just  
19 not there.

20 MR. CAVALLUZZO:

21 Q. This letter of Michael  
22 Walker, with its enclosures, went to City Council  
23 at the end of January 2004, when they were having a  
24 meeting concerning the Thelma project.

25 I understand that you requested,

1 through Mr. Walker, an opportunity to make  
2 submissions to the City before they made a decision  
3 on this issue at the end of January 2004?

4 A. Yes.

5 Q. Were you given that  
6 opportunity?

7 A. No.

8 Q. I understand that in late  
9 January 2004, the City followed the advice of  
10 independent counsel to in effect retroactively  
11 ratify the development agreements that had been  
12 negotiated up to that point in time?

13 A. Yes.

14 Q. At that point, did you and  
15 your fellow residents, the members of the Friends  
16 of the Village, decide that the matter was now  
17 essentially over?

18 A. Yes.

19 Q. Did you take steps to have  
20 your application for judicial review withdrawn?

21 A. Yes.

22 Q. I understand that Mr. Matlow  
23 withdrew from the OMB proceeding, correct?

24 A. That was a different time  
25 period. That was later on, but yes, he did

1 withdraw it; he was no longer a party to it.

2 Q. And he had been a party  
3 because he lived so close to the development, the  
4 OMB had to give him notice of the development  
5 application?

6 A. Yes.

7 Q. In terms of the withdrawal of  
8 the application for judicial review, did you  
9 discuss this with the residents, and the twenty-  
10 three other applicants?

11 A. I discussed it with each of  
12 the applicants, and suggested what I felt was best.  
13 Some wanted to continue, but on balance it did not  
14 make sense.

15 Q. Did you consult Justice  
16 Matlow about whether the application should be  
17 withdrawn?

18 A. I definitely spoke to Ted  
19 about it. We had discussions about the law  
20 regarding ratification, and other aspects of the  
21 application that could have permitted it to go on.

22 We did have justifiable grounds, I  
23 believe, for pursuing it. But once Council  
24 indicated that they did not have the political will  
25 to police their own staff, anything we would have

1 done, they would simply have passed a resolution  
2 correcting it.

3                               If they were not going to do it,  
4 that was it.

5                               Q.    Eventually, the application  
6 for judicial review was withdrawn on a without-  
7 costs basis?

8                               A.    Yes.

9                               Q.    Throughout this piece, you  
10 saw Ted Matlow's role in respect of the Friends of  
11 the Village?

12                              A.    I think it is fair to say  
13 that I was the closest one, the most consistent one  
14 of all of the participants.

15                              Q.    Can you give us your  
16 estimation of the role that Mr. Matlow played?

17                              A.    He was terrific. He was a  
18 great listener, patient, creative, very thoughtful  
19 and balanced.

20                              He didn't raise his voice, or lose  
21 his temper. He was very hard working. If someone  
22 did not want to do something, he would pick it up  
23 and do it himself, however menial the task.

24                              I don't know what more to say.

25                              Q.    Did you view him to be a very

1 good neighbour?

2 A. He was an excellent  
3 neighbour, and a fine member of the community.

4 Q. In your view as a retired  
5 lawyer, did you lose any respect for the judiciary  
6 because of the role he played in this neighbourhood  
7 fight with the City of Toronto?

8 A. No, absolutely not. Indeed,  
9 I actually became more favourably disposed.

10 I have friends who are judges, and  
11 sometimes judges distance themselves from the  
12 community. That is unfortunate, because they have  
13 the skills that are most needed by the community,  
14 especially in things like this.

15 I thought what Ted did was very  
16 courageous, very hard, and he was very devoted to  
17 it. I cannot even begin to tell you the hours he  
18 spent on this without complaint.

19 He is a great neighbour, and I  
20 think greatly respected in our community.

21 Q. The final series of questions  
22 relate to what has been referred to as the Bellamy  
23 Report, which reviewed the behaviour of City  
24 officials in another area in respect of leasing  
25 arrangements.

1                   The Bellamy Report is an appendix  
2 in this proceeding, and was issued and released  
3 publicly on September 12 and 13, 2005.

4                   I understand that you have read  
5 the Bellamy Report, and I would ask for your  
6 perspective in terms of any similarities between  
7 the kind of conduct that Justice Bellamy found, and  
8 the kinds of conduct you observed --

9                   THE CHAIR:    Mr. Cavalluzzo, how  
10 do we have any jurisdiction to deal with that  
11 report?  What does that have to do with us?

12                   I don't see that there is any  
13 serious question about whether or not it was  
14 appropriate for Justice Matlow to join the Friends  
15 of the Village, and oppose what was being done in  
16 that case.

17                   What Justice Bellamy found in her  
18 inquiry with respect to the computer issue, I am at  
19 a loss to understand how you can make that  
20 relevant.

21                   MR. CAVALLUZZO:    If you are  
22 saying to me, Chief Justice, that this panel is not  
23 concerned with Justice Matlow's role in the Friends  
24 of the Village and in this project dispute, then I  
25 will certainly move on, if I have that on the

1 record.

2 THE CHAIR: What I am saying to  
3 you is that I know of no basis for you having to  
4 establish that it was acceptable for Justice  
5 Matlow, as a resident in that area, to have some  
6 involvement.

7 What that detailed involvement was  
8 is quite another question. But the fact that he  
9 should have joined his neighbours in resisting this  
10 proposal, that test alone does not appear to me to  
11 be in dispute.

12 But what Justice Matlow did  
13 specifically goes to conduct, and that is what is  
14 before us.

15 MR. CAVALLUZZO: That is right,  
16 and it would seem to me that in respect of, I would  
17 say, eighty per cent of the allegations that relate  
18 to his involvement in the Thelma project, in order  
19 to make a determination in respect of each of those  
20 allegations -- and the only allegations that do not  
21 relate to the Thelma project are the ones  
22 specifically relating to Mr. Barber.

23 But it would seem to me that  
24 before you can make a determination as to whether  
25 his involvement in the Thelma project met the

1 threshold of those allegations, you should have a  
2 fair understanding of his involvement, the total  
3 context of his involvement, why he became involved,  
4 and so on.

5 THE CHAIR: But what does that  
6 have to do with the computer leasing inquiry done  
7 by Justice Bellamy?

8 MR. CAVALLUZZO: Because it will  
9 show that the very same criticism that Justice  
10 Bellamy found in respect of City officials was  
11 occurring at the very same time as these events  
12 that these local residents were attempting to deal  
13 with.

14 THE CHAIR: I do not want this  
15 inquiry to extend into an inquiry into the whole  
16 behaviour of the City of Toronto staff.

17 We are here to deal with  
18 complaints made by City of Toronto against Justice  
19 Matlow, and how it compares to what Justice Bellamy  
20 found in the computer leasing matter I would  
21 suggest is too remote to be of issue here.

22 MR. CAVALLUZZO: It is  
23 reflective, Chief Justice -- and this is the point  
24 I would make in terms of jurisdiction, in fairness.

25 We are going to be dealing with



1 Justice Matlow as to him sending the email to Mr.  
2 Barber in October 2005. His response will be that  
3 it arose from the release of the Bellamy report.

4 JUSTICE ROLLAND: The source of  
5 that was Mr. Matlow, not Mr. Lieberman, right?

6 MR. CAVALLUZZO: But it would  
7 seem to me that if Mr. Lieberman, a fellow  
8 neighbour, had the same view of the Bellamy Report  
9 that Justice Matlow does, that he should place more  
10 weight on Justice Matlow's motivation.

11 But I leave it to you.

12 THE CHAIR: What question is it  
13 you want to ask?

14 MR. CAVALLUZZO: I just want to  
15 ask Mr. Lieberman to give us his view as to his  
16 conclusion after reading the Bellamy Report, which  
17 indicated similar problems found by Justice Bellamy  
18 were the same or similar to the problems that he  
19 saw in terms of City officials in respect of the  
20 Thelma dispute.

21 THE CHAIR: With great respect,  
22 Mr. Cavalluzzo, you would be asking Mr. Lieberman  
23 for his opinion as to the level of behaviour of  
24 City officials in the City of Toronto and whether  
25 or not, in his view, there were similarities to the

1 way officials were behaving in connection with the  
2 Thelma project.

3 I do not see how what officials  
4 were doing in other respects at City Hall bears at  
5 all on Justice Matlow's conduct, and would be  
6 appropriate for us to review.

7 MR. CAVALLUZZO: I accept your  
8 ruling, and I will not ask Mr. Lieberman any  
9 further questions.

10 I should say that when I say I  
11 accept your ruling, that does not mean I accept it  
12 without reservation. There could be an objection  
13 to it.

14 Chief Justice and members of the  
15 panel, that would complete my direct examination.

16 THE CHAIR: Thank you, Mr.  
17 Cavalluzzo. Mr. Hunt?

18 CROSS-EXAMINATION BY MR. HUNT:

19 Q. My compliments to you, sir;  
20 you have taken on quite a challenge, and appear to  
21 have a mastery of the facts involved.

22 I imagine it must have become  
23 almost another file for you as a lawyer, while this  
24 was ongoing and --

25 A. More so, because I was not

1 getting paid.

2 Q. But it was a task you took  
3 on, because you live in the area?

4 A. I think that is a fair  
5 comment.

6 Q. I noticed from your  
7 affidavit, which is at Tab 22, in Paragraph 76 you  
8 list some of the things you had done up to the time  
9 this affidavit was sworn on December 17, 2003.

10 You have described some of this  
11 here today, but you certainly contacted the  
12 councillors involved and met with them?

13 A. Yes.

14 Q. You wrote to the City Clerk  
15 and City Treasurer, as you have described?

16 A. Yes.

17 Q. And you spoke to Ms Cappell  
18 in the legal department on a couple of occasions.

19 A. Yes.

20 Q. You assisted in assembling  
21 the petition from businesses, and the BIA --

22 A. The Business Improvement  
23 Association, yes.

24 Q. You met with the Auditor  
25 General of the City?

1 A. Yes.

2 Q. You met with Michael Melling,  
3 the solicitor dealing with this on behalf of the  
4 Friends of the Village?

5 A. Yes.

6 Q. And you dealt with Michael  
7 Walker with respect to getting documents, et  
8 cetera.

9 A. Yes.

10 Q. You reviewed all of the  
11 documents that Justice Matlow had obtained under  
12 his application?

13 A. Yes.

14 Q. You appeared before the  
15 Midtown Community Council, and tried to get them to  
16 appoint an independent counsel?

17 A. Yes.

18 Q. It is fair to say that you  
19 were on top of everything that was going on with  
20 respect to the Friends' attempts to deal with what  
21 they thought the City was doing?

22 A. Certainly in this area I was  
23 definitely the point person.

24 Q. I think you also met with  
25 Mayor Lastman, is that right?

1 A. Yes.

2 Q. On that occasion, you went  
3 with Justice Matlow?

4 A. And Mr. Becker, who was from  
5 the Business Improvement Association, yes.

6 Q. You being a lawyer, and  
7 having the experience you have, and being on top of  
8 this in the way you obviously were, what did you  
9 need Justice Matlow for in respect of these  
10 activities?

11 A. I probably would not have  
12 done it if it wasn't for Justice Matlow. I am not  
13 a leader, not a follower; I am a loner. I don't  
14 think I would have taken this on in the first place  
15 if it wasn't for Ted.

16 He was a bit of a magician in  
17 getting people to keep going, motivating them. It  
18 was fun working with him; it was instructive and  
19 interesting.

20 The six-storey building, that I  
21 was pretty motivated on. But that didn't really  
22 involve these issues that I finally became very  
23 involved with.

24 When the four-storey thing was  
25 passed, I was prepared to throw in the towel. But

1 then I got angry at what was going on, and thought  
2 we could do something about it. But we couldn't.

3 Q. But you had quite a bit of  
4 support here. I notice that at Appendix 22, this  
5 is your application for judicial review -- this is  
6 your affidavit, but it was filed in support of that  
7 application?

8 A. Yes, sir.

9 Q. So the style of cause we see  
10 here at Appendix 22 lists all of these folks from  
11 the Friends of the Village, is that right?

12 A. Yes.

13 Q. All of these folks were  
14 prepared to sign up to be applicants, with all of  
15 the dangers that entailed, costs awards and so on.

16 They were all prepared to sign up  
17 and participate?

18 A. Yes.

19 Q. So you had lots of support.

20 A. I did not have support from  
21 these people in terms of doing the things you have  
22 indicated.

23 These people are not experienced  
24 in law. I think one of them is a lawyer, but we  
25 have a doctor, an engineer, a real estate agent, a

1    librarian.

2                            These were just neighbours who had  
3    no contribution into this thing, other than to  
4    support it as applicants and provide some financial  
5    wherewithal.

6                            Q.    You were the lawyer?

7                            A.    I was an applicant.  We have  
8    a lawyer, a very good one; Jerry Jamieson, who is  
9    listed here.

10                          Q.    I think you said to my  
11   friend, when you talked about the judicial review  
12   application, that you didn't need Justice Matlow.

13                          In fact, you did not want him,  
14   because you thought it would complicate matters.

15                          Q.    At that stage, I think it is  
16   fair to say that we didn't need him.

17                          Q.    I take it that you were sort  
18   of picking and choosing when Justice Matlow would  
19   be of assistance to you?

20                          A.    I think that is a fair  
21   comment in connection with the application, yes.

22                          Q.    When you went to see the  
23   mayor, he went with you?

24                          A.    He arranged the meeting, so I  
25   went with him.  But that was the year before.

1 Q. Yes, I am not trying to  
2 suggest otherwise. So at that point, he was able  
3 to open the door?

4 A. Very much so, and he was the  
5 major spokesperson at that meeting.

6 Q. Do you think he was able to  
7 open the door because he was a judge?

8 A. No, I believe there was a  
9 mutual friend between him and the mayor.

10 Q. Could you have gotten in to  
11 see the mayor without Justice Matlow having --

12 A. I don't believe I could have.

13 Q. You have said he helped in  
14 terms of giving you advice on your affidavit, yet  
15 he was not one of the applicants because you  
16 thought it would just create more problems than it  
17 would solve, because he was a judge of that court?

18 A. Yes.

19 Q. So the issue of the delicate  
20 position that he was in because he was a judge of  
21 the Superior Court was something that was in your  
22 mind?

23 A. Yes.

24 Q. It was in your mind  
25 throughout?



1                   A.    It was at the beginning, and  
2 then when we actually came to a court application,  
3 it was in my mind.

4                   Q.    You said that you asked him  
5 about this out of curiosity, how a judge can get  
6 involved in this sort of activity, and he talked to  
7 you about a directive or document.

8                   A.    Yes.

9                   Q.    At that time, did you ask him  
10 if he had spoken to anyone about this?

11                  A.    I think at one stage, I did.  
12 I asked him if he had had any flack as a result of  
13 his activities, which were fairly well publicized.

14                  Q.    What I was really meaning  
15 was: did you say to him, when this was on the  
16 table, "Have you spoken to anyone like the Chief  
17 Justice, or the Associate Chief Justice, to find  
18 out if this is okay?"

19                  A.    I think I did, at one stage,  
20 ask if any of his superiors had said anything.

21                  Q.    There is a difference between  
22 his superiors saying something, though, and going  
23 to get advice from them.

24                  A.    I see. Did I ask him --

25                  Q.    Did you ever ask him, "Did

1 you ever go and get any advice on this from the  
2 Chief or the Associate Chief on all of this  
3 activity we are engaged in here?"

4 A. I can't recall whether I  
5 asked him in that way. I know we talked about the  
6 subject, but I am not sure that I put it in terms  
7 of "did you go", or "did they come" -- I don't  
8 recall, I am sorry.

9 Q. Did you ever hear whether he  
10 went and got advice from the Chief or Associate  
11 Chief?

12 A. Yes, I think I had asked him  
13 whether he had criticisms from anyone, and he said  
14 that he had not had any criticism from -- it was a  
15 lady judge who was his superior, but I can't recall  
16 her name.

17 Q. Justice Smith?

18 A. I think so, yes.

19 Q. So basically the conversation  
20 was, "Did you get any criticism?"

21 A. I think it was something like  
22 that.

23 Q. Do you know whether Chief  
24 Justice Smith would have known what detail he was  
25 involved in on behalf of the Friends of the

1 Village?

2 A. I don't know what the  
3 conversations were between Ted Matlow and Madam  
4 Justice Smith.

5 Q. All right. There was an  
6 application to the OMB, and at Tab 20 there is a  
7 notice of motion brought by Justice Matlow.

8 Was there a reason, so far as you  
9 and he discussed, why he was taking separate  
10 standing in the OMB matter?

11 A. Separate from?

12 Q. Was he applying in this  
13 matter on behalf of the Friends, or was he there in  
14 his own right?

15 A. I think he was there in his  
16 own right. I had very little to do with that, I  
17 must tell you. I had no stomach for the OMB.

18 I was busy with my own  
19 application, and was not all that interested in the  
20 OMB. I felt that once it got to the OMB, it was  
21 dead.

22 Q. Was this something you  
23 discussed with him, that he would do that and you  
24 would look after the application?

25 A. I don't think I ever said to

1 him, "You do that, and I will do this."

2                                   And he was in a different category  
3 than me, because he was within the -- there is a  
4 certain distance from the development that governs  
5 whether you get notices from the OMB, and whether  
6 you can become a party.

7                                   I was outside of that, so I never  
8 even got notices from the OMB. He was inside of  
9 that area, and the project was right beside him.

10                                  That is why he did it, I guess.  
11 But as I have said, I had very little to do with  
12 that. I was only interested in the OMB insofar as  
13 it reflected the application.

14                                  Q.    In Paragraph 77 of your  
15 affidavit, you indicate that based on information  
16 brought to you by Justice Matlow, he wrote to the  
17 Honourable Michael Bryant, asking him to intervene  
18 in this particular matter on November 6, 2003.

19                                  On November 13, 2003, he wrote to  
20 the new Mayor of Toronto, David Miller, to alert  
21 him to this issue and the history of the matter.

22                                  Is that something that you and he  
23 discussed, that he would write to those two  
24 political figures to express concern about this  
25 matter, as opposed to you?

1                   A.    I don't think discussed.  He  
2 would tell me what he was doing, and I would tell  
3 him what I was doing.

4                   But it would be wrong to think we  
5 were walking in lock-step with each other.  He had  
6 his approach, and I had mine.

7                   Michael Bryant is my member as  
8 well as Ted's, but I would not have written to him  
9 because I didn't think he would do anything.

10                  He didn't ask me for permission to  
11 do it, nor would I expect him to.

12                  As far as the Mayor goes, I think  
13 he told me he was going to write to him.  I said,  
14 "Cool, whatever you want."

15                  Q.    If you had thought that you  
16 might have better access, or would have been better  
17 received by the Attorney General and the Mayor,  
18 would you have said, "Well, maybe I should write  
19 those letters."

20                  A.    I probably would have said  
21 something like that.

22                  Q.    But you were content that he  
23 may well have better access to these people?

24                  A.    I didn't really think about  
25 it that much.  The way you have put it, I guess

1 that if there was someone he wanted to get in touch  
2 with that I could more readily access, and I wanted  
3 to do that, I would have said, "Well, if you want  
4 me to, I will drop them a line."

5 Q. Did you have, through this  
6 whole series of tasks that you and he had to sort  
7 out and deal with, the notion that in some cases he  
8 would have better access to someone than you, so  
9 that would fall to him?

10 A. That is probably right. We  
11 were trying to get things done, and if one person  
12 could do it better or easier than the other, sure,  
13 and also if one person was available or not.

14 Throughout all of this, I was  
15 still away quite a lot.

16 Q. The fact that he was a judge  
17 of the Superior Court was not a bad feature, as far  
18 as you were concerned, in terms of getting access?

19 A. I don't know about getting  
20 access. I am trying to think who we got access to  
21 because he was a judge.

22 The Mayor, like I have said, was  
23 through an intermediary. Not the councillors,  
24 because I was able to get complete access there and  
25 I am not a judge.

1                   Michael Bryant? I don't know him,  
2 so I have no idea.

3                   The Mayor? He did not get access,  
4 and he was a judge. I don't think I would have any  
5 chance with David Miller either.

6                   Q. Justice Matlow might have a  
7 better chance than you?

8                   A. I don't know David Miller, so  
9 I don't know what stock he puts in that. Maybe,  
10 maybe not; I don't know. Who else were you  
11 thinking of?

12                  Q. I was thinking of, for  
13 instance, the Attorney General.

14                  Writing and asking the Attorney  
15 General to intervene in what was essentially a City  
16 matter; that might be something you felt would  
17 better come from a judge than from Ron Lieberman?

18                  A. I never directed my mind to  
19 it. Maybe Bryant would be more impressed if a  
20 judge wrote to him, but I am not Bryant so I can't  
21 say.

22                  I don't even know if we got a  
23 response to that.

24                  MR. CAVALLUZZO: There was no  
25 response.

1 THE WITNESS: So maybe I would  
2 have had the better chance.

3 MR. HUNT:

4 Q. It could be the Attorney  
5 General felt it wouldn't be appropriate to write to  
6 a judge.

7 A. I don't know.

8 Q. At Appendix 33, Tab A, in  
9 Volume 3, we have some statements here from the  
10 Town Crier; that is a community newspaper, is it?

11 A. Yes.

12 Q. Particularly in the Forest  
13 Hill area?

14 A. I think it is one of those  
15 newspapers that has a local edition in various  
16 places.

17 Q. And the local editions would  
18 carry local news?

19 A. Yes.

20 Q. We see that Justice Matlow is  
21 quoted on February 3, 2003, Town Crier, and  
22 basically Justice Matlow is the spokesperson here  
23 in this particular article.

24 Was that something agreed to  
25 between you and he, as to who would be the



1 spokesperson in the media on this?

2                   A.    No, we never talked about  
3 that.  The media sometimes called me.  But it was  
4 never a case of you take them, I take them.

5                   Whoever they called would try to  
6 respond as best they could to their inquiries.

7                   Q.    You were content that he be  
8 the spokesperson when the media called him?

9                   A.    Sure.  It did not bother me  
10 one way or the other.

11                  Q.    There are a couple of things  
12 here; Judge Matlow is telling the media that the  
13 Parking Authority entered into a secret deal.

14                  Is that a phrase you and he agreed  
15 upon, that everything was secret around the deal?

16                  A.    To answer the first of your  
17 questions, no, we did not agree to use the  
18 expression "secret deal".

19                  We never had those discussions,  
20 and he could say what he wanted, however he wanted  
21 to.

22                  It was a secret deal.  That is the  
23 way I felt about it and that is the way he felt  
24 about it, but we could have described it otherwise.

25                  Q.    On the second page of that

1 article, we see:

2 "We lobbied almost every  
3 member of City Council and  
4 the Administration Committee.

5 This is a bad deal for the  
6 City and for the residents,'  
7 says Matlow."

8 That was after you had lobbied  
9 councillors?

10 A. We met with the councillors  
11 and explained our position. I don't really have a  
12 good sense of what lobbying is. Is that what  
13 lobbying is?

14 Q. I don't know; I am just  
15 reading what it says here.

16 A. I can tell you what we did.  
17 How it is characterized there, I don't know.

18 We went to the members, quite  
19 often with our own councillor, Michael Walker, and  
20 we explained why we were concerned about what was  
21 going on.

22 Q. At Tab B, we have the  
23 National Post of February 9, 2004. Again we have  
24 quotes attributed to Judge Matlow, particularly the  
25 centre paragraph where he is identified as a judge

1 of the Ontario Superior Court:

2 "Mr. Matlow says it is  
3 tantamount to an admission  
4 the city felt legally  
5 vulnerable ...,"

6 and further down:

7 "'They want to whitewash  
8 everything', Mr. Matlow  
9 said."

10 Was that the prevailing view  
11 amongst the Friends of the Village, that this was a  
12 whitewash?

13 A. Yes.

14 Q. So you do not disagree with  
15 the sentiments he expressed there?

16 A. I might not have expressed it  
17 in the same way, but --

18 Q. Do you think that might be a  
19 bit intemperate, to call it a whitewash?

20 A. No, I don't think so. I  
21 think what it was that they had circled the wagons;  
22 that is the way I put it. They decided to protect  
23 their staff rather than do the right thing.

24 I am not sure that I would have  
25 used that expression, but that is just a matter of

1 style.

2                                 What he was saying was true, if  
3 that is what you mean. They were trying to perhaps  
4 sweep this thing under the carpet.

5                                 Q. I notice that in your list of  
6 things you did, you say that you did go to see the  
7 Auditor General of the City?

8                                 A. Yes.

9                                 Q. Did Justice Matlow go with  
10 you at that time?

11                                A. Yes.

12                                Q. Could you turn to Appendix  
13 36, please? This is a faxed message from Justice  
14 Ted Matlow to Jeffrey Griffith. Is that the  
15 Auditor General for the City?

16                                A. Yes.

17                                Q. It is re the Friends of the  
18 Village:

19   "Here is a copy of the email  
20 message and attachments which  
21 I tried, without success, to  
22 email to you a few minutes  
23 ago."

24                                So Justice Matlow faxes to Jeffrey  
25 Griffith the attached email, and this begins with:

1 "I am writing to you further  
2 to our meeting with you on  
3 August 22, 2003."

4 That suggests that your meeting  
5 with the Auditor General preceded this email?

6 A. What date is the email?

7 Q. The email is dated December  
8 2, 2003.

9 A. It refers to the meeting, so  
10 I guess it was after the meeting.

11 Q. Yes. That paragraph says  
12 this to the Auditor General of the City:

13 "As well, the position taken  
14 by the City and the TPA is  
15 now formally set out in the  
16 recently released planning  
17 report to Council, which  
18 contains Barbara Cappell's  
19 opinion ..."

20 She is the person in the Legal  
21 Department that you spoke to, and that you referred  
22 to earlier?

23 A. She is also the one that  
24 stated that the two resolutions that we are  
25 questioning the authorization for, she was the one

1 that signed that those were authorized.

2 Q. This goes on to say:

3 "A copy of that report is  
4 also attached for your  
5 consideration. While I  
6 acknowledge my bias, I cannot  
7 resist saying that in my  
8 view, her expressed views are  
9 blatantly wrong and  
10 ridiculous, and if her report  
11 had been written as part of a  
12 first year law school  
13 examination, she would  
14 undoubtedly receive a failing  
15 mark."

16 Did he discuss that with you  
17 before he wrote that?

18 A. Not the specific thing, but I  
19 can tell you where that phrase came from; it came  
20 from me.

21 I taught contracts, and that is  
22 what I had said about it, and he poached it.

23 Q. You are not a judge and you  
24 are not writing to somebody in the City when you  
25 made that remark, right?

1 A. Absolutely.

2 Q. The remark that he poached,  
3 was that something you expressed to him privately?

4 A. I think I was expressing it  
5 to just about everyone. If my mother would have  
6 listened, I would have told her, too.

7 Q. You weren't concerned about  
8 whether your remarks were temperate or not, because  
9 you were just telling people amongst the Friends.  
10 You all shared that?

11 A. Yes -- well, I don't know who  
12 else shared it, but the people who were legally  
13 trained or who were following this very closely  
14 wondered about her opinion, too. It just did not  
15 make sense.

16 Q. Were you surprised when you  
17 saw it attached to a fax from Justice Ted Matlow to  
18 the City Auditor?

19 A. Actually, I don't think I  
20 ever did see it. Maybe I did; it is copied to me.  
21 But I probably would not have read it through.

22 He told me he was sending these  
23 documents on to Mr. Griffith, and when I looked at  
24 this I probably only would have thought he was  
25 sending it on.

1 I wouldn't have given it a lot of  
2 thought, quite frankly.

3 Q. I wanted to ask you a few  
4 questions about Appendix 22, which is in Volume 2.

5 A. My affidavit?

6 Q. Yes, it is. I really wanted  
7 to go to Appendix 22, Tab CC.

8 A. I have it, yes.

9 Q. This is a copy of an email  
10 from Ted Matlow to Mike Bryant, your local MPP and  
11 also the Attorney General?

12 A. I believe he was.

13 Q. This is Justice Matlow  
14 offering to meet with him and his officials, to  
15 provide copies of documents, and indicating in the  
16 third last paragraph on the page:

17 "However, before we actually  
18 start proceedings, we ask  
19 that you intervene to require  
20 that the City comply with the  
21 rule of law."

22 Was that something you discussed  
23 with him, that he, a judge, would write to the  
24 Attorney General and say that he needed his  
25 intervention to see that the rule of law was



1 complied with?

2 A. No, we never discussed this  
3 letter before. He just said he was going to write  
4 to Bryant, and then he wrote to him.

5 Q. At Tab DD, we have a letter  
6 on the letterhead of Justice Ted Matlow to Mayor  
7 David Miller on November 13.

8 These would be the two letters you  
9 indicated in your affidavit that he wrote?

10 A. Yes.

11 Q. In Paragraph 2, Justice  
12 Matlow is saying to the Mayor that the purpose of  
13 his letter is to bring once again to the attention  
14 of all members of City Council a serious issue, and  
15 "to ask you to intervene to reverse a violation of  
16 law."

17 Did you discuss that with him,  
18 that he would write a letter, on letterhead saying  
19 Justice Matlow, that this was a violation of law?

20 A. No, he did not. He wouldn't  
21 forward these things for me to edit or look over.

22 The only time he would check with  
23 me is if there was a factual thing he wasn't sure  
24 of. I don't recall ever receiving this and editing  
25 it in any way.

1 Q. If we could go back to Volume  
2 3 again, Tab 39? Mr. Bogosian is referred to in  
3 the Agreed Statement of Facts, and he was the  
4 independent counsel that the City retained?

5 A. He was the outside counsel.

6 Q. Yes, outside counsel. If you  
7 flip over to page 108, we have an email from  
8 Justice Matlow to David Bogosian, and it is really  
9 at 110 where Justice Matlow writes about how the  
10 Parking Authority got City Council to sell their  
11 rights to the developer for a price based on the  
12 use of the site for ten townhouses, "as a result of  
13 the devious acts that have taken place."

14 The characterization of the City's  
15 actions being devious, is that something discussed  
16 by you and Justice Matlow before he characterized  
17 them that way?

18 A. In this particular letter?

19 Q. Yes.

20 A. No, as I have said, he wrote  
21 what he wanted to write, and that was it. I am not  
22 sure what he is speaking about here.

23 It could be the problems we had  
24 getting that appraisal; there was a real difficulty  
25 getting it.

1                           But he would never, Mr. Hunt, come  
2 to me and say, "This is what I am sending out.  
3 What do you think?"

4                           Q.    No, I understand.

5                           A.    He did what he did.

6                           Q.    You indicated that when you  
7 first got lassoed by a group of people on the  
8 street, and you met at Ted Matlow's house and  
9 started talking about what you were going to do,  
10 one of the things someone suggested was that you  
11 had to raise the consciousness of the community --

12                          A.    Yes.

13                          Q.    -- and raise political  
14 pressure.

15                          A.    I think that last one came  
16 from Michael Walker, although I don't think he  
17 phrased it that way.

18                          That might be a characterization  
19 of the essence of it, where he said there were  
20 things we could achieve by going through our  
21 councillors -- not just ours, but the other  
22 councillors on the Administration Committee -- and  
23 that we may be able to block the six-storey thing  
24 by influencing councillors.

25                          Q.    I think you said that he

1 educated you all on how to raise political pressure  
2 through the other councillors.

3 A. Yes, and his executive  
4 assistant, and Joe Mihevc and his executive  
5 assistant.

6 Q. Was the group in agreement  
7 with this way of going about things, to get some  
8 political pressure going here?

9 A. At times, it resembled one of  
10 those old Andy Hardy movies: Let's put on a show,  
11 and maybe everybody will come.

12 Q. Was Justice Matlow in  
13 agreement with that as well?

14 A. Yes, he was.

15 MR. HUNT: Thank you, Mr.  
16 Lieberman.

17 THE CHAIR: Do you have any  
18 questions arising, Mr. Cavalluzzo?

19 MR. CAVALLUZZO: Yes, just a few,  
20 Chief Justice.

21 RE-EXAMINATION BY MR. CAVALLUZZO:

22 Q. Mr. Lieberman, you were asked  
23 questions as to why you couldn't have done  
24 everything that Ted Matlow did, and then you  
25 mentioned that you travel a lot. How often do you

1 travel?

2 A. Generally, between a hundred  
3 and a hundred and twenty days a year.

4 Q. When you are out of the city?

5 A. Out of the country.

6 Q. You were asked about access  
7 to individuals, and you referred to Mayor Lastman  
8 and said it was a friend of Ted's who got you that  
9 meeting.

10 You were asked about a meeting  
11 with the Auditor General. How did that meeting  
12 take place?

13 A. We were in Michael Walker's  
14 office, showing him some of the stuff we had found  
15 out. He said, "You have to speak to the Auditor  
16 General."

17 He picked up the phone, called the  
18 Auditor General, and said that he had some people  
19 that the Auditor General should speak to.

20 So they arranged an immediate  
21 meeting, and Michael Walker drove us down there.

22 Q. Michael Walker took you to  
23 the meeting?

24 A. Yes, he chauffeured us down  
25 there, dropped us off there.

1 Q. Was that unusual for the role  
2 Michael Walker played in respect of introducing you  
3 to politicians, bureaucrats, or anyone else with  
4 the City?

5 A. No, Michael was great. He is  
6 a wonderful fellow, with a very strong sense of  
7 good governance.

8 Sometimes he was just a voice in  
9 the wilderness, I am afraid.

10 THE CHAIR: Mr. Lieberman, you  
11 gave an answer to Mr. Hunt, and you left me with  
12 the impression -- and I want to be sure I do not  
13 have an incorrect impression.

14 The application to the Superior  
15 Court for judicial review, that was a route that  
16 you were pursuing?

17 THE WITNESS: Yes, sir. I was  
18 the one that came up with a way of financing it.  
19 It was my counsel that was retained, and it was my  
20 affidavit.

21 THE CHAIR: And Justice Matlow  
22 took the application to the OMB, and I think you  
23 indicated that you had a low level of confidence  
24 that the OMB would produce any good results for  
25 you.

1                   You left me with the impression  
2 that you were not really working together on the  
3 OMB thing with Justice Matlow, and he was not  
4 working with you on the application for judicial  
5 review.

6                   You were not in lock-step, I think  
7 was the phrase you used?

8                   THE WITNESS: That is a fair  
9 characterization, although we tried to keep each  
10 other informed of what we were doing.

11                   If sometimes I could not do  
12 something, he would jump in. And if he could not  
13 do something, I would jump in.

14                   THE CHAIR: Did he convey the  
15 impression that you weren't doing these things in  
16 concert to achieve the end objective?

17                   THE WITNESS: We were both trying  
18 to stop the development, but I did not think his  
19 route would go and --

20                   THE CHAIR: Thank you, that  
21 clarifies things for me. I was a bit concerned  
22 about the wording of the motion before the OMB,  
23 which says:

24                                 "The motion is for an  
25                                 adjournment of this appeal

1                   until such time as the  
2                   legality of the agreement of  
3                   purchase and sale, dated  
4                   November 8, 2001, made  
5                   between the Appellant, the  
6                   Toronto Parking Authority and  
7                   the City of Toronto, which  
8                   forms the basis of this  
9                   appeal, has been determined  
10                  in a proceeding about to be  
11                  commenced in Superior Court."

12                  The two do seem to be in lock-  
13                  step, as it were.

14                  THE WITNESS:   Here is what  
15                  happens.   The OMB will decide planning issues.

16                  But when someone raises a question  
17                  of whether there is a certain ownership issue, then  
18                  the OMB, I am told, doesn't want to touch it.

19                  So both the City and Ted wanted to  
20                  hold the thing back until the court could determine  
21                  whether the contract was valid or not.

22                  It wasn't just Ted; it was the  
23                  City that was joined in the application to adjourn.

24                  I might say we got along quite  
25                  well with the City on that application.   Their



1 lawyer was a very fine lawyer named Bradley.

2 THE CHAIR: Thank you, Mr.  
3 Lieberman, for coming here today. We appreciate  
4 it.

5 THE WITNESS: You are very  
6 welcome.

7 THE CHAIR: We will adjourn until  
8 ten a.m. tomorrow morning.  
9 --- Whereupon the hearing was adjourned, to be  
10 resumed on Wednesday, January 9, 2008,  
11 at 10:00 a.m.