

**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 Wednesday, January 9, 2008 at 10:05 a.m.

\* \* \* \* \*

**APPEARANCES:**

Douglas Hunt, Q.C.  
Andrew Burns

Paul Cavalluzzo  
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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 resuming on Wednesday, January 9, 2008  
3 at 10:05 a.m.

4 THE CHAIR: Please be seated. Mr.  
5 Cavalluzzo.

6 MR. CAVALLUZZO: Good morning,  
7 Chief Justice and members. At the outset, in  
8 response to a request from the panel, I have copies  
9 of the letters that we sent to the judges and  
10 lawyers that are formal character references.

11 THE CHAIR: Mr. Hunt, do you have  
12 any comment on the admission of this?

13 MR. HUNT: No. My friend has  
14 provided it to me and I am content.

15 THE CHAIR: Will we give it a  
16 title as an exhibit, the next number?

17 MR. CAVALLUZZO: I think it should  
18 be, yes.

19 THE CHAIR: The next number is 7.

20 EXHIBIT NO. 7: Letter from  
21 Cavalluzzo, Hayes, Shilton,  
22 McIntyre & Cornish, dated  
23 November 27, 2007.

24 MR. CAVALLUZZO: We received  
25 yesterday two other letters that I will file this

1 morning, and I have shared with my friend: One  
2 from a lawyer, Mr. Greenspan; finally, a letter  
3 that we received yesterday from a colleague of the  
4 Superior Court, if we would file that, as well.

5 THE CHAIR: We will mark Mr.  
6 Greenspan's letter Exhibit 6-A as an addendum to  
7 the Exhibit 6, which is a collection of letters you  
8 admitted yesterday, Mr. Cavalluzzo.

9 EXHIBIT NO. 6-A: Letter from  
10 E. Greenspan, dated January  
11 8, 2008.

12 THE CHAIR: The second one will be  
13 Exhibit 6-B.

14 EXHIBIT NO. 6-B: Collection  
15 of letters in support of  
16 Justice Matlow.

17 SUBMISSIONS BY MR. CAVALLUZZO:

18 MR. CAVALLUZZO: Chief Justice,  
19 the next witness will be Judith Collard,  
20 C-O-L-L-A-R-D, and before I call her, there is a  
21 legal question that we bring to you and I have  
22 discussed this with counsel.

23 Ms. Collard was one of the members  
24 of the core group of the Friends of the Village and  
25 next door neighbour to Ted Matlow, and will testify

1 as to her direct observations, which of course is  
2 fine. However, what she did, as well, is that she  
3 circulated a petition with the people in the  
4 Friends of the Village who were directly involved  
5 or active with the organization.

6                   It is like a community statement  
7 that was drafted by Mr. Lieberman, which talks  
8 about Mr. Matlow's role in Friends of the Village,  
9 how they viewed it, part of the background and  
10 their views of him as a civic-minded citizen, and  
11 so on and so forth.

12                   It certainly gives a clear  
13 indication and impression of the view of the local  
14 residents for Mr. Matlow, but obviously it is not  
15 direct evidence, in the sense that these people  
16 that have signed that petition will not be  
17 cross-examined.

18                   I did it this way because I  
19 thought it was most expeditious. We are going to  
20 have the core member testify, and rather than  
21 having a string of 25 people coming here and saying  
22 the same thing over a period of days, I thought  
23 this would be an expeditious way to do it.

24                   Obviously the rules within the  
25 complaint procedure are quite general in the sense.

1 Obviously as an administrative tribunal, you are  
2 the master of your own procedure and obviously you  
3 can accept this community statement and place on it  
4 whatever weight you deem is appropriate in all of  
5 the circumstances.

6 I thought that this would be an  
7 expeditious way to deal with this particular issue.

8 My friend takes the position that this is hearsay  
9 evidence and I can't cross-examine on it. I won't  
10 preempt the argument, but, in a nutshell, that is  
11 the objection and I bring that to you, because Ms.  
12 Collard is the person that collected the  
13 signatures.

14 THE CHAIR: Mr. Hunt.

15 SUBMISSIONS BY MR. HUNT:

16 MR. HUNT: I have a couple of  
17 comments, if I could, Chief Justice. My friend has  
18 fairly set out what this document is. It is  
19 prepared by Mr. Lieberman. Much of it appears to  
20 be consistent and confirmatory of the evidence that  
21 Mr. Lieberman gave yesterday.

22 The paragraph I suppose in it that  
23 I have the most concern about is the last one,  
24 where Mr. Lieberman's document gets into issues of  
25 what are the attributes of a judge and, in fact,

1 what touches on perhaps sanction and the impact of  
2 sanction on a judge or on Judge Matlow, which I  
3 thought perhaps went a little bit farther than a  
4 simple community statement about the facts.

5                   It is signed by quite a number of  
6 people, and I agree we wouldn't want to have to  
7 have a series of witnesses to essentially confirm  
8 what Mr. Lieberman says. I would certainly leave  
9 it to the committee if you accept it to attach what  
10 weight you would to it, but it goes a bit far in  
11 the last paragraph in terms of commentary on  
12 potential penalty and what the impact of that would  
13 be.

14                   THE CHAIR: Mr. Cavalluzzo, the  
15 panel doesn't immediately see the relevance of such  
16 a letter, but you have asked us to consider it, so  
17 we will. We think we would be operating most  
18 efficiently if we simply accepted it as being  
19 submitted by you for our consideration, and during  
20 the course of an adjournment or sometime during the  
21 course of this day, we will rule on its  
22 admissibility.

23                   MR. CAVALLUZZO: Thank you, Chief  
24 Justice. I won't ask the witness about how it was  
25 circulated, and so on. I will leave that to you

1 and we will just deal with her evidence.

2 THE CHAIR: Thank you.

3 MR. CAVALLUZZO: Thank you.

4 THE CHAIR: Okay, Mr. Cavalluzzo.

5 AFFIRMED: JUDITH COLLARD

6 EXAMINATION-IN-CHIEF BY MR. CAVALLUZZO:

7 Q. Ms. Collard, you can have a  
8 seat, if you would like.

9 Ms. Collard, you were a resident  
10 of Thelma Avenue during the period of 2002/2004?

11 A. I was, yes.

12 Q. Where did you live? What  
13 number?

14 A. I lived at number 6 Thelma.

15 Q. Number 6 Thelma, is that  
16 close to the parking lot development that we have  
17 been discussing these past few days?

18 A. It is three houses east of  
19 it.

20 Q. How long had you lived on  
21 Thelma?

22 A. Since 1989.

23 Q. Did you know Ted Matlow?

24 A. Yes.

25 Q. Where did he live?

1 A. He lived right next door to  
2 us at number 8.

3 Q. Your occupation, by the way,  
4 is?

5 A. I am a real estate sales  
6 representative.

7 Q. I understand that you have  
8 moved from Thelma?

9 A. Yes, we moved in July of '05.

10 Q. While you were on Thelma, I  
11 understand that Ted Matlow moved in there about  
12 1995?

13 A. That is correct.

14 Q. During that period, did you  
15 become friends with Mr. Matlow?

16 A. Yes, we did.

17 Q. I understand you shared a  
18 common driveway and you had common --

19 A. We shared a common  
20 right-of-way and we shared maintenance issues  
21 between the properties, landscaping, snow removal,  
22 that sort of thing.

23 Q. Since you have moved from  
24 Thelma in July of 2005, have you remained friends  
25 with Mr. Matlow?

1 A. I have, yes.

2 Q. I want to bring your  
3 attention to what we have been calling the Friends  
4 of the Village, what was called the Friends of the  
5 Village, and I understand that you were one of the  
6 original members?

7 A. Yes, that is right.

8 Q. Could you give us your  
9 observations as to how the Friends of the Village  
10 came about?

11 A. It came about after a meeting  
12 at Forest Hill Public School in April of 2002 at  
13 which Michael Walker, our councillor, and many  
14 members of the community, along with the developer  
15 of the parking lot and the lawyers, attended. We  
16 found out at that time about the development that  
17 was going to proceed with the parking lot and it  
18 was nothing like what we had known about.

19 We thought that it was a  
20 development of ten townhomes. This was the first  
21 indication that it was anything but that, and it  
22 turned out to be something completely and totally  
23 different, and we were very, very shocked and angry  
24 and upset about it.

25 Afterwards, several of us got

1 together, and Ted offered his house and we got  
2 together and held a meeting, and there were quite a  
3 number of us at the time.

4 Q. And at the beginning of the  
5 Friends of the Village, I assume it was shortly  
6 after April 2002 when it arose?

7 A. Yes. I can't recall specific  
8 dates, but it was shortly thereafter.

9 Q. You said at the beginning  
10 there were a number of people, and then did it  
11 slowly drop off?

12 A. There were always a number of  
13 members, but not everybody, not all of those  
14 people, attended all of the meetings. So as we got  
15 into a plan of action, if you want to call it that,  
16 about how to proceed to oppose this development, we  
17 formed a core group of working members, if you  
18 will.

19 Q. Who was the core group?

20 A. There was myself, there was  
21 Ted, Ron Lieberman and Robin Seif.

22 Q. The court reporter would like  
23 to know how you spell Seif.

24 A. S-E-I-F.

25 Q. Ms. Seif, I understand, is an

1 independent consultant in technology, computer  
2 technology.

3 A. I believe in technology  
4 matters, yes.

5 Q. Apart from the core  
6 committee, you say there were a number of members,  
7 and we have heard over a period of time, and we are  
8 not going to take you into detail, but certain  
9 petitions were circulated, and so on, amongst the  
10 local residents and the business association?

11 A. Yes.

12 Q. Do you recall how many names  
13 you got on the petition opposing this development?

14 A. It was roughly 2,000 or so.

15 Q. These names were obtained in  
16 visiting houses and --

17 A. Visiting houses, visiting  
18 businesses along Spadina Road and Forest Hill  
19 Village, and also just in the parking lot itself.  
20 When patrons of the businesses would come to park,  
21 and anyone who didn't know about the development  
22 and who read the petition, could sign. So that is  
23 how we gathered many of the names.

24 Q. In regard to the -- I am  
25 going to call it the decisions of the Friends of

1 the Village, how were they made?

2 A. They were very consultative.

3 There was no one opinion that was forced on  
4 anybody. We all discussed issues and arose out of  
5 a mutual -- came to a mutual decision-making  
6 process. No one person really forced their views  
7 on anybody.

8 Q. How was it that Ted was named  
9 president of the organization?

10 A. I think we just asked him.  
11 He kind of emerged as a natural leader because of  
12 his knowledge, his organizational skills, his legal  
13 knowledge and skills, his knowledge of the workings  
14 of government.

15 He just helped us all to kind of  
16 coalesce as a group, and it was evident that he was  
17 a natural leader and we asked him to become  
18 president.

19 Q. Were you one of the signing  
20 officers of the organization for the bank account?

21 A. Yes. When we decided we  
22 needed to raise funds, we realized we had to have  
23 signing officers, so actually the four of us who  
24 were really the core, core group became the signing  
25 officers. So there was Ted, Ron, myself and Robin.

1 Q. When you were with Ted and  
2 you met people, the other people within the  
3 community, politicians, city bureaucrats, how would  
4 Ted introduce himself?

5 A. As Ted Matlow.

6 Q. Did you know he was a judge?

7 A. Sure, I knew he was a judge,  
8 because he was my neighbour and we were friends and  
9 we interacted. We had dinners with each other, et  
10 cetera. We knew him well.

11 Q. Do you know if most of the  
12 people that, for example, signed the petitions,  
13 whether they knew that --

14 A. They had no idea. They did  
15 not know at all. Most of them -- I mean, anybody  
16 who didn't know Ted, and even most people who knew  
17 Ted, did not know he was a judge.

18 Q. I would like to now ask you  
19 from your observations -- and you were, as you say,  
20 part of the core group of the Friends of the  
21 Village -- your views of how Ted interacted within  
22 the group itself.

23 A. Within our core group?

24 Q. No, within the core group --

25 A. Within the whole community?

1 Q. -- and when he was acting on  
2 behalf of the Friends?

3 A. I found him to be very highly  
4 principled and ethical and honest. He went out of  
5 his way to include people in decisions and  
6 discussions of issues. I always found him to be  
7 extremely fair, a very decent honourable man, a  
8 very sharp intellect that was very obvious, which  
9 was one of the reasons that we really wanted him as  
10 a leader, because he knew what he was doing.

11 He knew what he was doing in terms  
12 of legal issues. He was organizationally  
13 brilliant, and he worked so hard. He was just a  
14 really hard worker and we all had a lot of respect  
15 for him.

16 Q. Would you say that Mr. Matlow  
17 was the only leader within --

18 A. Oh, no. He was the one who  
19 kind of brought everybody together, but, you know,  
20 all of us had a part in this, all of us did, and we  
21 didn't just look to him for answers.

22 Q. In your view, what would have  
23 happened to the Friends of the Village without Ted  
24 Matlow?

25 A. I don't think there would

1 have been -- there wouldn't have been a Friends of  
2 the Village, I don't think, without Ted. Certainly  
3 not --

4 THE CHAIR: Mr. Cavalluzzo, that  
5 is hardly evidence before us. It is speculation  
6 and maybe --

7 MR. CAVALLUZZO: Once again, Chief  
8 Justice, I understand that this is an  
9 administrative body, and I am just trying to put in  
10 as much information as we possibly can to be of  
11 assistance to you.

12 BY MR. CAVALLUZZO:

13 Q. The final question, Ms.  
14 Collard, is: As a result of your observations of  
15 Ted Matlow in his role with Friends of the Village,  
16 did you lose any respect for the judiciary or for  
17 judges?

18 A. No, not at all. In fact, I  
19 felt that he was a credit to the judiciary, that he  
20 only improved my assessment of it. Certainly I had  
21 no negative feelings about that at all.

22 Q. Thank you very much. I have  
23 no further questions. Mr. Hunt may have some  
24 questions for you.

25 MR. HUNT: I don't have any

1 questions. Thank you.

2 THE CHAIR: Ms. Collard, we have  
3 no questions for you. Thank you very much for  
4 making yourself available to give evidence this  
5 morning. The committee appreciates it.

6 THE WITNESS: Thank you.

7 MR. CAVALLUZZO: Thank you, Chief  
8 Justice. Our next witness and final witness, Chief  
9 Justice, will be Justice Matlow, Ted Matlow.

10 At the outset, let me apprise the  
11 panel of some information. Some new information  
12 has come to independent counsel, which was shared  
13 with us this morning, concerning information that  
14 isn't in the agreed statement of facts, and I have  
15 agreed to deal with that through Justice Matlow.  
16 So this will be new for you and we will deal with  
17 it that way.

18 My friend can cross-examine on it.

19 I think that is the most expeditious way to  
20 proceed.

21 AFFIRMED: THEODORE MATLOW

22 MR. CAVALLUZZO: In light of Mr.  
23 Lieberman's evidence yesterday, we have gone  
24 through a lot of that, and rather than taking  
25 Justice Matlow through that, I am just going to ask

1 him. He obviously heard Mr. Lieberman's evidence  
2 concerning the role of the Friends of the Village,  
3 and so on and so forth, and the interactions with  
4 politicians and so on, and ask him if he would  
5 agree with the evidence given by Mr. Lieberman, and  
6 then I would ask him specific questions relating to  
7 his conduct; is that fair?

8 THE CHAIR: That sounds fair.

9 MR. CAVALLUZZO: Thank you.

10 EXAMINATION-IN-CHIEF BY MR. CAVALLUZZO:

11 Q. Justice Matlow, you heard the  
12 evidence of Mr. Lieberman yesterday concerning what  
13 the Friends of the Village did during that whole  
14 period, we could say, from April of 2002 through  
15 the middle of 2004, and the question is: Would you  
16 agree or adopt the evidence that he gave?

17 A. I would agree with everything  
18 that he said.

19 Q. Thank you. Although some of  
20 the background information is in the statement of  
21 fact, and I won't go through your education and so  
22 on, but it appears, Justice Matlow, that you became  
23 a judge in 1981; is that correct?

24 A. Yes.

25 Q. And you were originally

1 appointed as a District Court judge, and, as a  
2 result of amalgamations in the court system in  
3 Ontario, you became a member of the Superior Court  
4 of Justice which you still are?

5 A. I started as a County Court  
6 judge, and ultimately became a judge of the  
7 Superior Court.

8 Q. How long had you wanted to be  
9 a judge?

10 A. This goes back a long time.  
11 This is a story that has been part of my folk  
12 culture. When I was seven or eight years old, I  
13 recall telling my friends and people who I would  
14 talk to that when I grew up, my ambition was to  
15 become a lawyer, and when I got to be old, I wanted  
16 to be a judge.

17 From that time on until I became a  
18 judge, I stuck to that life plan.

19 Q. We will come back to some of  
20 your duties as a judge, but I want to immediately  
21 focus in now on the Thelma Road project, and we  
22 heard evidence, just to summarize and give context  
23 here, that there was a meeting in 1999. You  
24 attended that meeting, I understand?

25 A. Yes.

1                   Q.    There was notice that there  
2 was going to be a ten-unit residential townhouse  
3 development, and so on, and then in April of 2002,  
4 there was this other meeting that Ms. Collard just  
5 testified about where the community was shocked.

6                   Then we had the creation, if you  
7 can call it, of the Friends of the Village. From  
8 your recollection, how did the Friends of the  
9 Village come to be?

10                  A.    Those of us who attended the  
11 meeting at the local school in April of 2002 were  
12 visibly upset by what we heard and what we saw.  
13 There was a lot of angry discussion with the  
14 developers who were there, and the architect and  
15 even with Michael Walker.

16                  After the meeting was over, we  
17 walked out, and those of us who knew each other  
18 just stood around and talked about it. In the days  
19 that followed that meeting, there was a lot of  
20 discussion. Whenever I stepped out of my house and  
21 walked down my street or go over to the village, I  
22 would meet somebody that I knew and the topic of  
23 discussion immediately turned to, Have you heard  
24 what is going to happen to the parking lot?

25                  After this went on for a number of

1 days, I don't know how many, it occurred to me that  
2 rather than just talk about it individually, I  
3 should get a few people together and invite them  
4 over to my home and discuss what, if anything, we  
5 can do to stop this development, which I thought  
6 was going to be very damaging to my street, to me  
7 and to our community.

8 Q. We heard evidence from Mr.  
9 Lieberman and Ms. Collard as to the purpose of the  
10 organization or its mandate, and so on and so  
11 forth, and --

12 A. Can I interrupt here? This  
13 is one part of perhaps the other witnesses'  
14 testimony that I want to take some issue with. It  
15 is flattering, but I think not accurate, to refer  
16 to the Friends of the Village as an organization,  
17 because by most standards, it never was an  
18 organization, and even when you talk about who were  
19 the members of it, I would never know who the  
20 members of the Friends of the Village were.

21 Whoever happened to show up at a  
22 particular time and take on a job or show up at a  
23 meeting of one kind or another, that would be all  
24 that you would have to do to be viewed as a Friend  
25 of the Village.

1 Q. There were no constitutions,  
2 bylaws, membership rules, indeed membership  
3 applications, I understand?

4 A. Nothing at all. The only  
5 formality was the banking documents that the bank  
6 required us to complete before we could open the  
7 bank account.

8 Q. You became, quote, the  
9 president of the Friends of the Village?

10 A. Certainly the bank thought  
11 that I was the president, and in many ways I on  
12 some occasions held myself out to be the president.

13 Q. We will come to some of those  
14 occasions. To be clear, if it isn't clear, it  
15 wasn't a question of being elected to the Friends  
16 of the Village. It was more of a matter of how it  
17 has been described, that, You do it?

18 A. I was never elected.

19 Q. We are now dealing with a  
20 situation where there is a group of residents that  
21 have a concern with the development, and, to use  
22 the vernacular, were going to fight City Hall or  
23 try to fight City Hall.

24 Were you concerned about your role  
25 of being a judge, on the one hand, and, on the

1 other hand, being a local resident fighting City  
2 Hall along with your fellow neighbours?

3 A. I was.

4 Q. What did you do as a result  
5 of that?

6 A. I reread things that had come  
7 to my attention in the past that dealt with the  
8 role of judges, the proper role of judges in the  
9 community. I recall going to judicom, which is a  
10 website that is accessible to judges. I found  
11 material on the website of the Canadian Judicial  
12 Council. I went to our judges' library at Osgoode  
13 Hall, and I kept reading these things.

14 Somewhere in that early time, I  
15 found a set of -- not that I found. I don't know  
16 whether they were sent to me or whether they were  
17 at the library. I don't know exactly how I got  
18 them. There was a set of advisory opinions that  
19 had been circulated to federal judges throughout  
20 Canada by a new advisory committee that dealt with  
21 a variety of subjects dealing with judicial ethics.

22 One of them was called "municipal  
23 democracy", and it describes what that committee  
24 thought was appropriate for a judge in the context  
25 of a dispute between a judge as a resident of a

1 community and his municipality.

2 Q. I wonder if you might refer  
3 to volume 1 of the book of documents at tab 9 and  
4 ask if this is the opinion that you are referring  
5 to?

6 A. Yes, that is the document  
7 that I just referred to.

8 MS. FREELAND: Did you say volume  
9 1 of?

10 MR. CAVALLUZZO: Tab 9.

11 Chief Justice, the witness has  
12 referred to the website of judicom. We have the  
13 website itself for all federally appointed judges  
14 from the advisory committee under ethical  
15 principles. It is dated February of 2003, but it  
16 gives reference to the purpose of the website.

17 I don't know if that would be  
18 helpful to you. We could file it with you. It  
19 wasn't in at the time 2002, but in 2003.

20 THE CHAIR: The judicial members  
21 of the panel would certainly be quite familiar with  
22 the website, and I expect the members of the panel  
23 who are lawyers are also familiar with the website.  
24 We really don't need it.

25 BY MR. CAVALLUZZO:

1 Q. After reading the documents  
2 of municipal democracy and the other articles you  
3 have referred to, did you reach any conclusions as  
4 to the propriety of you being involved in this,  
5 quote, fight with City Hall?

6 A. Yes. I concluded that, first  
7 of all, there were no hard and fast rules that  
8 applied to situations such as the one that I faced.  
9 There were guidelines contained in the literature  
10 and there were guidelines set out in this document  
11 that we are now looking at.

12 There were certain things that I  
13 knew that a judge certainly could not do and there  
14 was no doubt about those. I was satisfied that  
15 what I was likely to do would not be caught by any  
16 of those clear prohibitions.

17 One of the themes that evolved  
18 from the literature that I read was that the old  
19 practice of judges living aloof and apart from  
20 their community was no longer the appropriate  
21 modern view of the role of a judge, and that  
22 subject to restrictions that every judge has to  
23 comply with, a judge should be part of his or her  
24 community and should not be aloof.

25 Then I looked at the advisory and

1 I saw that there was no objection to my challenging  
2 my municipality, subject to one proviso that this  
3 advisory opinion sets out, and the proviso is that:

4 "The judge realizes that in  
5 so doing, the judge must be  
6 disqualified from any  
7 participation in any  
8 litigation arising from the  
9 matter."

10 That was a proviso that I had no  
11 difficulty with. The first thing is that when I  
12 started my involvement with this, I had no idea  
13 then what was going to evolve. It never occurred  
14 to me that what took place over the next couple of  
15 years was going to take place.

16 This was a very unique experience  
17 for me. I am flattered by some of the things that  
18 other witnesses have said about me and my  
19 organizational skills, but I can tell you that I  
20 felt like a real amateur in this area. Even when I  
21 practised law, I didn't do things like this.

22 My first idea was that somewhere  
23 along the road, we would have to become involved in  
24 proceedings at the Ontario Municipal Board. Even  
25 though the parking lot was owned by the city and

1 what was about to take place was going to be a  
2 joint venture between the city and the developer  
3 and the parking authority, somewhere along the road  
4 there was going to have to be a rezoning of the  
5 parking lot.

6 I thought ideally we would have to  
7 object to the rezoning to facilitate this very  
8 large building that was going to go there. I also  
9 knew that that would require us to engage lawyers  
10 and planning experts and traffic experts, and I  
11 didn't know what else, and I was pretty certain  
12 that the cost of doing all of that would be  
13 prohibitive. So we had to develop another approach  
14 where we could put forth an effective challenge,  
15 but on the cheap.

16 Q. In that regard, contact was  
17 made with your local councillor, Michael Walker, as  
18 well as Mr. Mihevic, who was the councillor across  
19 Spadina Road?

20 A. Exactly. Both of them,  
21 particularly though Michael Walker, really gave us  
22 an awful lot of input and encouragement, encouraged  
23 us to do the things that we subsequently did,  
24 opened doors for us at City Hall and in other  
25 places, and were exemplary councillors.

1 Q. You said when it started you  
2 didn't know where it would lead and you had no such  
3 experience. Had you had any experience before,  
4 whether it be as a judge or a practising lawyer or  
5 a student, in terms of, for example, dealing with  
6 politicians?

7 A. No. I had never in my life  
8 been actively involved in a partisan politics. I  
9 never belonged to a political party. The answer  
10 is, no, I wasn't involved in politics in any way.

11 Q. What about in dealing with  
12 the media or the press? Had you had any experience  
13 in that relationship?

14 A. I had some. There were cases  
15 that I had presided over, over the years, that led  
16 to inquiries being made. I even wrote some op ed  
17 columns -- actually, they were not op ed. They  
18 were actually columns, I guess, opposite the  
19 editorial page -- they were op ed pieces -- on  
20 various legal issues, some of which appeared over  
21 the years in the Globe and Mail.

22 There was at least one that I can  
23 now think of. There may be others that appeared in  
24 the Star, so I did do some of that.

25 Q. A final thing before we move

1 on to some of your conduct which is alleged to be  
2 misconduct, you told us that you reviewed the  
3 advisory opinion and other articles and you came to  
4 the conclusion of the propriety of your conduct.

5 Did you seek the permission of the  
6 Chief Justice or the Associate Chief Justice in  
7 respect of your activities with the Friends?

8 A. No, I didn't. My reading led  
9 me to conclude that each judge had the obligation  
10 to make his or her own independent decision, and it  
11 wasn't required or even appropriate that I seek the  
12 permission of my Chief Justice, whom I respect a  
13 lot, but I didn't think that that was an  
14 appropriate or a necessary step.

15 Q. Were any of your colleagues  
16 on the bench aware of your activities as one of the  
17 leaders of Friends of the Village?

18 A. Every one of them was. It  
19 was impossible for anybody who knew me or who read  
20 newspapers not to know of -- not at first, but as  
21 time went on, as this took on steam, everyone knew  
22 what I was doing.

23 Q. Was there any direction or  
24 suggestion that you shouldn't be doing that?

25 A. In all the time that I was

1 involved in this, the closest that comes to an  
2 implied criticism came from a colleague who is now  
3 retired, who would often pop into my office to talk  
4 about a variety of subjects, and this was one that  
5 we often talked about.

6                   At one stage, I recall him walking  
7 out and looking at me, smiling, saying something  
8 like, Ted, now be careful. Apart from that, I  
9 spoke to many, many of my colleagues about this,  
10 not in detail, but when I would bump into a  
11 colleague in the corridor, it was not uncommon for  
12 them to say, How's your campaign going? What's  
13 happening on Thelma? Good luck, hope it works out.

14                   It went on like that throughout  
15 the entire period.

16                   Q. I would like to move on to  
17 asking you specific questions about some of the  
18 allegations that have been made about you, and I am  
19 wondering if we could perhaps put a notice of  
20 hearing before you which has the detailed  
21 allegations. It may be easier that way.

22                   MR. CAVALLUZZO: I am going to  
23 refer the witness, for ease of reference, to  
24 Exhibit 4-B and, in particular, paragraph number  
25 35.

1 BY MR. CAVALLUZZO:

2 Q. I want to start, and I am  
3 going to group these into, I will call it, Thelma  
4 project-related conduct and interactions with the  
5 Globe and Mail conduct.

6 Dealing first with the Thelma  
7 conduct, it is alleged, if you look at paragraph  
8 (g), that:

9 "You participated and  
10 undertook a leadership role  
11 as the 'President' of Friends  
12 in respect of the Thelma Road  
13 Project."

14 Specifically, some of the evidence  
15 that we have agreed to is that you met with  
16 councillors, Justice Matlow, including the mayor,  
17 your councillors Mr. Walker and Mr. Mihevic. You  
18 met with members of the administrative committee,  
19 which we heard was the committee of councillors  
20 that reviews contracts. You met with the midtown  
21 council, and indeed you met with Mayor Mel Lastman.

22 We have agreed in the statement of  
23 facts that you have done all of that. Did you --

24 A. Perhaps I am being a  
25 nitpicker. The opening five lines of paragraph 35

1 have always troubled me and I have read this many,  
2 many times, and the allegation is that all of these  
3 things amounted to judicial misconduct, which  
4 placed me in a position incompatible with the due  
5 execution of my office.

6                   So subject to my saying that I  
7 deny that, I agree with those facts that you read  
8 out.

9                   Q. Let me ask you, in terms of  
10 that role that you played dealing with politicians  
11 from the mayor down through council, and so on and  
12 so forth, obviously trying to stop the development  
13 on Thelma Road, did you see anything improper about  
14 that, knowing that you were a judge at the same  
15 time?

16                   A. I didn't. Had I seen  
17 something improper, had I believed that there was  
18 something improper in what I was doing, I would not  
19 have done it. As eager as I was to stop the  
20 development, I would under no circumstances ever  
21 compromise my duties and obligations as a judge.

22                   Q. What about appearing before  
23 city committees, like the administration committee,  
24 the midtown council, making representations  
25 regarding this development? Did you see anything

1 improper about that?

2                   A. No. Every issue that can  
3 arise with the municipality has to be addressed in  
4 a way that is appropriate for that issue. Some  
5 issues wouldn't require contacts with councillors  
6 or appearances before committees.

7                   As it turned out, there was no way  
8 that I could conduct an effective challenge without  
9 doing those things, and I did them because my own  
10 house, my own property and my own life were  
11 directly threatened by what was about to take  
12 place.

13                  Q. You heard some questions  
14 yesterday directed at your contacting the Auditor  
15 General, and we will come to that in terms of the  
16 language that you used, and we heard evidence that  
17 it was Mr. Walker that took you to meet the Auditor  
18 General, and then you wrote that letter.

19                  Did you see anything improper  
20 about you writing to the Attorney General of the  
21 province when you are a Superior Court judge?

22                  A. No. By that stage, I was  
23 getting -- the record will show clearly that as  
24 time went on and the issue turned from, shall I  
25 call them, the planning, the on-the-ground issues,

1 to the legal issue about the authorization of the  
2 agreement, I was getting more and more frustrated  
3 and I was looking for an ear, somebody who would  
4 hear me out and see what was troubling me so much,  
5 and I was having an awful lot of trouble getting  
6 anybody to give me the time of day and to take me  
7 seriously.

8                                   The letter to the Attorney  
9 General, who was our local MPP, was an expression,  
10 I guess, of my frustration at the time.

11                                   Q.    Around the same time, the  
12 evidence is that you also wrote a letter -- and  
13 this is in November of 2003 now.  You also in  
14 November 2003 wrote a letter to Mayor Miller, who  
15 was the new mayor of Toronto?

16                                   A.    Yes.  He had just assumed  
17 office as mayor.  We had had -- I say "we".  My  
18 group, I, had had dealings in at least one meeting,  
19 perhaps two, with his predecessor, Mayor Lastman,  
20 and they were very satisfactory meetings, and I was  
21 hoping that the same kind of rapport that had  
22 developed with Mayor Lastman would continue with  
23 Mayor Miller.

24                                   I wrote him a letter bringing him  
25 up to date and hoping that that would open up a

1 dialogue with him, too.

2 Q. There is another area that I  
3 would ask you about under this allegation about a  
4 leadership role, and that is the Ontario Municipal  
5 Board application that you made that is referred to  
6 in paragraph 33 of the facts.

7 You did participate to be a party  
8 at the OMB; is that correct?

9 A. I did.

10 Q. Why did you do that?

11 A. Because of my proximity to  
12 the parking lot, I received the statutory notice of  
13 the proceedings before the OMB. I wanted to make  
14 sure -- I didn't know what was going to happen down  
15 the road, but I wanted to make sure that I could  
16 protect my right to, first of all, be informed,  
17 and, if something arose that I wanted to  
18 participate in, I would then be able to decide  
19 whether or not to actually take an active role.

20 After discussing this with  
21 advisors, friends of mine who know more about this  
22 than I do, I decided that the most appropriate way  
23 would be to become a party. By becoming a party,  
24 that would ensure that I would have to be given  
25 notice of proceedings and motions, and everything

1 else, so I would be kept informed.

2                   May I take this opportunity to  
3 tell you that if you are looking at the affidavit  
4 that I used in support of my motion to become a  
5 party, I made an error in a date that has long  
6 bothered me?

7                   I think in my affidavit, I said  
8 that the Friends of the Village had existed since  
9 the year 2000. I noticed sometime long afterwards  
10 that that should have been 2002 and I made a typo  
11 when I typed that.

12                   Q. You subsequently withdrew  
13 from the OMB proceeding after the City of Toronto  
14 passed that resolution in January of 2004 which  
15 retroactively approved all of the agreements to  
16 that point in time?

17                   A. Yes. Once I was formally a  
18 party, I did nothing, and other things happened.  
19 Eventually, in 2004, after city council ratified  
20 the existing agreement, the joint venture  
21 agreements, and we gave up the battle.

22                   There was a time when we were  
23 awaiting, I think, the direction or the opinion of  
24 the outside counsel and it became -- sorry, I  
25 skipped one step.

1                   It was necessary I think to obtain  
2 an adjournment of the Ontario Municipal Board  
3 hearing, and I brought a motion to have it  
4 adjourned, and so did the city solicitor.

5                   Q.    Right.  We heard that  
6 yesterday.

7                   A.    So I did that.  But then in  
8 2004, when we had lost the battle and we were  
9 closing up shop, I went back to the OMB on a day  
10 and said that I had no further interest in this, we  
11 have given up the battle, and I withdrew.  I didn't  
12 want to be involved anymore.

13                  Q.    The other aspect that I would  
14 like to deal with under this paragraph is that we  
15 have in the book of documents some examples of  
16 local articles, such as the Town Crier, or the  
17 local papers, such as the Globe and Mail or the  
18 Toronto Star or the Post or the Toronto Sun,  
19 wherein you gave interviews to the newspapers.

20                  The question I have is:  Do you  
21 think it is appropriate for a judge to be giving  
22 interviews to the newspapers in respect of a fight  
23 with city hall?

24                  A.    In the circumstances which  
25 prevailed here, where reporters were calling me

1 frequently to ask for updates and information about  
2 the status of the parking lot issue, I felt it was  
3 appropriate.

4                   Throughout this whole thing, I  
5 think the documentation shows that part of our  
6 strategy in dealing with this was to raise the  
7 profile of the disputes. It was only by having  
8 transparency, by having this become a public issue  
9 where people would know what the issue was, could  
10 understand it, that I thought that we stood a  
11 chance of succeeding, and so I didn't hesitate to  
12 explain the issue to anybody who would ask me.

13                   So if I was asked by a reporter  
14 for one of the local newspapers to explain  
15 something or to give an update, I was only too  
16 happy to do it, because I thought that was an  
17 integral and an essential part of our strategy.

18                   Q. I would like to move on to  
19 another allegation relating to Thelma, and I am  
20 referring specifically to paragraph (i):

21                   "You repeatedly communicated  
22 your status as a judge of the  
23 Ontario Superior Court of  
24 Justice to those engaged in  
25 the Thelma Road Project

1 controversy and to the media.  
2 Your communications  
3 identified you as a 'judge',  
4 'Justice Ted Matlow', 'Mr.  
5 Justice Matlow' or a  
6 'Superior Court Judge.'"

7 I would ask you, first of all,  
8 with residents, to your recollection, how did you  
9 identify yourself with other residents in the  
10 village?

11 A. Invariably as Ted Matlow.

12 Q. What about with politicians?

13 A. Invariably as Ted Matlow.

14 Q. There are, for example, your  
15 letter to the mayor, some of the letters identify  
16 yourself -- and let me show it to you. If you  
17 refer to paragraph 51 of the statement of facts,  
18 there is a reference to a letter which is attached  
19 as appendix 38 in volume 3.

20 JUSTICE ROLLAND: You are saying  
21 appendix 38, Mr. Cavalluzzo?

22 MR. CAVALLUZZO: Yes, appendix 38  
23 in volume 3.

24 JUSTICE ROLLAND: Thank you.

25 BY MR. CAVALLUZZO:

1 Q. Once again, we have already  
2 referred --

3 A. Can you give me one moment,  
4 please, while I find it?

5 Q. I am sorry. I thought you  
6 had it, at 38.

7 A. Yes, I have it.

8 Q. We have referred to this  
9 letter. This is to the new mayor who was just  
10 elected, and so on, and described this letter, but  
11 I note, for example, at the top of the letter it  
12 says "Justice Ted Matlow", and would ask you about  
13 that.

14 A. So far as I can recall,  
15 throughout this entire period, this is the only  
16 actual letter that I ever sent to anybody. There  
17 is a suggestion that I sent another letter -- I  
18 can't remember where I read this now, but somewhere  
19 in this material there is a suggestion that I wrote  
20 another letter. There is no controversy about the  
21 letter itself, but that there may have been two  
22 letters that I sent.

23 I have never seen the other  
24 letter. This is the only one that I know about. I  
25 don't write letters very often. I send e-mails, or

1 I scrawl out memos in handwriting on a pad and send  
2 them off. This was a letter. For this kind of  
3 purpose, I have a template on my own computer at  
4 home. It was set up I don't know how many years  
5 ago, many years ago. I don't know how long I have  
6 had this, so that when I want to send a personal  
7 letter, I go to templates and I open up a template  
8 and this comes out, and it is blank except for  
9 "Justice Ted Matlow" at the top and my home address  
10 and phone number and fax number at the very bottom.

11 I thought that this occasion, this  
12 was a special occasion to write to the new mayor.  
13 I would do it by way of letter, and without  
14 thinking, I just went to my computer and typed the  
15 letter and that is how that came about.

16 Q. Also now in the same month,  
17 and we have referred to it earlier, you have also  
18 sent an e-mail to -- this isn't a letter. It is an  
19 e-mail to Mr. Michael Bryant, and that can be found  
20 at appendix 37.

21 Mr. Bryant, once again, at that  
22 time was the Attorney General and your local member  
23 of parliament.

24 A. Yes, I sent that.

25 Q. In this letter, do you

1 identify yourself as a judge?

2 A. I don't know, but if I can  
3 pause for a moment, I will see if I do. I don't  
4 think so.

5 Q. I don't think you do. Do you  
6 think it is fair that Mr. Bryant might know that  
7 you were a judge?

8 A. I have no idea.

9 Q. There is reference in your  
10 affidavit which accompanied your application to the  
11 OMB.

12 This can be found, members, in  
13 volume 2 at appendix 20. This is a notice of  
14 motion seeking an adjournment at the OMB, and  
15 accompanying the notice of motion is an affidavit.  
16 The reference to the correction, members of the  
17 panel, is in paragraph 3, where there is a  
18 reference there to 2000 -- correction. That should  
19 be 2002, which is what the witness told us about  
20 earlier.

21 I want to refer to the previous  
22 paragraph, paragraph number 2, where you identify  
23 yourself as a judge of the Superior Court of  
24 Justice and would prefer not to be involved in the  
25 appeal. There was a situation where you identified

1 yourself as a Superior Court judge, and can you  
2 tell us why?

3                   A. Yes. I felt awkward about  
4 making this application, but even though I felt  
5 awkward about doing it, I felt that it was the  
6 right thing to do and the permissible thing to do,  
7 but I thought that it would be discourteous of me  
8 if I didn't reveal to the board who I was, and so I  
9 -- I want you to understand that I didn't spend  
10 hours thinking this whole thing through. I typed  
11 these things and did them pretty quickly.

12                   I decided obviously that I would  
13 tell them that, and I also set out that I would  
14 prefer not to be involved in this appeal, which is  
15 how I felt.

16                   Q. Some would say why were you  
17 doing that, because the OMB is sometimes a party  
18 before the Superior Court of Justice. You could be  
19 sitting on a case involving the OMB. Don't you  
20 think there could have been construed to be a  
21 conflict?

22                   A. That didn't occur to me.

23                   Q. One other document that I  
24 would refer to that was referred to yesterday by  
25 Mr. Hunt is in volume 3. This is the notice or the

1 facts to the Auditor General, and this can be found  
2 in volume 3 behind tab 36. Do you see that is a  
3 fax message from Justice Ted Matlow to the Auditor  
4 General Mr. Griffiths?

5 A. Yes.

6 Q. Could you explain why you  
7 identified yourself as Justice Ted Matlow to the  
8 Auditor General?

9 A. Yes. First of all, what I  
10 was doing is I was faxing him a copy of an e-mail  
11 message that I had tried to send to him -- all  
12 right -- that I tried to send to him just a few  
13 moments earlier.

14 What confused me just for a moment  
15 there is that the fax message says today's date is  
16 September 8th, 2003, and up above it says received  
17 September 2nd, 2003, and it makes reference to a  
18 copy of an e-mail message, which I tried without  
19 success, to e-mail a few minutes ago.

20 When I flipped over, I see that  
21 the e-mail is a message dated September 2nd, 2003.

22 Obviously I put the wrong date in there. It  
23 should have been September 2nd.

24 I don't know what the problem was,  
25 whether there was something wrong with my computer



1 interactions with Mr. Barber in 2002 and 2005, you  
2 identified yourself as a judge?

3 A. Yes. I think that the fact  
4 that I am a judge is part of my identity, just as  
5 much as -- it tells a lot of things about me. It  
6 tells something about my education, something about  
7 my familiarity with law. It helps one, I hope,  
8 make some more accurate assessment as to whether or  
9 not I am likely to be a crank, and there are other  
10 things, too.

11 So in certain situations, not very  
12 many, I thought that it would be okay for me to let  
13 the person that I was addressing or writing to or  
14 speaking to know that I was a judge. That was part  
15 of me, and I wanted the other person to know what  
16 kind of person I likely was.

17 It was never my intention to  
18 derive some benefit from the authority or prestige  
19 of my court or to get my court involved. That was  
20 never in my mind. It was never my intention. I  
21 never thought of that until I heard some of the  
22 allegations that a long time later were made  
23 against me.

24 I did that on I don't know how  
25 many occasions, but not very many occasions.

1 Q. Related to these  
2 communications would be the next allegation to  
3 which I would refer, and indeed --

4 THE CHAIR: If you are going to  
5 change to another topic, this might be a convenient  
6 time for us to take the mid-morning break. Is that  
7 all right?

8 MR. CAVALLUZZO: That is  
9 absolutely fine, yes.

10 THE CHAIR: We will break for  
11 about 10 or 15 minutes.

12 --- Recess at 11:16 a.m.

13 --- Upon resuming at 11:51 a.m.

14 DECISION:

15 THE CHAIR: Please be seated. If  
16 you would give me a moment before you continue, Mr.  
17 Cavalluzzo, we didn't spend the entire half hour  
18 simply having a coffee. We were addressing the  
19 request of Mr. Cavalluzzo earlier to accept into  
20 evidence this community statement.

21 We have given it full  
22 consideration, and to say that it is unconventional  
23 as evidence before a tribunal that has to act  
24 judicially would be somewhat of an understatement.  
25 It is quite unconventional.

1                   We nevertheless considered the  
2 request but must refuse acceptance of it, because  
3 essentially it is in the form of a petition signed  
4 by a group of people seeking a decision of this  
5 committee that is in a certain direction, and we  
6 think that is not appropriate.

7                   So we do not accept the community  
8 statement.

9                   Mr. Cavalluzzo, you may continue.  
10 CONTINUED EXAMINATION-IN-CHIEF BY MR. CAVALLUZZO:

11                   Q. Justice Matlow, we were  
12 moving to another allegation and, in particular,  
13 paragraph (h), and this states that:

14                               "You used languages that was  
15                               intemperate, improper and  
16                               inappropriate in the course  
17                               of your participation in, and  
18                               leadership role as, the  
19                               'President' of Friends, with  
20                               respect to the Thelma Road  
21                               Project controversy."

22                   Reference is made in the statement  
23 of fact in paragraph 49, in fact, that you met with  
24 the Auditor General in August of 2003 and sent a  
25 message that we have referred to wherein you

1 stated:

2                                   "-- an opinion by a lawyer  
3                                   employed by the City  
4                                   Solicitor 'is blatantly wrong  
5                                   and ridiculous' and that 'if  
6                                   her report had been written  
7                                   as part of a first year law  
8                                   school examination, she would  
9                                   undoubtedly receive a failing  
10                                  mark.'"

11                                 There was also reference  
12                                 yesterday, in terms of questioning of Mr.  
13                                 Lieberman, where you used the word "devious" in  
14                                 respect of some of the conduct of city officials.  
15                                 I ask you, in retrospect, whether you think this  
16                                 kind of language that was used either with the  
17                                 Auditor General or describing the city's conduct as  
18                                 devious is appropriate when you are a member of the  
19                                 judiciary?

20                                 A.    I don't know how to answer  
21                                 the question in a satisfactory way.  I have a sense  
22                                 that some of the language that I used was  
23                                 excessive.  Other language was I think appropriate  
24                                 under the circumstances, despite the fact that I  
25                                 was a judge.

1                   What is temperate or intemperate I  
2 think very largely requires a subjective  
3 assessment, and the same language used in certain  
4 circumstances may be appropriate and in other  
5 circumstances may be intemperate.

6                   I was really frustrated and upset  
7 about what I perceived -- not would have been  
8 perceived -- that I observed, read and perceived  
9 about the conduct in the city's legal department  
10 particularly the conduct of the city solicitor and  
11 Barbara Capell.

12                   When Barbara Capell and the city  
13 solicitor were asked to justify their opinion --  
14 and the opinion that I am referring to is that when  
15 city council, back in 1990, approved the  
16 transaction, the joint venture for the ten  
17 townhouses.

18                   Q.    You said 1990.  I assume you  
19 mean 2000.

20                   A.    I am sorry, 2000, right.  
21 When city council in 2000 approved the joint  
22 venture -- that is what it was described --  
23 involving the ten townhouses within the existing  
24 zoning, when they said that that language was broad  
25 enough to permit them to change that description of

1 development and insert a large six-storey mixed-use  
2 condominium/retail that far exceeded the zoning, I  
3 thought that that was just absurd.

4                   The language was just so  
5 abundantly clear that all you have to do is to look  
6 at the authorization that city council granted and  
7 see what they put in the agreement that they  
8 signed, and they sought to justify it on grounds  
9 that made even less sense.

10                   They justified it on the grounds  
11 that the business agreement, the nature of the  
12 development itself, was still to be determined at  
13 some future time. It didn't say by whom or when,  
14 but the nature of the development was set out very  
15 clearly, ten townhouses falling within the existing  
16 zone. So I was really upset.

17                   Clearly the language that I used  
18 reflected my sense of anger and upset. Now that I  
19 feel more relaxed about it, when I look at the  
20 language, I think, yes, maybe I went too far, but  
21 like any other human being, sometimes I just blow  
22 my stack, and I did it then.

23                   Q. We have heard from Mr.  
24 Lieberman and Ms. Collard as to their direct  
25 interest in this new development. If you could

1 briefly tell us yourself what impact this new  
2 development would have on you as a homeowner at 8  
3 Thelma Drive?

4                   A.    The type of impact that Ron  
5 Lieberman described, that is, how it would affect  
6 the whole neighbourhood, of course applies to me.  
7 I was very close to the parking lot. Next to the  
8 parking lot were two townhouses joined together,  
9 and then was the home where Judith Collard lived,  
10 and then there was my home.

11                   If a six-storey building were to  
12 go up in that parking lot, it would have various  
13 impacts on me. First of all, it would block the  
14 sunshine, the summer sunshine, for sure, in the  
15 afternoon. There would be balconies overhanging  
16 that would be sitting virtually on top of my house  
17 and my backyard.

18                   The plan that we were shown for  
19 this building provided that the front door of the  
20 condominium complex would be on Thelma Avenue, and  
21 right in front of the front door there would be  
22 just a tiny little part carved out of the roadway  
23 so cars could move up in the front of the building.

24                   If somebody were to want to pick  
25 somebody up or drop somebody off at that building,

1 they would have to come in to Thelma Avenue from  
2 Spadina. Because Thelma is a dead end street, in  
3 order to get to the front of that building, they  
4 would have to go up somebody's driveway.

5                   The first two driveways were not  
6 very appealing driveways for various reasons. Mine  
7 was the first one that was wide and open, and I  
8 just had horrors of people coming into my driveway  
9 all the time.

10                   The entrance and the exit to the  
11 underground parking, which was going to have 20  
12 more spots than the surface, was also going to be  
13 on Thelma. So cars would be coming on to Thelma  
14 going in and out of the underground garage right  
15 next to my house.

16                   Finally, for me to drive out of  
17 Thelma Avenue and to get onto Spadina, particularly  
18 if I want to turn left to go south, is a challenge  
19 that requires great courage every time I do it,  
20 because there are always cars parked illegally at  
21 that corner. When I veer out into Spadina and I  
22 look left, I can barely see what is coming. I have  
23 to be mindful of what is coming southwards from the  
24 right, and to have all this other new traffic now  
25 buzzing around in the same place would scare me

1     terribly and I didn't want that to happen.

2                     Q.     You just briefly, in  
3     conclusion, as far as your personal concerns were,  
4     you mentioned the six-storey development.  As we  
5     know from the evidence, it morphed into a  
6     four-storey development as time went on in early  
7     2003.

8                     Would you still have those impacts  
9     with the four-storey development?

10                    A.     Sure, perhaps to a lesser  
11     degree, but the problems would still be the same.

12                    Q.     Let's move on to the next  
13     allegation, which can be found in paragraph number  
14     (j) of the notice, and let me read it for those  
15     that don't have it:

16                             "You publicly involved  
17                             yourself in legal issues in  
18                             the Thelma Road Project  
19                             controversy that you knew or  
20                             ought to have known were  
21                             likely to come before the  
22                             Ontario Superior Court of  
23                             Justice, in particular, the  
24                             processes before the OMB --"

25                             Which we have dealt with:

1                                   "-- and the Application  
2                                   before the Ontario Superior  
3                                   Court."

4                                   Of course that is the Ron  
5 Lieberman and 23 other applicants' application for  
6 judicial review. I would ask you what your  
7 involvement was in the application for judicial  
8 review. You have heard from Ron Lieberman as to  
9 his recounting of your involvement. Would you  
10 agree with that?

11                                  A. I agree entirely with what he  
12 said.

13                                  Q. At this time, though, we  
14 understand from the statement of fact that --

15                                  A. Should I have brought my copy  
16 of the statement of facts with me?

17                                  Q. We can give you one, if you  
18 want. In any event, at the time of the application  
19 for judicial review, you notified Chief Justice  
20 Smith that there was an outstanding application for  
21 judicial review, and if I could just find that for  
22 you. I thought I knew this statement by heart by  
23 now. Obviously I don't.

24                                  Yes, it is volume 3 of the book of  
25 documents, tabs 23 and 24, if you could review

1 that, 24 containing what is, I guess we could call  
2 it, "protocol"?

3 A. Yes. This was a protocol  
4 that prevailed in my court that was developed by a  
5 former Chief Justice, and it essentially provided  
6 that if a judge gets involved in litigation, he or  
7 she should notify -- I can't remember -- yes, the  
8 regional senior justice of the litigation, so that  
9 the regional senior justice can take steps to make  
10 sure that the case does not come before a Toronto  
11 judge, but would come before a judge from some  
12 other city who would be brought to Toronto, someone  
13 who didn't know the judge involved.

14 It emphasized the fact that there  
15 is no prohibition against a judge being involved in  
16 litigation or in getting involved in activities  
17 that could reasonably lead to litigation.

18 Q. The notice to Chief Justice  
19 Smith is behind tab 23, and it is dated December  
20 28th?

21 A. We just looked at tab 24, I  
22 think.

23 Q. Right. Tab 23, though, is  
24 your notice to Chief Justice Smith regarding the  
25 protocol and what should be done?

1 A. Yes, exactly.

2 Q. You say:

3 "Although I am not an  
4 applicant, the applicants are  
5 all members of the Friends of  
6 the Village, a single issue  
7 association, who are affected  
8 by the issues. I am  
9 president. It may be that  
10 you want to decide that the  
11 application be heard by a  
12 judge from another city."

13 (As read)

14 What you were referring to was  
15 protocol behind tab 24?

16 A. Exactly.

17 Q. If we could move on to the  
18 SOS matter, which is of course the other  
19 application. I refer now to paragraph (f). That  
20 says that:

21 "On October 2, 2005 and  
22 following, you identified  
23 yourself as a 'Superior Court  
24 Judge' and contacted Mr.  
25 Barber of the Globe and Mail

1                   concerning your criticisms of  
2                   the City and your opposition  
3                   to the Thelma Road Project  
4                   with the intention of  
5                   persuading Mr. Barber to  
6                   write a story based on your  
7                   criticisms of the City and  
8                   your opposition to the Thelma  
9                   Road Project."

10                   The evidence is that you  
11                   communicated by e-mail with Mr. Barber on Sunday,  
12                   October 2, 2005, and the question is why?

13                   A.    Let me put this in  
14                   perspective for you.  As at February of 2004, so  
15                   far as I was concerned, the Thelma Avenue issue had  
16                   been lost and I had very shortly after that deleted  
17                   my e-mails, thrown out my documents.  I didn't want  
18                   to have anything more to do with fighting about the  
19                   parking lot on Thelma Avenue.  I had had as much as  
20                   I could take in one lifetime.

21                   In most ways, I had let everything  
22                   go.  In September of 2005, the Bellamy report was  
23                   released and it came to my attention.  I read it  
24                   not when I first got it, but not long before  
25                   October 2nd of 2005.  I can't remember exactly

1 when. As I read it, and I read the findings that  
2 Justice Bellamy had made about the conduct of  
3 various officials employed by the City of Toronto  
4 and exceeding the authority that city council had  
5 given them, I was struck with the similarity  
6 between what she had found was widespread among  
7 people involved in leasing computer equipment. It  
8 was exactly the same thing that we had encountered  
9 involving this parking lot project on Thelma  
10 Avenue.

11                               On October the 2nd, I was about to  
12 leave for Sudbury where I was to sit in the  
13 Divisional Court for part of the following week,  
14 and that morning, like I always do on Sundays when  
15 I am about to spend a week in another city, I start  
16 putting my house in order and doing things and  
17 getting my desk cleared off.

18                               I don't remember it specifically,  
19 but what happened, obviously, is that I was  
20 influenced by my very recent reading of the Bellamy  
21 report, and, in acting as what I perceived to be  
22 something like a whistleblower, because I was so  
23 upset by what these two people in the legal  
24 department had been doing, I got the urge to renew  
25 that part of the issue and I dashed off an e-mail

1 to John Barber, and that is how that came about.

2 Q. We have already discussed you  
3 did identify yourself as a Superior Court judge,  
4 which you had done two or three years earlier with  
5 Mr. Barber, and you told us you did that for the  
6 reasons you gave, and we need not repeat that.

7 One question that I have is: When  
8 you sent that e-mail to Mr. Barber, were you aware  
9 that you would be sitting on the SOS application  
10 later in that week?

11 A. No. I found out about that  
12 only on Monday. It could have been Tuesday. I  
13 think it was Monday when I was already in Sudbury.  
14 My panel of the Divisional Court was then  
15 scheduled to be in Sudbury for three days.

16 The cases that we originally had  
17 scheduled for Thursday and Friday of that week had  
18 somehow been settled or had evaporated, and so on  
19 Monday morning when I got to my office assigned to  
20 me in Sudbury and I connected my court-provided  
21 laptop, I got an e-mail from Livia Sessions, the  
22 divisional court registrar in Toronto, asking me  
23 whether I would be willing to return to Toronto on  
24 Tuesday night and take on a Divisional Court case  
25 in Toronto, and I think she gave me the name of it.

1 Q. In the statement of facts, it  
2 said that Livia Sessions sent an e-mail on the  
3 afternoon of Friday --

4 MS. FREELAND: Which paragraph is  
5 that, Chief Justice?

6 MR. CAVALLUZZO: Paragraph 61 of  
7 the statement of facts.

8 BY MR. CAVALLUZZO:

9 Q. It says:  
10 "Late in the afternoon of  
11 Friday 30 September 2005,  
12 Livia Sessions, the Registrar  
13 of the Divisional Court, sent  
14 an e-mail to the justices who  
15 had been sitting on the panel  
16 in Sudbury, advising that  
17 they had been scheduled for  
18 an urgent application  
19 involving SOS on Thursday 6  
20 October --"

21 And attached is the e-mail. When  
22 did you see that e-mail for the first time?

23 A. On Monday.

24 Q. Friday afternoon, I  
25 understand that you were playing tennis; is that

1 correct?

2                   A. I knew at some stage what  
3 time she said this. It was sometime I think after  
4 three o'clock on the Friday, and I know that at  
5 four o'clock I was already playing tennis at my  
6 tennis club that day.

7                   Q. You find out, you say, likely  
8 on the Monday that you were going to be sitting on  
9 the SOS application. The next day, on October the  
10 4th, which is the Tuesday of that week, Mr. Barber  
11 responds to you and requests documents and you  
12 respond back, and then the facts are that on  
13 Wednesday, October 5th, you delivered a packet of  
14 documents, which is part of the book of documents,  
15 to the Globe and Mail at around noon on Wednesday,  
16 October 5th; is that correct?

17                  A. I delivered a few documents  
18 to him, not a large pile.

19                  Q. Those documents that you left  
20 at the Globe and Mail for Mr. Barber, this would  
21 have been on the Wednesday. Was this before you  
22 saw the SOS file?

23                  A. Yes. I think I told him in  
24 my e-mail that day that I am about to go down to my  
25 office and on the way to my office I will stop off

1 at the Globe and deliver an envelope, and that is  
2 what I did.

3 Q. You had returned from Sudbury  
4 on the Tuesday evening?

5 A. Tuesday night, yes.

6 Q. After delivering the  
7 documents to Mr. Barber, did you then go to your  
8 office at Osgoode Hall?

9 A. Yes, I did.

10 MR. CAVALLUZZO: Chief Justice and  
11 members of the panel, you may recall earlier that I  
12 had arguments respecting the jurisdiction of this  
13 panel to review what I view to be recusal matters.  
14 The way it was left at the preliminary motion in  
15 November was that you would hear all of the  
16 evidence, and then make your determination on those  
17 issues.

18 So I am going to be getting into  
19 this area now, and I am letting you know that I  
20 will be -- even though I am leading evidence on  
21 this point, I will be asserting that jurisdictional  
22 argument.

23 THE CHAIR: I understand.

24 BY MR. CAVALLUZZO:

25 Q. You get to Osgoode Hall and

1 this would be the Wednesday afternoon on October  
2 the 5th, and you would have reviewed presumably the  
3 SOS file for the hearing the next day in the  
4 Divisional Court?

5 A. Yes.

6 Q. Did you have any thoughts at  
7 that time as to whether you should sit on the SOS  
8 file, in light of your past activities with the  
9 Thelma Road project?

10 A. Yes.

11 Q. Could you tell us your  
12 thought process?

13 A. I examined the material  
14 closely to see what the issues were that were being  
15 raised or had to be canvassed during the course of  
16 that application. There were only two issues  
17 raised in the material by the counsel involved.

18 The first one was whether the  
19 proposed streetcar line violated the provisions of  
20 the Toronto Official Plan. The second one was a  
21 complaint made by the citizens' group who were  
22 opposing the streetcar line that the city had not  
23 conducted an adequate environmental assessment as  
24 required by another statute.

25 I could see nothing in the

1 material, both from the issues and from the  
2 evidence that was filed, that had anything remotely  
3 to do with my issue on Thelma Avenue. It is true  
4 that my home is I think a little bit more than 0.6  
5 kilometres from St. Clair.

6                   The part of St. Clair that  
7 intersects with Spadina has a park there, and there  
8 are some old apartment buildings and things like  
9 that. There is no commercial development there, at  
10 all. The opposition to the streetcar that I didn't  
11 know then, but I know now, had to do largely with  
12 how it was going to affect business on St. Clair,  
13 and that was all far -- not far, about half a mile  
14 west of Spadina, west of Bathurst.

15                   I just couldn't see how there  
16 could be remotely any connection between the two.  
17 That was my thought process and I decided to hear  
18 the case.

19                   Q. Did you have any views on the  
20 St. Clair streetcar?

21                   A. None at all. I knew that  
22 there was a dispute. I didn't know the details of  
23 the dispute. I knew that business owners were  
24 largely objecting to it, and I knew that there was  
25 a citizens' group. I had no views about the merits

1 of it. I frankly didn't much care what was going  
2 to happen. I shouldn't say "much care". I didn't  
3 care at all what was going to happen.

4 Q. I would like to move to  
5 paragraphs (a) and (b).

6 A. I am sorry, there is one  
7 other factor that I considered.

8 Q. What is that?

9 A. It was present in my mind  
10 that from 2002 until then, I had already sat on  
11 five -- I think there were five -- cases involving  
12 the city, and never once did counsel representing  
13 the city take any objection to my sitting on any of  
14 those cases.

15 I assumed, I think reasonably,  
16 that counsel representing the city would know about  
17 my involvement in Thelma everybody else in the city  
18 knew about it and I had had lots to do with the  
19 city's legal department, and that if there was some  
20 reason why I should recuse myself, then they would  
21 raise it, and they didn't.

22 So that also was present in my  
23 mind.

24 Q. That leads to, I guess,  
25 perhaps we could refer to three paragraphs at once.

1 It really deals with the same thing. Paragraph  
2 (a) says, "Having regard to your involvement" --

3 A. Sorry?

4 Q. Paragraph (a).

5 A. Yes.

6 Q. "Having regard to your  
7 involvement in the Thelma  
8 Road Project controversy, you  
9 did not take steps to ensure  
10 that you did not sit on the  
11 Divisional Court Panel  
12 hearing the SOS application."

13 Paragraph (c):

14 "You failed to disclose  
15 details of your involvement  
16 in the Thelma Road Project  
17 controversy and your  
18 criticisms of the City to  
19 Justice Greer and Justice  
20 Macdonald prior to the  
21 commencement of the hearing  
22 of the SOS application."

23 I guess similar to that would be  
24 the two new allegations which can be found in (k)  
25 and (l), and that provides:

1 "Your conduct in taking the  
2 role that you did in the  
3 Thelma Road Project  
4 controversy, and in making  
5 out of court statements in  
6 relation to same, constituted  
7 conduct which, in the mind of  
8 a reasonable, fair minded and  
9 informed person, would  
10 undermine confidence in your  
11 impartiality with respect to  
12 the City and issues relating  
13 to the City that could come  
14 before the courts."

15 Finally (1):

16 "Given your participation in  
17 the Thelma Road Project  
18 controversy, you failed to  
19 take steps to ensure that you  
20 did not sit on any matter  
21 involving the City."

22 In response to that, I guess you  
23 repeat what you said before, and that is that you  
24 had five cases already with the city. In your  
25 view, they were quite aware of your activities in

1 the Thelma Road project. At least a reasonable  
2 person would be reasonably familiar with your role  
3 on the Thelma Road project, and no one had ever  
4 objected?

5 A. That answer pertains, I  
6 think, to paragraphs (k), (l) and (m). Is that  
7 what you are referring to now?

8 Q. Yes. As well, what about (a)  
9 and (c), which is the SOS application itself?

10 A. The SOS application --

11 THE CHAIR: Just before you go on,  
12 Justice Matlow, Mr. Cavalluzzo, I think it would be  
13 best if you let Justice Matlow answer the question  
14 rather than tell him the answer, which you just  
15 did. I realize that this is a more relaxed matter  
16 and much of the evidence is already before him, but  
17 you are putting to the committee Justice Matlow's  
18 view of it and his response to it, and I think you  
19 had best elicit that from him.

20 MR. CAVALLUZZO: That is fine. I  
21 was just trying to expedite this.

22 THE CHAIR: I understand.

23 THE WITNESS: I would feel more  
24 comfortable if you would please let me separate  
25 (k), (l) and (m) from the SOS case, because the SOS

1 case presented a problem that wasn't present in the  
2 others.

3 BY MR. CAVALLUZZO:

4 Q. Let's deal initially, then,  
5 with the SOS paragraphs (a) and (c).

6 MS. FREELAND: Chief Justice, I am  
7 not clear on what the question is.

8 BY MR. CAVALLUZZO:

9 Q. The question is: There are  
10 certain allegations that have been made against you  
11 in respect of paragraphs (a) and (c), and the  
12 question is what Justice Matlow's response is to  
13 these allegations that your failure not to sit and  
14 your failure not to inform your colleagues is  
15 misconduct?

16 A. A long time has passed  
17 between October of 2005 until today, and I have had  
18 many, many opportunities to think about what  
19 occurred and to ponder my own actions and the  
20 criticism that has been levied against me.

21 I am persuaded, with the benefit  
22 hindsight, that I made errors in judgment in the  
23 way I handled the SOS case. There are two errors  
24 in judgment that are now apparent to me which I  
25 very much regret and I wish had not occurred.

1                   The first one occurs, I think, on  
2 the Wednesday, and I don't know what the date was.

3                   Q.    October 5th.

4                   A.    The 5th.  When I delivered  
5 those documents to the Globe and Mail for John  
6 Barber, by then I knew that I would be sitting on  
7 the SOS case, and, in retrospect, I wish that I had  
8 just cut off my contacts with John Barber at that  
9 time and that I had not delivered anything to him.

10                  My second error, which I also very  
11 much regret, occurred when the SOS hearing was  
12 about to begin.  I can now see how my e-mail to  
13 John Barber and my delivering documents to him  
14 created optics, if I can use that expression,  
15 created an appearance, which could lead someone to  
16 worry about whether or not my attitude, my feelings  
17 towards the persons in the city legal department  
18 would somehow affect my impartiality in that case.

19                  If I had to do it over again, I  
20 would have followed one of two other and I think  
21 better approaches.  I could have, I think, at the  
22 opening of the hearing, told counsel and my two  
23 colleagues on the panel what I had done and invited  
24 them -- invited counsel, not my colleagues --  
25 invited counsel to make submissions as to whether

1 or not I should disqualify myself.

2 In those circumstances, had they  
3 urged me to disqualify myself, I likely would have  
4 done that. A safer approach, but one which has  
5 other considerations attached to it, would have  
6 been simply to not -- refuse to sit on that case  
7 and avoid the issue entirely.

8 I guess in retrospect I am sorry  
9 that I had anything to do with the SOS/St. Clair  
10 case, because I think that is the source of the  
11 difficulty that I find myself in right now.

12 Q. What about the more general  
13 question that you want to be treated differently;  
14 that is, leaving aside the interactions with John  
15 Barber, and that is without that whether -- and  
16 your thought about this in retrospect, whether you  
17 thought it was appropriate that you sat, that you  
18 didn't advise your colleagues because purely of  
19 your Thelma Road involvement.

20 What can you tell us about that?

21 A. When the first case came  
22 before me involving the city, after I had already  
23 been involved in the Thelma project, the first  
24 question that I automatically asked myself was, Is  
25 there any similarity between the case that I am

1 about to hear and what I have done in connection  
2 with Thelma? If the answer had been anything other  
3 than a definitive no, I wouldn't have sat on the  
4 case.

5                                   Until then, and even until this  
6 complaint against me was made, nobody representing  
7 the city had ever complained to me about having sat  
8 on the first city case. So when the second case  
9 came, I assumed once more that if there was any  
10 concern on the part of the city or the city legal  
11 department about my sitting, somebody would say  
12 something about it and that it happen then.

13                                   I started thinking about -- and  
14 this is something that I actually wrote about in my  
15 reasons for decision in the SOS case. There is  
16 something different about one's relationship with  
17 one's own city than with other, say, commercial,  
18 private interests.

19                                   I thought that I could have a  
20 dispute with my city about the garbage delivery,  
21 about other things, and even about more serious  
22 things, about building a development down the  
23 street from me, without that tainting my ability to  
24 sit in judgment on the case and being partial and  
25 fair to the city.

1                   In all five of the cases that I  
2 sat on involving the city, I applied that  
3 reasoning. I can repeat in the strongest terms  
4 that I can find nothing that I did or nothing that  
5 happened in connection with Thelma or the city  
6 legal department or anything related to that  
7 affected me in any way when I heard those five  
8 cases involving the city.

9                   Indeed, in four of those five  
10 cases, the city succeeded. In one of those cases,  
11 the city didn't. And that thinking continues even  
12 when the SOS case came before me.

13                   MR. CAVALLUZZO: I would like to  
14 refer the members of the panel to --

15                   THE CHAIR: If you are going on to  
16 another subject, I am just reminded that it is now  
17 12:32. It is our normal lunch break. Is there  
18 something you wish to cover before that?

19                   MR. CAVALLUZZO: No, Chief  
20 Justice. If you want, I could probably be finished  
21 in 15 or 20 minutes, but if you would like to  
22 break, that is fine, now. It is up to you.

23                   THE CHAIR: We have to think about  
24 everybody, including staff. We will take our break  
25 now.

1 MR. CAVALLUZZO: Thank you.

2 --- Luncheon recess at 12:33 p.m.

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

4 THE CHAIR: Mr. Cavalluzzo?

5 MR. CAVALLUZZO: Before the  
6 break, I was just about to come to what I referred  
7 to earlier as the new information which both  
8 counsel have received, relating to the Globe &  
9 Mail.

10 The information we have is that on  
11 January 4, 2006, Mr. Matlow met with two members of  
12 the editorial board of the Globe & Mail, Sylvia  
13 Stead and Greg Boyd-Bell.

14 We were advised of that last  
15 night, and I am going to ask Justice Matlow about  
16 that now. There is nothing in the Agreed Statement  
17 of Facts about this.

18 MR. CAVALLUZZO:

19 Q. Justice Matlow, around that  
20 time, January 4, 2006, do you recall meeting for  
21 about an hour or so with these two people at the  
22 Globa & Mail?

23 A. I do.

24 Q. Where did that meeting take  
25 place?

1                   A.    In an office at the Globe &  
2 Mail.

3                   Q.    Did you request that meeting?

4                   A.    I think so, yes.

5                   Q.    What was the purpose of your  
6 request for a meeting?

7                   A.    After the SOS recusal motion,  
8 there was something in the Globe & Mail that I  
9 thought was unfair and wrong.

10                  I was still mindful of John  
11 Barber's column of October, which I thought was the  
12 epitome of unfairness in journalism.

13                  I thought the time had come for me  
14 to say something to the Globe & Mail, and the  
15 things they were writing about me.

16                  So I sent an email to someone in  
17 the editorial hierarchy, there were some phone  
18 calls, and they invited me to come for a meeting.

19                  There were holidays taking place,  
20 and the first time they could set up the meeting  
21 was sometime in January.

22                  Q.    If you could refer to Volume  
23 4, page 129, is this the Globe & Mail article to  
24 which you referred?

25                  A.    That is the piece on the

1    recusal motion that I took issue with.

2                    Q.    What are the errors you felt  
3    should be corrected?

4                    A.    It stated in several places  
5    that at that motion, I dissented from the majority,  
6    who were my two colleagues.

7                    I wanted them to understand the  
8    process of recusal, and the fact that I did not  
9    dissent. I was the one who considered the motion,  
10   and my judgment on it was the only judgment that  
11   dealt with whether or not I should recuse myself.

12                   Q.    Did you also raise this issue  
13   with Mr. Barber as well?

14                   A.    I did.

15                   Q.    Did you raise the Thelma  
16   project controversy?

17                   A.    No.

18                   Q.    You just wanted them to  
19   report on these two points. Do you know if they  
20   ever did?

21                   A.    I never saw anything written  
22   that would respond to that meeting.

23                   MR. CAVALLUZZO: Chief Justice,  
24   during the lunch break, I was reminded that there  
25   was another contact with the Globe & Mail, through

1 counsel, which you should be aware of.

2                               That was in February 2007, and I  
3 have the article for you. Unfortunately, I do not  
4 have the correction, which I will provide for you  
5 tomorrow.

6                               This article is dated February 23,  
7 2007, and it is about the complaints against  
8 Justice Matlow, and the title is "Ontario Judge To  
9 Face Review Over Alleged Ethical Breach", but the  
10 subtitle states "Jurist Ted Matlow sat on panel  
11 that ruled on streetcar issue he opposed", which  
12 was clearly wrong.

13                              Counsel intervened with the Globe  
14 & Mail, and we received a correction. That title  
15 was removed from internet copies.

16                              If you go to page 218 of Volume 4,  
17 you will see the article with the removal of the  
18 subtitle, at our insistence.

19                              I thought you should be aware of  
20 that as well, and I wonder if we can make this  
21 document an exhibit.

22                              THE CHAIR:    Yes, this will be  
23 Exhibit No. 8.

24    EXHIBIT NO. 8:  Globe & Mail  
25    article dated February 23,

1 2007

2 MR. CAVALLUZZO: Before I  
3 continue with my final questions, there is matter  
4 that relates to the fact that the SOS matter was  
5 referred to another panel, there was a decision on  
6 that, a different decision which upheld the City's  
7 position, but there were some legal changes which  
8 occurred.

9 I don't know if the panel is  
10 interested in hearing about that. But if you are,  
11 Justice Matlow will assist you in that regard.

12 THE CHAIR: As I understand it,  
13 following the decision of Justices Grier and  
14 McDonald, the matter went before a different panel  
15 of the divisional court, and that court rendered a  
16 decision in which the position of the City of  
17 Toronto was upheld.

18 MR. CAVALLUZZO: That is correct.

19 THE CHAIR: It is the panel's  
20 view that that is not an issue before us.

21 MR. CAVALLUZZO: That is fine.

22 MR. CAVALLUZZO:

23 Q. Justice Matlow, are you proud  
24 of being a judge?

25 A. Very much so.

1 Q. You believe it is an  
2 important privilege to be a judge?

3 A. Absolutely.

4 Q. And you want to continue  
5 being a judge?

6 A. I do.

7 Q. And you regret any  
8 embarrassment that may have been caused to the  
9 judiciary as a result of these proceedings?

10 A. I do.

11 Q. I understand that in April  
12 2005, you became a supernumerary judge.

13 A. Yes.

14 Q. But you continued for a  
15 period of time with a full load?

16 A. I did.

17 Q. You developed a specialty on  
18 the divisional court, is that correct?

19 A. For many years, I have worked  
20 many weeks of the year in the divisional court. I  
21 think that qualifies me to say that it is a form of  
22 specialty.

23 Q. You haven't been sitting as a  
24 judge since April 5, 2007, is that correct?

25 A. Yes.

1 Q. Apart from your role on the  
2 judiciary, I have a couple of personal questions.  
3 Do you have any children?

4 A. I have two children. Josh,  
5 my son, is thirty-two years of age, and my  
6 daughter, Rachel, is twenty-seven. Both of my  
7 children are in the body of the court.

8 Q. I understand you are the  
9 editor of the Advocates' Quarterly.

10 A. I am.

11 Q. Does that require a great  
12 deal of work on your behalf?

13 A. It does. It involves  
14 receiving, organizing and editing papers on a  
15 variety of subjects relating to civil litigation,  
16 submitted by academics and practitioners throughout  
17 Canada.

18 Q. In respect of your activities  
19 outside of the judiciary, I understand that back in  
20 the 'sixties, you were very active in terms of the  
21 abolition of the death penalty.

22 A. I was. When I was a law  
23 student, I was instrumental in the formation of  
24 what became known as the Canadian Society for the  
25 Abolition of the Death Penalty.

1                   For a number of years afterwards,  
2 I was very actively involved in traveling  
3 throughout Canada and organizing events to  
4 encourage the abolition of the death penalty.

5                   Q.    You were also very active  
6 with the Canadian Jewish Congress concerning Soviet  
7 Refuseniks?

8                   A.    Yes, during the 'eighties, I  
9 was involved with the Soviet Jewry Committee of the  
10 Canadian Jewish Congress.

11                  I travelled to the Soviet Union to  
12 make contact with Refuseniks, to obtain information  
13 about their conditions and --

14                  THE CHAIR:   Mr. Cavalluzzo, I  
15 would not want you to conclude by my not mentioning  
16 it that we consider this particularly relevant to  
17 the matters before us.

18                  MR. CAVALLUZZO:   In a normal  
19 professional matter, Chief Justice, we take into  
20 account the full person, in terms of a situation  
21 where you have the authority to recommend the  
22 removal of a person from their profession.

23                  Most professional bodies will take  
24 into account the total person, and their  
25 contributions to Canadian society. That is the

1 purpose of this evidence.

2 THE CHAIR: The standard with  
3 which we have to be concerned is the suitability of  
4 Justice Matlow to continue to discharge his duties  
5 as a judge, and whether his conduct has impaired  
6 that suitability.

7 I have difficulty understanding  
8 how any further roles or interests of Justice  
9 Matlow impact on that.

10 MR. CAVALLUZZO: It happens every  
11 day in professional cases and in labour cases, when  
12 someone is about to be dismissed.

13 As I say, the body normally takes  
14 into account not only the criticisms of the  
15 individual, but also their contributions as well,  
16 as a balance in terms of their ultimate decision.

17 But I will leave that with you.

18 I want to refer now to a recent  
19 article in the Town Crier dated April 2007, and it  
20 is entitled "Forest Hill Today", where a number of  
21 residents are commended for their contribution to  
22 Forest Hill, and Justice Matlow is one of those  
23 individuals.

24 I would like to file that article.

25 THE CHAIR: Do you have any

1 comment to make on this, Mr. Hunt?

2 MR. HUNT: No, I do not object.

3 THE CHAIR: Exhibit No. 9.

4 EXHIBIT NO. 9: Town Crier

5 "Forest Hill Today" edition,

6 Spring 2007

7 MR. CAVALLUZZO: The relevant

8 portion can be found at page 17, Chief Justice.

9 MR. CAVALLUZZO:

10 Q. Justice Matlow, this article

11 refers to your past activities regarding the

12 abolition of the death penalty, and it says,

13 "Matlow is no stranger to activism."

14 Are there any other activist

15 causes, other than the death penalty and the Soviet

16 Jewry point that we talked about, that you are

17 aware of?

18 A. I can't think of anything.

19 MR. CAVALLUZZO: Thank you,

20 Justice Matlow, that completes my questions.

21 THE CHAIR: Mr. Hunt?

22 CROSS-EXAMINATION BY MR. HUNT:

23 Q. Justice Matlow, we do not

24 really know each other, other than to say hello to

25 each other?

1                   A.    I think that many years ago,  
2 when I was in practice, you and I were engaged in  
3 some matter.  But I have not seen you or spoken to  
4 you in many years.

5                   Q.    Since you have become a  
6 judge, I don't recall ever having a matter in front  
7 of you.

8                   A.    I don't think so.

9                   Q.    You told Mr. Cavalluzzo that  
10 when you became involved with the Friends, it did  
11 concern you that you were a judge.

12                   As a result, you read, or reread  
13 things you had read before, that dealt with the  
14 role of a judge.  You referred to Judicom and the  
15 advisory.

16                   Was one of the things you read the  
17 Canadian Judicial Council's "Ethical Principles for  
18 Judges?"

19                   A.    I cannot be absolutely  
20 certain.

21                   Q.    Let me show you a copy --

22                   A.    Yes, I have this at home.

23                   Q.    You would have no doubt read  
24 that at some point, and probably more than once,  
25 during your years as a judge?

1                   A.    Is there something that  
2 indicates when this was published?  If it was  
3 published by then, I tried to read everything I  
4 could find.

5                   Q.    There is a copyright date of  
6 June or July 2004, but it does not appear  
7 otherwise.

8                                In Chief Justice McLachin's  
9 foreward, it indicates the publication in 1998 of  
10 the "Ethical Principles for Judges constitutes a  
11 valuable achievement in this regard --"

12                   A.    I likely looked at it, but I  
13 don't want to say I read it from cover to cover.

14                   MS FREELAND:  Chief Justice, I  
15 wonder if Justice Matlow might be shown one of the  
16 blue books, because it is smaller than the  
17 photocopy and might give some visual recognition.

18                   THE CHAIR:  I can show you a copy  
19 in the form it takes.

20                   MR. CAVALLUZZO:  It was  
21 originally a hard copy, a maroon coloured cover --

22                   THE WITNESS:  Yes, I think I saw  
23 it.

24                   MR. HUNT:

25                   Q.    So you recall seeing the

1 maroon coloured copy, around the time it was  
2 published?

3 A. I think so, yes.

4 Q. In Chapter 1, page 3, under  
5 "Purpose", it states:

6 "To provide ethical guidance  
7 for federally-appointed  
8 judges."

9 That is why it would be relevant  
10 for you to read this.

11 A. I would say that.

12 Q. On page 5, item 3 on that  
13 page, it indicates:

14 "The publication of these  
15 statements, principles and  
16 commentaries coincide with  
17 the establishment of an  
18 Advisory Committee of Judges,  
19 to which specific questions  
20 may be submitted by judges  
21 and which will respond with  
22 advisory opinions. The  
23 process will contribute to  
24 ongoing review and  
25 elaboration on the subjects

1                   dealt with and the principle,  
2                   as well as introduce new  
3                   issues that they do not  
4                   address. More importantly,  
5                   the advisory committee will  
6                   ensure that help is readily  
7                   available to judges looking  
8                   for guidance."

9                   You were aware of the existence of  
10                  the Advisory Committee?

11                   A.    I was.

12                   Q.    In fact, I think you referred  
13                  to an advisory opinion which is set out in Volume  
14                  1, at Appendix 9; do you have that?

15                   A.    I have it.

16                   Q.    Is that one of the advisory  
17                  opinions that would come out of this Advisory  
18                  Committee to judges, to assist judges in handling  
19                  particular problems they would like some advice on?

20                   A.    Yes.

21                   Q.    On page 13 of the "Ethical  
22                  Principles for Judges", you will see that Chapter 3  
23                  is entitled "Integrity" and the statement is:

24                               "The judges should strive to  
25                               conduct themselves with

1 integrity so as to sustain  
2 and enhance public confidence  
3 in the judiciary."

4 And principle No. 1 is that:

5 "Judges should make every  
6 effort to ensure that their  
7 conduct is above reproach in  
8 the view of a reasonable,  
9 fair minded and informed  
10 person."

11 You would have been aware of that  
12 as a principle for judges?

13 A. It is pretty fundamental.

14 Q. The phrase "every effort" I  
15 suppose could include getting advice, when advice  
16 might be helpful in dealing with a situation that  
17 may raise a question of integrity?

18 A. I think the way you have  
19 framed it goes too far.

20 I don't think there is an  
21 obligation to get advice in every instance where it  
22 might be helpful.

23 I think it is a matter of using  
24 one's discretion; otherwise, one would seek advice  
25 ten times a day.

1                   I think every judge has to use his  
2 or her own discretion when a situation arises that  
3 he or she does not feel quite comfortable with, and  
4 wants some more input. That is the time to go and  
5 seek advice.

6                   Q.    And part of the process by  
7 which a judge could get advice would be through the  
8 Advisory Committee of Judges?

9                   A.    That is right.

10                  Q.    On page 15, and this is in  
11 the commentary section dealing with integrity, item  
12 No. 5 -- do you have that?

13                  A.    I do.

14                  Q.    It reads:

15                        "The judge's conduct, both in  
16 and out of court, is bound to  
17 be the subject of public  
18 scrutiny and comment. Judges  
19 must therefore accept some  
20 restrictions on their  
21 activities, even activities  
22 that would not elicit adverse  
23 notice if carried out by  
24 other members of the  
25 community. Judges need to

1 strike a delicate balance  
2 between the requirements of  
3 judicial office and the  
4 legitimate demands of the  
5 judge's personal life  
6 development."

7 You would be aware of that notion,  
8 that a judge has to accept some restrictions?

9 A. Of course.

10 Q. On page 27, which is Chapter  
11 6 of "Ethical Principles for Judges" and is headed  
12 "Impartiality", the statement reads:

13 "Judges must be and should  
14 appear to be impartial with  
15 respect to their decisions  
16 and decision-making."

17 And then under "Principles", item  
18 No. 1 reads:

19 "Judges should strive to  
20 ensure that their conduct  
21 both in and out of court  
22 maintains and enhances  
23 confidence in their  
24 impartiality, and that of the  
25 judiciary."

1                   And item No. 3 then says:  
2                   "The appearance of  
3                   impartiality is to be  
4                   assessed from the perspective  
5                   of a reasonable, fair minded  
6                   and informed person."

7                   You would agree with both the  
8 statements and the principles set out there?

9                   A.    I do.

10                  Q.    And you were aware of those?

11                  A.    I think I was.

12                  Q.    You are not sure?

13                  A.    I do not have any specific  
14 recollection of having read this page, and having  
15 had this in my mind at the time.

16                                But these are things that I was  
17 familiar with, and if I did not know them from  
18 reading this page, I would have known them from  
19 experience and common sense.

20                  Q.    Would that apply as well to  
21 the statement in item No. 3, that the appearance of  
22 impartiality is to be assessed from the perspective  
23 of a reasonable, fair minded and informed person?

24                  A.    There is a very large body of  
25 law that stands for that very proposition.

1                   Q.    It is really directing judges  
2   that it is not their subjective view of conduct in  
3   this area that is important, but that of a  
4   reasonable, fair minded and informed person?

5                   A.    Yes, a judge should strive to  
6   avoid creating a reasonable apprehension of bias.  
7   I think that is the principle, is it not?

8                   Q.    This seems to relate to  
9   impartiality as it relates to ethical principles,  
10   and that is what we are dealing with.

11                   On page 28, under the heading  
12   "Political Activity", item No. 1 states:

13                               "Judges should refrain from  
14                               conduct such as memberships  
15                               in groups or organizations,  
16                               or participation in public  
17                               discussions which, in the  
18                               mind of a reasonable, fair  
19                               minded and informed person,  
20                               would undermine confidence in  
21                               the judge's impartiality with  
22                               respect to issues that could  
23                               come before the court."

24                   You are familiar with that  
25   principle?

1 A. Yes.

2 Q. At page 39, which is now  
3 under the commentary section on impartiality, item  
4 B.1 indicates:

5 "This section deals with out-  
6 of-court activities of  
7 judges, and in particular it  
8 addresses political activity  
9 and other conduct, such as  
10 memberships in groups or  
11 organizations, or  
12 participation in public  
13 debate and comment which,  
14 from the perspective of the  
15 reasonable, fair minded and  
16 informed person would  
17 undermine the judge's  
18 impartiality as regards  
19 issues that could come before  
20 the court."

21 That is a statement of the  
22 principle we have just looked at, agreed?

23 A. It is.

24 Q. You referred to the fact that  
25 in your research and your reading, you looked at

1 Appendix 9, Volume 1, an opinion of the Advisory  
2 Committee on judicial ethics headed "Municipal  
3 Democracy".

4 Did you look at any others? Were  
5 there others that were important to you at this  
6 time?

7 A. Other advisory opinions?

8 Q. Yes.

9 A. I looked at a lot of them,  
10 but couldn't find any others that had any bearing  
11 on my situation.

12 Q. Of all the ones you looked  
13 at, this was the only one that had any bearing?

14 A. That is correct.

15 Q. Did you ever consider  
16 availing yourself of the opportunity provided by  
17 the Advisory Committee, and as set out in "Ethical  
18 Principles for Judges", to ask a question of the  
19 Advisory Committee at any time during this process?

20 A. No, I did not think it was  
21 necessary.

22 Q. Subjectively you did not  
23 think it was necessary?

24 A. Everything I do is  
25 subjective.

1                   Q.    Are you not supposed to be  
2    guided by some principles that include the  
3    objective assessment of the reasonably informed  
4    person?

5                   A.    I think we are caught up in  
6    semantics now.  Of course, I understand what the  
7    test is.  But I am the one who has to make the  
8    decision as to whether or not I have enough  
9    information on which to act, or whether I require  
10   more information or input from other sources.

11                   That is a decision I have to make.  
12    That is not a decision that the public will make  
13    for me.

14                   Q.    And you did not, at any  
15    point, feel you needed any assistance in assessing  
16    what a reasonable, fair minded and informed person  
17    might think about your conduct?

18                   A.    We are dealing with different  
19    things now.  You began by asking whether I thought  
20    about seeking assistance or another opinion from  
21    the Advisory Committee.

22                   I answered by saying I did not  
23    think I needed it.

24                   I am sorry, but I am having  
25    trouble jumping into your next question as --

1                   Q.    We have just looked at some  
2 of the ethical principles as they relate to  
3 integrity and impartiality, which indicate that  
4 they are to be assessed on an objective basis by a  
5 reasonable and informed individual.

6                   A.    Absolutely.

7                   Q.    Were you quite confident  
8 throughout that you could make that judgment  
9 yourself, without seeking advice on whether you  
10 were right that a reasonable, informed person might  
11 view your conduct as falling appropriately within  
12 the principle --

13                  A.    Trying to understand the  
14 thinking of the reasonable man is a task that  
15 judges have had to engage in for many years on  
16 their own, and without advice.

17                  Of course, when I ask myself would  
18 there be a reasonable apprehension of bias in a  
19 certain situation, I do not have the luxury to go  
20 around and ask reasonable people whether they would  
21 have an apprehension of bias.

22                  I have to use my own judgment and  
23 experience and, in some cases, if the situation is  
24 difficult, I can seek input from a judicial  
25 colleague.

1                           But ultimately, the decision has  
2 to be mine alone. That is what a judge has to do.

3                           Q. I am not directing these  
4 questions to bias, but to ethical conduct by a  
5 judge, where you do have the luxury of seeking  
6 assistance and advice from the Advisory Committee  
7 set up to provide that very assistance and advice.

8                           A. I don't know whether we can  
9 find anything in this material that gives any  
10 guidelines about when one should, or is entitled to  
11 seek advice.

12                           But I have understood that these  
13 are advisory opinions, and they are there for  
14 consideration.

15                           We do not have a code of judicial  
16 ethics in Canada. We are told repeatedly that  
17 every judge has to make decisions affecting his  
18 ethical behaviour on his own.

19                           But he or she should of course  
20 refer to the published material.

21                           I do not know of any requirement I  
22 had to seek another advisory opinion in the  
23 circumstances of my piece.

24                           It was an option that was open to  
25 me, but I decided that I did not need it, and I did

1 not do it.

2 Q. When you then looked at the  
3 opinion of the Advisory Committee at Appendix 9 in  
4 Volume 1, entitled "Municipal Democracy", it must  
5 have struck you that it did not really address the  
6 concerns that you had about your own role as a  
7 judge, as you entered into this -- I think you  
8 called it in one email your first venture into  
9 municipal politics.

10 This was pretty removed from the  
11 situation you were contemplating.

12 A. Let me begin by saying that  
13 despite the fact that I occasionally used the  
14 vernacular, "municipal politics", almost tongue-in-  
15 cheek, that should not be regarded as a concession  
16 for me that I was engaging in municipal politics.

17 I was not doing that, even though  
18 I sometimes jokingly or ironically referred to it  
19 in that way.

20 What I meant was that I was  
21 getting involved in the municipal arena of  
22 politicians.

23 I was acting as the owner of a  
24 property, who had an issue with my municipality.  
25 That is exactly what this advisory opinion

1 addresses.

2 Q. It does to an extent, in the  
3 sense that the judge who availed himself or herself  
4 of the opportunity to get the advice of the  
5 Advisory Committee in this case had a situation  
6 that involved traffic flow through a neighbourhood  
7 and wanted to know if they could write to a council  
8 member indicating opposition to a move by some  
9 citizens to halt traffic in the judge's community.

10 The response was that, yes, you  
11 can write, provided it is on private or plain note  
12 paper, and you don't sit on any litigation arising  
13 from the matter.

14 Have I summarized that correctly?

15 A. I think so.

16 Q. Your situation is one where  
17 perhaps not on day one, but as the matter  
18 developed, you were far more involved in the  
19 municipal area than worrying about traffic flow  
20 through your neighbourhood.

21 You were meeting with Council  
22 members and the Mayor, you were writing to the  
23 Mayor and to the Attorney General, and you were not  
24 always using your private or plain note paper --

25 A. Yes, it was private note

1 paper. It may have said Justice, because that is  
2 my title. But that is my private letter-writing  
3 paper.

4 I have judicial stationery that I  
5 use for letters in my capacity as a judge. That  
6 was not such a piece of stationery; it was my  
7 personal stationery.

8 Q. Did you interpret this  
9 advisory, when it referred to private or plain  
10 paper, that meant it could still refer to you as a  
11 judge as long as it was not paper that came from  
12 the courthouse?

13 A. Absolutely. That is my  
14 title; it is part of who I am. It is part of my  
15 identity.

16 Q. I will come back to that.  
17 But you were getting involved to a far greater  
18 degree that any advice or information you could  
19 have got from this particular advisory that you  
20 relied on?

21 A. The principle is the same.  
22 The fact that I had a more complex issue, and a  
23 more formidable task to perform, does not alter the  
24 fact that the principle was basically the same.

25 Q. In any event, it did not ever

1 occur to you that maybe, before you wrote to the  
2 Mayor, the Attorney General, or met with the  
3 various officials, you might seek an opinion from  
4 the Advisory Committee?

5 A. I always knew that I could, I  
6 guess. But I never considered it to be a  
7 reasonable next step to perform.

8 It seemed to me the principle was  
9 quite clear and one I could rely on. And this was  
10 not the only thing I relied on. There were a lot  
11 of other things I relied on, the body of literature  
12 that was available.

13 This is not the only guidance I  
14 obtained. I read Justice John Sopinka's piece  
15 where he advocated that judges cease acting like  
16 monks, I think was the phrase, and should come out  
17 into their communities and take part in the affairs  
18 of their communities.

19 I was mindful of a well-known  
20 speech by the present Chief Justice of Canada,  
21 which was to the same effect.

22 Q. To be fair to both Justice  
23 Sopinka and the Chief Justice, they were not really  
24 addressing issues at all like the ones you found  
25 yourself involved in.

1                   A.    Sure, but neither one of them  
2 knew about Thelma Avenue. I doubt there was ever  
3 an issue like the one I faced.

4                   I am sure that had I had written  
5 to the Advisory Committee, they would not have had  
6 any experience with this either.

7                   Q.    You seem to be suggesting  
8 that you were completely comfortable relying on  
9 your own judgment about your own conduct in this  
10 matter.

11                  A.    I certainly did not seek an  
12 advisory opinion. I have no recollection of having  
13 sent letters out, or making formal inquiries.

14                  I read, and perhaps discussed this  
15 with a colleague or colleagues. I cannot be sure.

16                  I won't say that yes, I did,  
17 because I don't have any specific recollection of  
18 having done that.

19                  But might I have? I am not  
20 foolish, and I understood the import of what I was  
21 doing, and I was trying to be cautious within the  
22 guidelines and ethics.

23                  I knew I was about to do something  
24 that likely most other judges would not do. But I  
25 thought that I do not have to be like every other

1 judge, and I do not have to measure what I do by  
2 the standards of every other judge.

3 I was entitled to do things that  
4 fulfilled my concept of my role as a judge, within  
5 the confines that I had to accept.

6 I felt I was acting as a good  
7 citizen, openly and transparently for a public  
8 cause as well as my own.

9 When it came to being critical of  
10 the City's Legal Department, I thought that if a  
11 judge sees things like I saw and remains silent,  
12 why would anyone else in this world be expected to  
13 speak out in the face of such things.

14 I wanted to be an example to my  
15 community and my children, and wanted to perform my  
16 own concept of my role as a decent and honest human  
17 being and a good judge.

18 This reflected my effort to  
19 combine all of these objectives, and stay within  
20 the rules.

21 Q. But at least one of your  
22 colleagues said to you, "Ted, now be careful." Do  
23 you remember that?

24 A. Yes, I said that earlier.

25 Q. When your colleague said

1 that, did you not think at that point that maybe  
2 you could use some assistance from another  
3 colleague, or from the Advisory Committee, in terms  
4 of advice on whether you were crossing some line  
5 you shouldn't cross?

6 A. No, because I know the  
7 colleague who said this; no one else here does.

8 I can tell you that although I  
9 respected many aspects of this person, and he was  
10 in many ways a wonderful judge, he was a very, very  
11 cautious and conservative person who would  
12 certainly not do anything approaching what I would  
13 do.

14 So to use him as a standard for  
15 governing my own conduct would have been absurd.

16 Q. But if you had used his  
17 standard, I take it you would not be here today  
18 saying that you regret doing certain things, and  
19 that if you had them to do over again, you would do  
20 them quite differently?

21 A. No, that does not follow  
22 either. I conceded errors in judgment on my part  
23 because they occurred.

24 These are not the first errors in  
25 judgment that I have committed since I became a

1 judge, nor, if I return to judging, will they  
2 likely be the last.

3 That is why we have courts of  
4 appeal; judges make errors. So long as we act  
5 honestly and in good faith, and do our best not to  
6 make errors in judgment, I think that is all that  
7 can be expected of us.

8 Q. When you were discussing  
9 generally your conduct in relation to the Thelma  
10 controversy, and you were asked about meeting with  
11 councillors and the Mayor, you said this morning,  
12 "Had I believed there was something improper, I  
13 would not have done it."

14 A. Yes.

15 Q. Did you apply the test of the  
16 reasonable, fair minded and informed person and  
17 what they would think, or was it what your robust  
18 view of what judges can do -- did you think about  
19 it only in that respect?

20 A. No. I thought about this in  
21 the broadest sense. I thought if people knew what  
22 I was doing, how would my community think of me.  
23 How would other judges think of me.

24 I concluded, contrary to what you  
25 are suggesting, that they would admire what I was

1 doing.

2                   As it turned out, my real life  
3 experience justified that view. I have received  
4 more compliments from members of my community, from  
5 the legal community, and from a very large number  
6 of judges for having done what I did.

7                   Some of them said they would not  
8 have done it, but are glad that I did, and they  
9 applaud me for it.

10                  I acknowledge that there are  
11 different views, and I do not criticize judges who  
12 don't do what I do.

13                  They are free to criticize me, but  
14 I cannot abdicate the responsibility of making my  
15 decisions as to how I conduct my life, including my  
16 life as a judge.

17                  Q. You were asked this morning  
18 about giving interviews to the media, and we have  
19 seen examples in the documents of your comments.

20                  You said you felt it was  
21 appropriate, because the strategy was to raise the  
22 profile of your dispute, and that this was an  
23 integral part of the strategy, giving interviews.

24                  A. I think that is what I said.

25                  Q. I am going to suggest that

1 you knew from the outset that this was going to  
2 achieve a significant level of public observation,  
3 and you wanted to create the thought in the mind of  
4 the public that this was a significant controversy.

5 A. It was a controversy of  
6 sorts, but a special kind of controversy.

7 It was not one in which some  
8 members of the community felt one way, and some  
9 felt the other. This was a controversy where a  
10 virtually unanimous part of the community -- you  
11 can't find many issues that would unify a community  
12 like this one did.

13 In the two or three years I spent  
14 on this, there was only one person in the community  
15 who criticized what I was doing. He then told me  
16 that he was a close personal friend of the  
17 developer.

18 But everyone in our community that  
19 I ever had contact with supported what I was doing,  
20 because it was sensible.

21 The developer wanted to build  
22 this, and the Toronto Parking Authority, for  
23 reasons I have never understood, wanted to go ahead  
24 in the face of the wishes of our community,  
25 pretending to want to add more parking for our

1 community, and was actually going to take parking  
2 away from us.

3 Q. The community you describe is  
4 Forest Hill Village?

5 A. And the surrounding area,  
6 people who have anything to do with Forest Hill.

7 Q. That is who were mainly  
8 interested in the controversy. But you and the  
9 others wanted to raise the profile of this issue  
10 into a much larger issue of controversy with the  
11 City. Would you agree?

12 A. It changed as time went on.  
13 Initially, it was -- no, I think I am nitpicking.  
14 I think you are right.

15 Q. My suggestion really is that  
16 you knew from the start, or fairly shortly after  
17 you entered into it, that this was going to become  
18 a political matter and highly controversial, and  
19 that is the way you wanted it to go?

20 A. No, I didn't. I thought that  
21 if knowledge of this would rise above the surface,  
22 everyone would be able to see what an absurd  
23 situation this was, and it would come to an end  
24 quickly when people came to their senses.

25 Q. But that is why you tried to

1 get the Globe & Mail to pick up the cause, wasn't  
2 it? You wanted to make this into a big issue about  
3 the controversy?

4 A. Do you mean my final letter  
5 to John Barber?

6 Q. Yes, in October -- you began  
7 earlier. You began in 2002, and picked it up again  
8 in 2005.

9 A. Things changed over time.  
10 After we had, we thought, successfully fought off  
11 the large version of this development, the one  
12 announced in April 2002, this whole thing went away  
13 for a fairly long period of time until well into  
14 2003.

15 And then it came alive again.  
16 Each time it reared its ugly head, something new  
17 was happening.

18 At first there were environmental  
19 issues; later the focus turned to the legal issues.  
20 We did not have a coordinated, long-term plan.

21 We were reacting to what was  
22 happening, and trying to bring sense into this  
23 absurd situation.

24 Q. You had lots of time to step  
25 back, take a breath, and ask yourself whether it

1 was one shouldn't be involved in.

2 A. We did not know there was  
3 going to be a first step --

4 Q. You keep saying "we", but I  
5 am referring to you. Over the period of years you  
6 were involved in this, you had many points at which  
7 to step back and decide to get out, to let someone  
8 else go and meet with the politicians and --

9 A. Of course. If I wanted to do  
10 those things, I could have done them.

11 Q. You did not want to step  
12 back, because you were committed to this issue and  
13 the strategy that you and the Friends may have  
14 developed from time to time?

15 A. I would phrase it slightly  
16 differently. I felt that it was right to continue  
17 doing what I ended up doing.

18 Q. You were asked about your  
19 identification of yourself as a judge, and my  
20 friend took you through the various pieces of  
21 communication.

22 You indicated that you would  
23 introduce yourself as Ted Matlow, aside from those  
24 places where we see the word "Justice".

25 It would be fair to say that a

1 number of the people you communicated with,  
2 councillors and others, knew you were a judge?

3 A. Yes.

4 Q. And they knew that perhaps  
5 right from the first time you communicated with  
6 them, or met with them?

7 A. I don't know. Some people  
8 knew I was a judge; some didn't.

9 Q. You had been a judge for over  
10 twenty years in the city --

11 A. I was appointed in 1981.

12 Q. So you had been a judge for  
13 twenty-two, twenty-three, twenty-four years at that  
14 time?

15 A. Yes.

16 Q. I am going to suggest that  
17 you recognized that a number of them knew you were  
18 a judge.

19 A. Yes.

20 Q. So you really didn't need to  
21 say anything about the fact as to who you were when  
22 you met them, to the people who already knew. You  
23 did not need to say, "Hi, I am Justice Matlow."

24 A. No, that is not so. It is my  
25 impression that if you canvassed the general

1 population of the city and asked them to name the  
2 judges in our courts, most people don't know their  
3 names unless one has direct experience in our  
4 courts.

5                               Most people, I think, don't know  
6 the names of the judges.

7                               Q.    But you weren't dealing with  
8 the general population; you were dealing with  
9 councillors, the Mayor, the Attorney General.

10                              These are people, would you agree,  
11 who probably already knew you were a judge?

12                              A.    I can't guess.  I don't know.

13                              Q.    We know that when you made  
14 your application to the OMB, you referred to the  
15 fact that you were a judge in your affidavit.

16                              A.    I did.

17                              Q.    And the OMB might be taken to  
18 know you are a judge, because they have matters  
19 that come before you from time to time?

20                              A.    I have no idea whether the  
21 persons at the OMB who had anything to do with my  
22 application to become a party had ever heard of me  
23 before.

24                              Q.    Let's take the OMB for a  
25 second.  If you hadn't said in your affidavit that

1 you were a justice of the Superior Court, it  
2 wouldn't have in any way diminished your  
3 application, would it?

4 A. No.

5 Q. You wouldn't need to say it?

6 A. I thought it was the right  
7 thing to do.

8 Q. Why is that?

9 A. Because I think that when a  
10 judge or member of a tribunal appears before  
11 another court of tribunal, it is a matter of  
12 courtesy to identify yourself as a judge or member  
13 of a tribunal.

14 Q. So it wasn't in your mind  
15 that this would attract special attention or  
16 treatment?

17 A. I wasn't seeking nor  
18 expecting any special treatment. I wanted my name  
19 put on the mailing list, so that I would get  
20 notices of what was going on.

21 That is something that any party  
22 is entitled to, and having achieved the status of a  
23 party, I achieved my purpose.

24 There was nothing else that I was  
25 looking for.

1 Q. Do you think the Attorney  
2 General, Michael Bryant, would have known you were  
3 a judge?

4 A. I don't know.

5 Q. He is a lawyer?

6 A. Yes.

7 Q. He practiced in Toronto?

8 A. I don't know.

9 Q. He practiced with a big law  
10 firm in Toronto; you didn't know that? You can  
11 take it from me that he did.

12 A. I will, but I --

13 Q. He was with a big litigation  
14 firm in Toronto, McCarthys. Do you think he would  
15 have known that Ted Matlow was a judge?

16 A. If he was a litigation lawyer  
17 with McCarthys, there is a good chance he would  
18 know I was a judge.

19 Q. As you decided to write to  
20 him and tell him there had been a violation of law,  
21 and ask him to intervene, do you think it might  
22 have struck him that he had a judge of the Superior  
23 Court writing to tell him that there had been a  
24 violation of law, and that is something different  
25 than an ordinary member of the public?

1                   A.    Are you able to find that  
2 email for me quickly? I cannot remember whether I  
3 identified myself as judge, or not.

4                   Q.    You did not identify yourself  
5 as a judge in that email.

6                   A.    That is what I thought.

7                   Q.    But I have suggested to you,  
8 and I think you agree, that it is a pretty good  
9 assumption that a lawyer who practiced with a large  
10 litigation firm in Toronto would know that Ted  
11 Matlow was a judge?

12                  A.    Yes, that is a reasonable  
13 assumption. But bear in mind that as I have just  
14 told you, when I wrote to him I did not know that  
15 he had been a litigation lawyer with McCarthys.

16                  I did not know anything about him  
17 until he became a member of the Legislature.

18                  MR. CAVALLUZZO: I don't like to  
19 interfere in my friend's examination, but he did  
20 refer to McCarthys as a litigation firm.

21                  McCarthys is a very large firm,  
22 with one division that handles litigation. I don't  
23 know whether Mr. Bryant was in the litigation  
24 department.

25                  MR. HUNT: He was, and I should

1 have made that clear.

2 THE WITNESS: You know that; I  
3 didn't.

4 MR. HUNT:

5 Q. Did you pause, before you  
6 wrote the letter, and reflect on whether there  
7 might be any appearance that was not consistent  
8 with the principles of either integrity or  
9 impartiality that might flow from the fact that you  
10 were writing this to him?

11 A. Forgive me for saying this,  
12 but it sounds like you are turning the world upside  
13 down.

14 From my perspective, I had seen a  
15 lot of things that made me concerned about the  
16 conduct of two people in the City's Legal  
17 Department.

18 I was satisfied that what they  
19 were doing could reasonably be described as  
20 misconduct, or even more.

21 I was doing my best in what I  
22 perceived to be my role as a responsible citizen.  
23 And I had, of course, my interest in terms of  
24 Thelma Avenue.

25 I had, until then, failed to

1 achieve my purpose of getting someone to understand  
2 what it was that these two people were up to.

3                   So in almost desperation, I  
4 started sending off other emails. I guess it was  
5 the same feelings that I had that caused me to  
6 write to John Barber led me to write to a member of  
7 the Legislature, to ask him to intervene.

8                   I was ready to ask anybody to  
9 intervene, because I thought this can't be; we  
10 can't have this kind of stuff going on in our city,  
11 and someone has to step in.

12                   It amazes me to this very day that  
13 no one has.

14                   I tell you this in the best way I  
15 know how. I saw this, and see it today, as being  
16 the same kind of thing that took place in  
17 connection with the leasing scandal.

18                   I do not know why no one has yet  
19 to do anything about it.

20                   Q. I understand the depth of  
21 your feelings about the issue.

22                   You have said that you would  
23 sometimes think it okay to indicate to people that  
24 you were a judge, because it would say something  
25 about you, and your education, and they wouldn't

1 think you were a crank.

2 A. I said that, yes.

3 Q. So there were times when you  
4 entered into some consideration as to whether it  
5 would be helpful for someone to know you were a  
6 judge?

7 A. Yes.

8 Q. And you hoped to gain some  
9 benefit from that?

10 A. One has to be careful. When  
11 you say that I hoped to see from benefit from it,  
12 that has to be examined carefully before I can give  
13 you an honest answer.

14 If you are implying that I was  
15 holding out some offer of advantage to that person  
16 because I was a judge, or that there was some  
17 threat implied that was intended to extract some  
18 benefit for me, that would be an improper purpose  
19 for disclosing that I am a judge.

20 My work with my court should have  
21 nothing to do with my private business, and I did  
22 my best to separate those two.

23 But being a judge is also part of  
24 my personal life, and has nothing to do with my  
25 court; it is who I am.

1 I went to law school, practiced  
2 law, and I was appointed to the bench. That tells  
3 something about me. I leave it to others to decide  
4 what it tells, but it tells something about me and  
5 who I am.

6 In certain situations, I find it  
7 appropriate to disclose the fact that I am a judge.  
8 In those situations where I thought it appropriate  
9 for me to do that, I did.

10 In the vast majority of cases when  
11 I spoke to people, wrote to people, I was Ted  
12 Matlow; there was no indication that I was a judge.

13 Q. There would be three  
14 different groups of people. There would be those  
15 who wouldn't know Ted Matlow from the next guy,  
16 those who would know Ted Matlow as a judge because  
17 of their involvement in the legal community or  
18 otherwise, and then there would be those that you  
19 would indicate to them that you were a judge.

20 A. I guess so.

21 Q. How did that fit with the  
22 restrictions we looked at here in the ethical  
23 guidelines on integrity and --

24 A. Can you tell me which page  
25 you are referring to, please?

1                   Q.    Yes, page 15.  We looked at  
2  this earlier, item No. 5, and you agreed that  
3  judges have to accept some restrictions on their  
4  conduct, even though if the same conduct was  
5  carried out by someone who was not a judge, it  
6  would not be controversial.

7                    But judges have to accept some  
8  restrictions in their --

9                    A.    Of course.

10                  Q.    Is that not a pretty strong  
11  indication that things flow from the fact that you  
12  are a judge, and are known to be a judge, and you  
13  are going to have accept that if you want to hold  
14  that position, you have to accept that there are  
15  certain restrictions?

16                  A.    Of course.

17                  Q.    You have, I guess, a fairly  
18  robust view of where that line is drawn.

19                  A.    No, not in this regard.  I  
20  see nothing in item No. 5, or in this entire book,  
21  that includes a prohibition against a judge  
22  identifying himself as a judge.

23                  Q.    Does it depend on what the  
24  judge is doing?

25                  A.    Of course, and that is what I

1 have been saying to you, too. That is why, in most  
2 cases, I didn't, and on the few occasions, I did.

3                   There are certainly lots of  
4 restrictions. I know that I must not engage in  
5 partisan politics, or go and raise money for  
6 charities; there is a whole list of things I am not  
7 supposed to do. And I won't do them, and have not  
8 done them since I became a judge.

9                   Q. Let's move to --

10                   THE CHAIR: Before you move on,  
11 Mr. Hunt, we have not properly identified this  
12 document for the record and we ought to do that  
13 now. This will be Exhibit No. 10.

14                   EXHIBIT NO. 10: Book:  
15 "Ethical Principles for  
16 Judges"

17                   THE CHAIR: Now that I have  
18 interrupted you, this is probably a good place for  
19 our afternoon break.

20 --- Recess at 3:20 p.m.

21 --- Upon resuming at 3:34 p.m.

22                   THE CHAIR: Mr. Hunt?

23                   MR. HUNT:

24                   Q. Justice Matlow, this morning  
25 you were asked about the language you used, and

1 whether you thought it appropriate when you  
2 indicated that the City's Solicitor was blatantly  
3 wrong and would have failed first year of law  
4 school, and talking about devious acts on the part  
5 of City officials.

6                   You said at that time that you had  
7 a sense that some of your language was excessive,  
8 and that maybe you went too far.

9                   But I didn't really understand you  
10 to be saying that you now, in hindsight, believe  
11 that your language was excessive and that you did  
12 go too far.

13                   A. Of course, I cannot give you  
14 the same answer that applies to every word I ever  
15 spoke.

16                   I cannot remember now the context  
17 in which I used the words "devious acts". Can you  
18 help me with that?

19                   A. While my friends are looking  
20 that up, perhaps we could deal with the "blatantly  
21 wrong" part.

22                   On any item, do you now, on  
23 reflection, feel that you were excessive and went  
24 too far?

25                   A. Probably, yes. But I have a

1 lot of difficulty with this, because I don't know  
2 quite what the standard is.

3 I know there is a concept that  
4 judges are not supposed to use intemperate  
5 language, at least not publicly. I don't know  
6 whether, when they scream at their kids, it matters  
7 or not.

8 It is really hard to measure this.  
9 I think I conceded this morning that now that I  
10 look at some of the things I said -- I guess I can  
11 concede that I wish I had not used the same  
12 language that I did.

13 I could have made the point and  
14 seemed perhaps more polite and more moderate.

15 But I didn't plan these things in  
16 advance. I didn't prepare a script that I then I  
17 had time to think about.

18 I was admittedly very emotionally  
19 involved in this whole thing, and I was frustrated.  
20 Under those circumstances, I shouldn't be  
21 surprised that once in a while I uttered things  
22 that perhaps went a bit too far.

23 Yes, I think some of my language  
24 was not so good, and I wish I had done better.

25 But the thoughts and the sense of

1 them, and the truth of what I was saying, still  
2 remains intact.

3 Q. To be specific, in Paragraph  
4 49 of the Agreed Statement of Facts, when you were  
5 going to meet with the Auditor General and you sent  
6 the email message to the Auditor General of the  
7 City, you talk about:

8 "The opinion of the lawyer  
9 employed by the city  
10 solicitor is blatantly wrong  
11 and ridiculous, and if the  
12 report had been written as  
13 part of a first year law  
14 school examination, she would  
15 undoubtedly receive a failing  
16 mark."

17 Is that one that, in hindsight,  
18 you would take back?

19 A. This, too, has to be compared  
20 contextually, and the whole context is not here.

21 For example, I remember what the  
22 Auditor General said to me about her legal opinion,  
23 and in the face of what he said about this lawyer's  
24 legal opinion, this does not seem so outrageous.

25 Q. Is the Auditor General a

1 lawyer?

2 A. I don't know. Probably not.

3 Q. I guess what he has to say  
4 about legal opinion we will have to take as coming  
5 from someone who is not a lawyer.

6 A. Let me tell you that this  
7 kind of legal opinion could come from anybody who  
8 can read English; it is that fundamental.

9 Q. If you don't think you would  
10 take it back, that is okay; you can say so.

11 A. Take it back in what sense?  
12 I am not --

13 Q. Regret it; not use it if you  
14 had to do it again.

15 A. In my email to the Auditor  
16 General?

17 Q. Yes.

18 Q. I think it would have been  
19 better to be more businesslike about it, and say  
20 much the same thing in a different way.

21 Q. Is this one of the dangers of  
22 a judge getting too involved in controversial  
23 public issues? You get too close to it, and you  
24 can't see the bright lines?

25 A. I suppose so.

1                   Q.    If you go to Paragraph 54 of  
2 the Agreed Statement of Facts -- you will see that  
3 in Appendix 39, an email to Mr. Bogosian, a lawyer  
4 who the City retained, you stated that among other  
5 matters, "devious acts" had taken place to the  
6 Thelma parking lot. Do you think that was  
7 intemperate?

8                   A.    I am going to be totally up-  
9 front with you, because it is the only way I know  
10 how to be.

11                   I must tell you there were many  
12 times that I was convinced that something, not only  
13 conduct -- or whatever other words I used -- had  
14 occurred. I thought that illegal things must have  
15 occurred.

16                   I couldn't prove them, so I never  
17 said that. But the circumstances surrounding the  
18 creation of this development were really, really  
19 suspicious.

20                   The purpose was to provide more  
21 parking, and the net result was going to be less  
22 parking.

23                   The developers were getting money  
24 they were not entitled to, and agreements were  
25 being signed contrary to the authorization of City

1 Council.

2 In dealing with Mr. Bogosian, his  
3 legal opinion coincided, in its essence, with ours.

4 He also said that the agreement signed by the City  
5 officials had not been authorized by City Council.

6 But, he said, the difference was  
7 not material. In other words, a six-storey mixed  
8 condominium residential, far in excess of the  
9 zoning, was not materially different from ten  
10 townhouses that fell within the existing zoning.

11 When I hear someone say that to  
12 me, I wonder if this person is serious. Would  
13 anyone in their right mind say that? That is how I  
14 viewed it.

15 And then City Council accepted his  
16 other advice, and retroactively approved the  
17 agreement that had been signed.

18 That sounds devious to me. They  
19 led us to believe they were going to do the right  
20 thing after they got this opinion from Mr.  
21 Bogosian.

22 But they did not do the right  
23 thing; they did the wrong thing. They covered up  
24 what had occurred.

25 Q. City Council?

1                   A.    That is right, City Council  
2 influenced by the opinion of the Legal Department  
3 and Bogosian, who was all part of that group, went  
4 and decided to cover this whole thing up and  
5 retroactively give it an okay.

6                   That sounds devious to me.

7                   Q.    You would apply that to  
8 Council, the lawyer who wrote the opinion, the  
9 Legal Department?

10                  A.    I think that in fairness --  
11 my complaint is with the two people in the Legal  
12 Department.

13                  I can understand the councillors  
14 on City Council, who are overwhelmed with work --  
15 this is a large city to govern now, and I  
16 understand how they have to be guided by opinions  
17 given by their officials.

18                  I am not surprised, nor  
19 particularly upset that they did what they did.

20                  But what those two people in the  
21 City Legal Department did, I will never --

22                  Q.    And the outside lawyer as  
23 well?

24                  A.    To the extent he said that  
25 the large condo project was not materially

1 different from ten townhouses -- I don't know him  
2 very well, but I cannot fathom any rational basis  
3 upon which a lawyer can say that, or anyone can say  
4 that.

5 Q. I take it from that that you  
6 don't want to withdraw the characterization of the  
7 conduct as devious?

8 A. I can't say that "devious" is  
9 the best word. If I had time, perhaps I could  
10 think of something that conveys the sentiment I  
11 have very candidly shared with you, and found a  
12 better word for it.

13 Q. Let's move on to the SOS  
14 application. You indicated that you were sort of  
15 fed up with this after February 2004, and you threw  
16 out your documents.

17 A. I was so happy to do that.

18 Q. You obviously kept some,  
19 because you sent some to Mr. Barber.

20 A. I kept a box that I didn't  
21 know I hadn't thrown out.

22 Q. You indicated that weren't  
23 aware that you were going to be sitting on the SOS  
24 application when you emailed Mr. Barber on the 2nd.

25 A. That is correct.

1 Q. And what prompted your email  
2 on the 2nd was the Bellamy report.

3 A. Correct.

4 Q. That had come out several  
5 weeks earlier. How was it that several weeks after  
6 the report came out, with all of the attendant  
7 publicity, that you decided on a Sunday to email  
8 Mr. Barber?

9 A. I don't know. Everyone in  
10 our court got a copy of the complete Bellamy report  
11 with a CD. I brought it home, and I was looking  
12 for an opportunity when I could spend some time and  
13 read it.

14 It interested me. I had read  
15 about it in the newspapers, and I knew generally  
16 what she had said in her report, and I finally got  
17 around to reading the actual report.

18 I cannot tell you now exactly when  
19 I read it, but it was not long before October 2.

20 I don't know what inspired me to  
21 send that email on October 2 of all days; I just  
22 don't know.

23 Q. Even if you had known on the  
24 2nd that you were going to sit on the SOS  
25 application on the 6th, it wouldn't have made any

1 difference, would it?

2                               You would have emailed Barber and  
3 sent him the materials?

4                               A.    I don't know how to answer  
5 that.  Maybe something would have twigged, and I  
6 wouldn't have done it.

7                               Q.    It didn't twig on the 5th,  
8 when you drove down to the Globe & Mail offices and  
9 -- did you go to the mailroom there?

10                              A.    Yes.  By then, it was sort of  
11 too late to get out of that mess.  The email was  
12 gone.  We had exchanged emails when I was in  
13 Sudbury, and he was expecting some documents from  
14 me.

15                              I had things to do, some personal  
16 things; I had to get ready for the SOS case.  When  
17 I was in Sudbury, I had an email from him asking  
18 for documents, so I put that on my list of things  
19 to do when I got back to Toronto.

20                              I didn't even think about it.  I  
21 just did the things on my list.  I took the  
22 documents that were essential, put them in a brown  
23 8 x 10 envelope, and took them to the Globe & Mail.

24                              Q.    It really wasn't too late to  
25 get out of it, was it?

1                   A.    I could have refused to sit  
2 on the SOS case.

3                   Q.    You could have refused to  
4 take documents down to Barber.

5                   A.    Of course.  There is no  
6 question that I could have done a whole bunch of  
7 things differently.

8                                But I didn't, and I am embarrassed  
9 that I didn't handle that better than I did.  But I  
10 didn't, and so --

11                   Q.    My point is that even if you  
12 had known on October 2 that you were going to sit  
13 on the case, you would have still done the same  
14 thing, because you did it on the 5th when you knew  
15 you were sitting on the case.

16                   A.    No, I don't think that  
17 follows.  The harm -- and I use that word in  
18 quotations -- occurred when I sent the first email.

19                                That email to him, asking him to  
20 get involved and have a fresh look at this, that in  
21 retrospect was probably enough to require me to at  
22 least raise that at the SOS hearing.

23                   Q.    Certainly it pales in  
24 comparison to putting some documents in an  
25 envelope, and going down to the Globe & Mail

1 mailroom and leaving them for him the day before  
2 the hearing, does it not?

3 A. No, I don't think so. I  
4 think they are both the same. If they show  
5 anything, each one of those acts show the same  
6 thing, that I was upset with two people in the  
7 Legal Department.

8 Q. I think you have indicated  
9 that you did this after you took a look at the  
10 file?

11 A. No, I did before --

12 Q. You did it before, on your  
13 way down?

14 A. On my way downtown.

15 Q. But you could have simply  
16 decided not to carry through with any of the  
17 communications with Barber on the 2nd?

18 A. Of course. No one was  
19 holding a gun to my head. I had the right to do  
20 that.

21 Q. In your explanation to Mr.  
22 Cavalluzzo about having looked at the file when you  
23 got to your office, and it didn't really strike you  
24 that there was anything remotely to do with the  
25 Thelma dispute, you also referred to the fact that

1 on five other cases involving the City, there has  
2 never been any objection raised.

3                               You can turn to Paragraph 53 of  
4 the Agreed Statement of Facts, if you want to --

5                               A. Paragraph 53? Yes, I have  
6 it.

7                               Q. It would appear that none of  
8 those cases bear any resemblance to the nature of  
9 the SOS case or the Thelma Road controversy.

10                              A. That is right.

11                              Q. And it acknowledged that the  
12 City Solicitor would not necessarily have been  
13 aware that you were presiding over those cases?

14                              A. I was astonished to hear that  
15 evidence from her at an earlier stage.

16                              I assumed, perhaps without  
17 justification, that she knows or someone there  
18 knows which judges are hearing the City's cases,  
19 and that they knew I was hearing their cases.

20                              Q. But you have no way of  
21 knowing that?

22                              A. No, I had no reasonable way  
23 of finding that out. I wasn't going to phone her  
24 and ask her.

25                              Q. Do you think maybe you were

1 relying a little too much on assumptions you were  
2 making at the time?

3 A. No. Let me explain that a  
4 bit. As you know, there is a heavy onus on a party  
5 who wants to have a judge recuse himself or herself  
6 on the grounds of reasonable apprehension of bias.

7 It is not just the judge who has  
8 the responsibility, but the litigant as well.

9 If I am regularly hearing City  
10 cases -- and I would say that five times would make  
11 it "regularly" -- and the City's Solicitor claims  
12 to be concerned about me, and then takes no steps  
13 to have me identified as a judge hearing the City's  
14 cases, it is not a big leap of faith to assume that  
15 there is no objection to my sitting on the City's  
16 cases.

17 Q. But I thought you said a few  
18 moments ago that even having renewed the issue with  
19 Barber on Sunday, the 2nd, as you now think about  
20 it, would have been enough to cause you to disclose  
21 some things on the 5th --

22 A. I might have. You are asking  
23 me to speculate on what I might have done if the  
24 facts had been different, so all I can do --

25 Q. I thought it was your answer

1 that once you had sent that email on the 2nd, you  
2 had really done enough at that point that, on  
3 reflection, you should have disclosed it.

4 A. With the benefit of  
5 hindsight, now I think it would have been the  
6 better course to follow to raise that with counsel  
7 at the opening of the SOS hearing.

8 Q. If you had the ethical  
9 principles in mind on integrity and impartiality,  
10 wouldn't that have struck you at the time?

11 I guess I am having trouble with  
12 why it is down to two and a half years later that  
13 it strikes you.

14 A. Because I did not think I was  
15 in conflict with the City of Toronto. I thought I  
16 was actually doing a good service to the City, and  
17 to the citizens of Toronto, by trying to expose  
18 what these two people in the Legal Department were  
19 doing.

20 That struck me as being a  
21 perfectly laudatory thing, even for a judge, to do.

22 At the time, I did not see why  
23 that should disqualify me from hearing a case  
24 involving the City.

25 After -- I don't know when,

1 because a lot has happened since that date, and  
2 there has been a lot of discussion privately and in  
3 the media, and I have had opportunities to talk to  
4 colleagues and others about this, and I have come  
5 around to recognize that what I did on that  
6 occasion was an error in judgment.

7 I regret that, and if the  
8 situation arose again, I would not do what I did  
9 last time.

10 Q. But surely you had lots of  
11 time to talk to people about it at the time.

12 A. Had I realized there was  
13 something to talk about, I would have talked about  
14 it.

15 I just told you what my mental  
16 processes were, and that led me to do what I did.  
17 It was only after it was too late that I came to  
18 the realization that I did not handle this well.

19 I made an error in judgment, and I  
20 wish that I had handled it differently.

21 Q. I am just suggesting, though,  
22 that if, on October 5th, you had just flipped open  
23 "Ethical Principles for Judges" and looked at what  
24 we looked at here this morning, wouldn't it have  
25 become patently clear to you that you had stepped

1 across a bright line?

2 A. I don't know what would have  
3 happened. It didn't occur to me to flip open any  
4 page of "Ethical Principles" that day.

5 Q. Am I correct that today,  
6 January 9 of 2008, is the first time you have taken  
7 the position that you erred in judgment?

8 A. No, I have acknowledged this  
9 before -- not to you, because I have never spoken  
10 to you before. But I have acknowledged that to  
11 others.

12 Q. Did you ever acknowledge it  
13 to the Canadian Judicial Council before today?

14 A. No.

15 Q. I feel obliged to ask you: is  
16 it today that you have characterized it as an error  
17 in judgment for the first time to this Judicial  
18 Council because the alternative to that is judicial  
19 misconduct?

20 A. No. I characterized it as  
21 legal error, because that is exactly what it was.  
22 Misconduct involves intentional wrongdoing, some  
23 act for an improper purpose.

24 I did not do anything that was  
25 dishonest, or designed to achieve an improper

1 purpose.

2                                   At worst, I made a mistake, and I  
3 made it in good faith. That is why I call it an  
4 error in judgment.

5                                   Q. There was an issue raised by  
6 Mr. Cavalluzzo relating to your disclosure to Chief  
7 Justice Smith about your connection to the Friends  
8 in relation to the application that was brought in  
9 Superior Court.

10                                   At Appendix 23 in Volume 3, we  
11 have your email dated December 28, 2003, to Chief  
12 Justice Heather Smith, copied to Mr. Justice  
13 Nordheimer.

14                                   You bring to their attention the  
15 application of Lieberman et al, and you say:

16   "Although I am not an  
17   Applicant, they are all  
18   members of the Friends, and I  
19   am president of the Friends."

20                                   You then say:

21   "It may be that you, or one  
22   of you, will want to decide  
23   that the application should  
24   be heard by a judge from  
25   another city. I have no

1 preference."

2 What you don't tell the Chief  
3 Justice is that this application involves an  
4 affidavit from Lieberman that you helped prepare,  
5 and that it includes two letters as exhibits, one  
6 from you to the Attorney General and one from you  
7 to the Mayor. Am I right?

8 A. That is right, but you fail  
9 to recognize that I cited the court file number in  
10 my email.

11 I knew that the first thing  
12 Justice Nordheimer, who was in charge of motions  
13 and applications, would do would be to get the  
14 file, read it, and probably talk to me about it.

15 Q. So you thought he would get  
16 out the file, read the affidavit, and then see that  
17 you were actually rather significant in the  
18 affidavit in terms of activities undertaken?

19 A. I am certain that he did  
20 that, actually, but I can't remember whether --  
21 there were communications that followed, but I  
22 cannot right now give you the details.

23 But I know that Justice Nordheimer  
24 got the file, and very quickly arranged for a judge  
25 from outside Toronto, and a time was fixed for a

1 hearing of the application, and it was all done in  
2 accordance with the protocol.

3 Q. Did you not feel that maybe  
4 you should give them a little bit bigger warning of  
5 your role than to say, "It may be that one or both  
6 of you will want to decide that the application  
7 should be heard by a judge from another city. I  
8 have no preference."

9 A. It was their decision as to  
10 whether or not a judge should come from another  
11 city.

12 This case, technically speaking  
13 and literally speaking, did not fall within the  
14 protocol. But I felt I was close enough to it so  
15 that it should be treated just as if I were an  
16 applicant.

17 That is why I wasn't going to be  
18 presumptuous. I was telling them about it, and  
19 politely saying, "You might want to deal with this  
20 as if I were a party, and you might therefore  
21 decide that this should be heard by an out-of-  
22 Toronto judge," and that is what they did.

23 Q. If you didn't think it fell  
24 within the protocol and no one had looked at it,  
25 wouldn't it have been problematic if your letters

1 to the Attorney General and the Mayor were suddenly  
2 being referred to in your court, in front of a  
3 judge that was your colleague?

4 A. I am sorry, but I don't  
5 follow you.

6 Q. I am suggesting it is not  
7 much of a warning to a Chief Justice to say, "Maybe  
8 you want to think about a judge from out of town.  
9 I have no preference."

10 How could you have no preference  
11 when your activity was very much involved in the  
12 affidavit that was filed in support, including the  
13 correspondence?

14 A. I was saying, "I am not  
15 asking you to have a judge from out of Toronto hear  
16 this case," because it wasn't my prerogative.

17 But it was giving them the heads-  
18 up to do it, and I fully expected that they would.

19 If they hadn't, I would have spoken with Justice  
20 Nordheimer again and asked if he was going to get  
21 someone from out of town to hear the Lieberman  
22 case.

23 I would not have stood by idly and  
24 let one of my colleagues inadvertently slide into  
25 this case.

1 Q. In any event, you would agree  
2 with me that the filing of the affidavit with your  
3 letter to the Attorney General as an appendix to it  
4 certainly made that a public document?

5 A. Sure. Everything in a court  
6 file is a public document.

7 I'm sorry, but is my email to the  
8 Attorney General -- are you saying that is attached  
9 to the affidavit in the Lieberman file?

10 A. Yes.

11 Q. I am not disputing that; I  
12 just don't remember that right now.

13 Q. We heard for the first time  
14 today that you went back to the Globe & Mail on  
15 January 4, 2006.

16 A. Yes.

17 Q. You said you thought you  
18 requested the meeting. I am going to suggest that  
19 you did.

20 A. Probably.

21 Q. How else would it have  
22 happened?

23 A. I sent an email complaining  
24 about what they had done, and I was expecting some  
25 response.

1 I got a response from Sylvia  
2 Stead, and I think she responded by email. I am  
3 not sure -- I think we also spoke on the phone, and  
4 out of all of that, there occurred a meeting.

5 That is why I am being vague. I  
6 don't know that I specifically requested a meeting,  
7 but it is entirely possible that I did.

8 Q. Was it Patrick Martin that  
9 you communicated with to arrange the meeting?

10 A. No, it wasn't -- I don't  
11 think it was. I think I took a name off the  
12 masthead, someone who had a position that made it  
13 appear that person had some kind of authority over  
14 these things.

15 Q. Did you tell him you were a  
16 judge?

17 A. I was complaining about  
18 things that had been published in the Globe & Mail  
19 about me as a judge. So I didn't have to tell them  
20 I was a judge; that was apparent to them.

21 Q. In any event, whatever you  
22 did, it got you in to see two senior editors at the  
23 Globe & Mail?

24 A. Yes.

25 Q. You were there for about an

1 hour?

2 A. That sounds close.

3 Q. I would suggest that you took  
4 in the documents you had left over for Thelma Road,  
5 the ones you had given to Barber.

6 A. I think you are right. I  
7 think I took those with me and -- I can't remember.  
8 The discussion that took place had to do with  
9 those two columns, because that is the reason I  
10 went there.

11 Q. And I am going to suggest to  
12 you that in your complaint about the columns, you  
13 outlined the Thelma Road controversy with them, and  
14 one of the things you wanted them to do was correct  
15 what you perceived as unfair articles and to write  
16 another article that would review the Thelma Road  
17 issue.

18 A. No, I don't think that is  
19 what I asked for. It is true that I wanted them to  
20 do something, but at this moment, I am sorry, but I  
21 can't tell you what I wanted them to rewrite.

22 Q. This meeting on January 4,  
23 2006, as I understand it, was shortly before the  
24 rehearing of the SOS case. Is that your  
25 recollection?

1                   A.    I don't recall that, but I  
2 accept that.

3                   Q.    Did the timing of your second  
4 trip to the Globe & Mail have anything to do with  
5 the rehearing of that case?

6                   A.    No, the reason the meeting  
7 occurred then was because Sylvia Stead was going to  
8 be away -- when was the recusal motion again?

9                   Q.    October 26 and 27, I believe.

10                  A.    My email to the Globe & Mail  
11 complaining about Barber's column, and the way they  
12 reported the recusal, followed very quickly after  
13 those things occurred.

14                   So I must have sent my email to  
15 them roughly at the beginning of November, or maybe  
16 the end of October.

17                   I got a response back fairly  
18 quickly, and I spoke to Sylvia Stead and we decided  
19 to meet.

20                   She told me that she was going on  
21 vacation, and it was she who proposed the date in  
22 January. That is how it happened to be January.

23                   Q.    Was it the case that you just  
24 couldn't let this Thelma Road issue go?

25                   A.    I couldn't let the role of

1 the two people in the Legal Department go; I have a  
2 real problem with that.

3 Q. Have you let it go yet?

4 A. I will answer this way: I  
5 will never do anything about it anymore.

6 But do I still have in my mind the  
7 beliefs I had when all of this occurred? I have to  
8 say yes, I do. I have not changed my beliefs about  
9 the role that those two people played.

10 Q. You indicated that you would  
11 have done a couple of things differently.

12 You wouldn't have gone to see  
13 Barber on the 5th, or emailed him at all, and you  
14 would have handled your participation in the SOS  
15 case differently. Those are your regrets?

16 A. Yes.

17 Q. Do you have any other  
18 regrets?

19 A. I think I have also said that  
20 I regret I ever heard of SOS and St. Clair, because  
21 I am quite certain that if I had never heard of it  
22 or been assigned to it, I wouldn't be sitting in  
23 this chair this very moment.

24 Q. But do you have any other  
25 regrets about your own conduct?

1                   A.     That is a tough one, because  
2 I have paid a big price for what I have done here.  
3 I haven't been able to work as a judge since  
4 April. There are those in the media who have been  
5 critical of me, and people outside the media who  
6 have been critical of me.

7                   In my own personal life, I have  
8 been asked by people, who are or were my friends,  
9 to explain to them what terrible things I did to  
10 warrant this complaint and these proceedings.

11                   I tell them what I have said in my  
12 evidence here today.

13                   But it has been really  
14 uncomfortable for me, because I think a lot of  
15 people suspect I wouldn't be here facing this  
16 complaint had I not done something dishonest.

17                   I have not done anything  
18 dishonest. If anything critical can possibly be  
19 said about me it is that I have made mistakes, and  
20 I don't know any judge who hasn't.

21                   I have no one to blame but myself  
22 for the mistakes I have made, and I accept  
23 responsibility for them.

24                   I think the price I have paid for  
25 my mistakes has been totally out of proportion to

1 the seriousness of those mistakes. I don't mean to  
2 minimize my mistakes, but it has been really tough  
3 for me on various levels.

4 It has affected my health, my  
5 wellbeing, and my disposition. I have really  
6 suffered a lot because of all of this.

7 Do I regret this? That is a tough  
8 one, because it is also important to me to be true  
9 to my own conscience, and where I draw the line is  
10 a tough one.

11 I don't know how to answer the  
12 question any better.

13 Am I sorry that I did all of this?

14 Yes, I am sorry I made the mistakes that I did. I  
15 am sorry that I brought all of this terrible stuff  
16 onto myself. I am sorry that my conduct has  
17 affected other people adversely, and for that I am  
18 deeply sorry, too.

19 But my motives were pure. I  
20 thought I was doing the right thing. It is not in  
21 my nature to let injustice that I recognize pass by  
22 without my trying to do something to set things  
23 right.

24 Most of the time, it works well --  
25 let me say that it has always worked a lot better

1 than it has this time. This has been a colossal  
2 failure, and I haven't been able to set things  
3 right.

4 I have created some problems and  
5 made some mistakes, and I have brought a lot of  
6 hardship on myself and my family, including my  
7 children. I am really sorry that my children have  
8 to sit there and see me go through this kind of  
9 process. I would give anything to be able to  
10 reverse things so that they wouldn't have to  
11 witness this.

12 But I can't reverse history, and I  
13 have to face the reality of the situation. I hope  
14 that this turns out well, and I would love to  
15 return to my role as a judge.

16 But I recognize that there is a  
17 lot of uncertainty now about my future, and I don't  
18 know how this case will ultimately be resolved.  
19 Only time will tell.

20 I hope that as time goes on, I  
21 will have further opportunities to reassess my role  
22 and think about the very question you have asked  
23 me, am I sorry I got involved in this.

24 Q. Do you regret any negative  
25 impact on the public's view of the administration

1 of justice that this has caused?

2 A. To the extent that there has  
3 been some negative impact, and if I caused that to  
4 happen, of course I regret that. I would hate to  
5 be responsible for doing that.

6 I hope that if there are such  
7 people who have reacted as you have just described,  
8 that there are also a lot of people who will think  
9 more highly of some of us who are involved in the  
10 administration of justice, and who will applaud  
11 what I have done.

12 I know there are people like that,  
13 because they have identified themselves to me. I  
14 have no way of measuring how many think more highly  
15 of the administration of justice and how many think  
16 worse of it because of me.

17 But to the extent that I have  
18 injured the reputation of the administration of  
19 justice, or the public's perception, I am sorry and  
20 I do feel remorseful if that indeed has occurred.

21 Q. You are not sure whether it  
22 has occurred?

23 A. It has occurred, yes, but I  
24 do not know the extent of it.

25 THE CHAIR: Have you concluded,

1 Mr. Hunt?

2 MR. HUNT: I have, yes, Chief  
3 Justice.

4 THE CHAIR: Mr. Cavalluzzo, do  
5 you have any further questions?

6 MR. CAVALLUZZO: Yes, just a few,  
7 Chief Justice.

8 RE-EXAMINATION BY MR. CAVALLUZZO:

9 Q. Justice Matlow, could you  
10 refer back to Exhibit No. 10, please?

11 Mr. Hunt took you through several  
12 pages and asked if you had read them. But I would  
13 like to refer you to the portions that he did not  
14 take you to, and ask if you were aware of these  
15 principles at the material time.

16 For example, if you would refer to  
17 page 3:

18 "Setting out the various  
19 statements, principles and  
20 commentaries does not  
21 preclude reasonable  
22 disagreements about their  
23 application, or imply that  
24 departure from them warrant  
25 disapproval."



1 principles and commentaries  
2 can or are intended to limit  
3 or restrict judicial  
4 independence in any manner."

5 Do you see that?

6 A. Yes.

7 Q. And in Paragraph 1 under

8 Topic 4, Commentary:

9 "These statements, principles  
10 and commentaries are the  
11 latest in a series of  
12 Canadian efforts to provide  
13 guidance to judges on ethical  
14 and professional questions,  
15 and to better inform the  
16 public about the high ideals  
17 which judges embrace and  
18 towards which they strive."

19 Were you aware of that?

20 A. Yes.

21 Q. On page 15 of the same

22 document, Paragraph 4:

23 "Judges, of course, have  
24 private lives and should  
25 enjoy as much as possible the

1 rights and freedoms of  
2 citizens generally.  
3 Moreover, an out-of-touch  
4 judge is less likely to be  
5 effective. Neither the  
6 judge's personal development  
7 nor the public interest is  
8 well served if judges are  
9 isolated from the communities  
10 they serve. Legal standards  
11 frequently call for the  
12 application of the reasonable  
13 person test. Judicial fact-  
14 finding, an important part of  
15 a judge's work, calls for the  
16 evaluation of evidence in  
17 light of common sense and  
18 experience. Therefore,  
19 judges should, to the extent  
20 consistent with their special  
21 role, remain closely in touch  
22 with the public."

23 Were you attempting to do that in  
24 respect of your role in the Thelma matter?

25 A. Yes.

1                   Q.    We have heard a lot about the  
2 fair and reasonable person test, and applying that  
3 to your behaviour in your role in the Thelma  
4 development.

5                   At any point in time, did any of  
6 the hundreds of people that you came in contact  
7 with -- whether they be judges, politicians,  
8 bureaucrats, or ordinary citizens -- ever say to  
9 you that your conduct in respect of the Thelma  
10 development was inappropriate?

11                  A.    No.

12                  MR. CAVALLUZZO:    One final  
13 matter; Chief Justice, I earlier referred to the  
14 Judicom website, and there is a reference on the  
15 website which I think is important.

16                  I need not file this as an  
17 exhibit, but it confirms very strongly what Justice  
18 Matlow has said about the ultimate decision must be  
19 left to the judge.

20                  THE CHAIR:    If you are going to  
21 use it to rely upon and ask us to take it into  
22 account, it would be better to file it.

23                  MR. CAVALLUZZO:    Then I ask that  
24 it be filed as an exhibit.

25                  THE CHAIR:    That will be Exhibit

1 No. 11.

2 EXHIBIT NO. 11: Page from  
3 Judicom website

4 MR. CAVALLUZZO:

5 Q. The part I would read to you,  
6 Justice Matlow, and ask if you were aware of this  
7 at the material time, is found at page 2:

8 "The language used in the  
9 opinions follows that of the  
10 principles which give ethical  
11 guidance to federally  
12 appointed judges leaving the  
13 ultimate decision to a judge  
14 whether he or she wishes to  
15 engage in the proposed  
16 activity."

17 Is that what you had in mind when  
18 you said that ultimately it is the judge who has to  
19 make the determination on the proposed activity?

20 A. The answer to that is yes,  
21 but permit me to go further.

22 I have read this many, many times.  
23 This is not the first time I have seen this,  
24 although it is the first time you and I have  
25 discussed it together.

1                   This was placed on Judicom in  
2 February 2003, and I have gone back to the website  
3 many times since then. Why would I go there? I  
4 know that this document is there, and I am familiar  
5 with it.

6                   MR. CAVALLUZZO: Thank you,  
7 Justice Matlow, I have no further questions.

8                   MS FREELAND: There was reference  
9 to a Globe & Mail article that appeared, and it  
10 would have been subsequent to November 2005 and  
11 prior to the January 4, 2006, meeting of Justice  
12 Matlow with the members of the editorial staff of  
13 the Globe & Mail.

14                   I wonder if that article has been  
15 provided to the panel?

16                   MR. CAVALLUZZO: It is in the  
17 materials in Volume 4, the second Volume 4, at page  
18 149. It is an article dated November 4, 2005, from  
19 the Globe & Mail.

20                   MS FREELAND: Thank you. Was  
21 there a further article subsequent to Justice  
22 Matlow's meeting with the two members of the  
23 editorial board?

24                   MR. CAVALLUZZO: I understand  
25 that Justice Matlow's answer to that was he never

1 saw such an article.

2 THE WITNESS: That is correct.

3 MS FREELAND: Chief Justice, I am  
4 wondering if there are copies available of the  
5 email exchanges that led to Justice Matlow  
6 discussing this matter with the members of the  
7 editorial board on January 4, 2006?

8 MR. CAVALLUZZO: We don't have  
9 them, and I don't know if Justice Matlow has them.

10 THE WITNESS: I don't know  
11 whether they are still on my computer.

12 MR. CAVALLUZZO: If they are  
13 available, we can make them available.

14 MR. HUNT: I don't know whether  
15 the Globe & Mail has them, but I can say with  
16 reasonable certainty that if they do, in order to  
17 get them we would require a subpoena and your  
18 arguments on the issue.

19 THE WITNESS: I can check my  
20 computer tonight and, if I still have them, I can  
21 bring them tomorrow.

22 THE CHAIR: Thank you, Justice  
23 Matlow. You have both completed your evidence?

24 MR. CAVALLUZZO: I don't have  
25 anything further.

1 THE CHAIR: Can you tell me now  
2 what you propose with respect to presentations to  
3 the panel?

4 MR. HUNT: I would propose we do  
5 that tomorrow morning. I cannot tell you how long  
6 I will be. Of course, my role is not to seek a  
7 particular result, but to try to assist the panel  
8 in identifying the issues and the relevant  
9 evidence.

10 THE CHAIR: The reason I ask is  
11 not to tie counsel down or confine them. But we do  
12 have some planning to do, in terms of accommodation  
13 and travel, so an approximation of the time you  
14 require -- without feeling any constraint  
15 whatsoever -- would be helpful.

16 MR. CAVALLUZZO: What we are  
17 going to do this evening is work on written briefs  
18 that you can take away with you.

19 I would be sure that we could  
20 finish final argument within a day, by four  
21 o'clock.

22 JUSTICE ROLLAND: Are you speaking  
23 for yourself, or both counsel?

24 MR. CAVALLUZZO: No, I am talking  
25 about both counsel. I would think this will be

1 finished by this time tomorrow.

2 THE CHAIR: Thank you very much,  
3 and we are adjourned for the day.

4 --- Whereupon the hearing was adjourned

5 at 4:42 p.m., to be resumed on Thursday,

6 January 10, 2008, at 10:00 a.m.