

APPENDIX III

APPENDIX "A" to the Notice of Hearing

IN THE MATTER OF an investigation regarding
The Honourable Justice Theodore Matlow

AMENDED PARTICULARS

1. At all material times you were a judge of the Ontario Superior Court of Justice.

Thelma Road Project Controversy

2. In April 2000, Toronto City Council authorized the Toronto Parking Authority (the "Parking Authority") to develop the lands located at the corner of Spadina Road and Thelma Avenue in Forest Hill Village (the "Thelma Road Project"). At all material times you resided on Thelma Avenue.
3. On or after April 2002, you, along with other residents of Forest Hill Village formed a citizen's group, The Friends of the Village (the "Friends") opposed to the Thelma Road Project. At all material times you were the "President" of Friends.
4. Negotiations related to Thelma Road Project between the Parking Authority and the developer, Spadina Place Inc., culminated in the execution of an agreement between the City of Toronto (the "City"), Spadina Place Inc. and the Parking Authority for the sale of the Thelma Road Project lands on November 8, 2001 (the "Agreement").
5. Spadina Place Inc. subsequently appealed to the Ontario Municipal Board ("OMB") from the refusal or neglect of the City to enact a proposed amendment to a zoning bylaw to permit the proposed development on Thelma Avenue (the "OMB Appeal").
6. In December 2003 a Mr. Lieberman and others, with your support and knowledge, commenced an Application in the Ontario Superior Court of Justice against the City seeking a determination of the validity of the Agreement (the "Application"). Mr. Lieberman swore an affidavit in support of the Application, which provided evidence, in significant part, on information from you. In particular, included as exhibits to Mr. Lieberman's affidavit, were your correspondence with the City Clerk regarding a Freedom of Information request made by you related to the Thelma Road Project documents and a legal opinion letter regarding the issue of whether the Agreement was authorized. The opinion letter is addressed to "Friends of the Village c/o The Honourable Justice Ted Matlow". The affidavit also attaches, as exhibits, an e-mail you wrote to the Attorney-General dated November 6, 2003 and a letter your wrote to the mayor of

the City (Mayor Miller) dated November 13, 2003. The Application was scheduled to be heard in May 2004.

7. Following the issuance of the Application in December 2003, you brought a motion in the OMB Appeal seeking standing for yourself and an adjournment of the OMB Appeal pending the decision of the Ontario Superior Court of Justice on the Application. In your motion materials you identified yourself as a “judge of the Superior Court of Justice”. The OMB Appeal was adjourned as requested.
8. As a consequence of, at least, the ongoing public debate and the Application regarding the Thelma Road Project, the City retained an independent counsel (the “Independent Counsel”) to review the matter. Upon receipt of the Independent Counsel’s opinion, the City ratified the Agreement on January 28, 2004. Following the ratification by the City, you withdrew from the OMB Appeal and the Application was dismissed on consent.
9. The Thelma Road Project, at all material times, was a matter of significant ongoing public and political controversy involving the Friends, the Parking Authority, elected representatives of the City, City Staff, Spadina Place Inc., and members of the media and public.
10. From the outset of your involvement you deliberately assumed a central public role in Friends and directly involved yourself in the political and legal activities related to the Thelma Road Project controversy.
11. You personally engaged in political lobbying, through e-mail correspondence, direct meetings with elected officials, City Staff, the City Administration Committee, the Midtown Community Council and through your personal contact and comments to the media.
12. In your interviews and interactions with the media, you identified yourself as a judge of the Ontario Superior Court of Justice.
13. You made a series of public comments to the media regarding your reasons for opposing the Thelma Road Project and your personal views on the legality of the Agreement including, among others:
 - a) Referring to the Agreement. as a “secret deal with the developer” – Town Crier Online Article published February 3, 2003;
 - b) Following the ratification of the Agreement by the City on January 28, 2004 it was reported that “Mr. Matlow says that it is tantamount to an admission the City felt legally vulnerable ... ‘They want to whitewash everything’ Mr. Matlow says” – National Post published February 9, 2004; and,

- c) You stated "I think they didn't want another scandal, so they wanted to hush the thing up and sweep it under the carpet." – Town Crier Online article, published March 19, 2004.
14. You met with the mayor of the City (Mayor Lastman) to express your opposition to the Thelma Road Project and your criticisms of the City.
 15. You appeared in person before the Administration Committee of the City on May 28, 2002 to express your personal opposition to the Thelma Road Project and your criticisms of the City.
 16. You contacted Councilor Holyday, a member of the City Administration Committee, by e-mail on October 11, 2002 with the intention of expressing your personal opposition to the Thelma Road Project and your criticisms of the City.
 17. You appeared in person before the Midtown Community Council on July 8, 2003 to express your personal opposition to the Thelma Road Project and your criticisms of the City.
 18. You met with the Auditor General for the City on August 22, 2003, and then wrote to the Auditor General for the City on September 2, 2003, stating that the opinion of the City Solicitor "is blatantly wrong and ridiculous" and that "if her report had been written as part of a first year law school examination, she would undoubtedly receive a failing mark". You forwarded your e-mail to the Auditor General under cover of a fax message sheet titled "Justice Ted Matlow."
 19. You wrote to the Attorney General of Ontario on November 6, 2003 seeking his direct intervention in the Thelma Road Project matter to "require that the City comply with the rule of law".
 20. You wrote to the mayor of the City (Mayor Miller) and all members of City Council on November 13, 2003 as the "president of Friends of the Village", on letterhead titled "Justice Ted Matlow", seeking Mayor Miller's intervention regarding the Thelma Road Project to, among other matters, "reverse a violation of law".
 21. You met with and corresponded with the City's Independent Counsel and, on December 5, 2003, referred to, among other matters, the "devious acts that have taken place" in relation to the Thelma Road Project. Throughout your discussions and correspondence with the City's Independent Counsel you were addressed by the City's Independent Counsel as "Your Honour".

St. Clair Project Controversy

22. SOS-Save our St. Clair Inc. ("SOS"), a ratepayer's association, brought an application (the "SOS Application") in August 2005 to the Divisional Court

seeking a determination that the St. Clair West Transit Improvements Project (the "St. Clair Project"), a joint project with the City and the Toronto Transit Commission for the reconstruction of the existing streetcar tracks on St. Clair Avenue West did not conform with the City's Official Plan.

23. The St. Clair Project was subject to significant ongoing public and political controversy and media articles regarding the merits of the proposed St. Clair Project.
24. The SOS Application was originally scheduled to be heard on October 3, 2005 by a single judge of the Divisional Court.
25. On Friday September 30, 2005, the registrar of the Ontario Divisional Court sent an e-mail to you, Justice Greer and Justice Macdonald advising that you and they would constitute a Divisional Court Panel to hear the SOS Application in Toronto on October 6 and 7, 2005.
26. Prior to the hearing of the SOS Application, you did not disclose details of your involvement in the Thelma Road Project controversy or your criticisms of the City to the other members of the Divisional Court Panel or take the necessary steps to ensure that you were not assigned to sit on the Panel that would hear the SOS Application.
27. On Sunday October 2, 2005 you e-mailed Mr. John Barber of the Globe and Mail, advising him that you are " a Superior Court judge and was, until recently, the president of the Friends of the Village." You alleged "evidence of misconduct" in connection with the City's role in the Thelma Road Project controversy and requested that he contact you.
28. On Tuesday October 4, 2005 Mr. Barber responded and requested relevant documents. You agreed to provide a "package" to him.
29. On Wednesday October 5, 2005 you provided Mr. Barber with a package of documents related to the Thelma Road Project controversy. In your correspondence of the same date to Mr. Barber you referred to "dishonesty at City Hall" and "really awful and devious things".
30. Prior to the hearing of the SOS Application, on October 6 and 7, 2005 you did not disclose any information concerning your dealings with Mr. Barber to the other members of the Divisional Court Panel or the parties to the SOS Application or take the necessary steps to ensure that you were not assigned to sit on the Panel that would hear the SOS Application.
31. On October 6 and 7, 2005 you chaired the panel of the Divisional Court consisting of yourself, Justice Greer and Justice Macdonald and heard the SOS

Application. The Panel subsequently provided the parties with its decision with reasons to follow.

32. On October 19, 2005 the City brought a motion requesting: a) an Order recusing Justice Matlow from continued participation in the hearing of the SOS Application; b) an Order striking the panel which heard the SOS Application, and remitting the matter for a new hearing before a new panel; and, c) an Order that the decision of the panel dated October 11, 2005 is null and void.
33. On October 20, 2005 the Globe and Mail published a story written by Mr. Barber which referred to your communications with Mr. Barber in relation to the Thelma Road Project controversy.
34. On October 25 and 26, 2005 the same Divisional Court Panel, consisting of yourself, Justice Greer and Justice Macdonald, which heard the SOS Application on October 6 and 7, 2005, heard the motion by the City referred to above in paragraph 32. The motion was granted.

Allegations of Judicial Misconduct

35. Having regard to the forgoing, you have misconducted yourself and have become incapacitated or disabled from the due execution of the office of judge by reason of having failed in the due execution of that office and by reason of having placed yourself in a position incompatible with the due execution of that office. In particular:
 - a) Having regard to your involvement in the Thelma Road Project controversy, you did not take steps to ensure that you did not sit on the Divisional Court Panel hearing the SOS Application;
 - b) Having regard to your involvement with Mr. Barber of the Globe and Mail you did not take steps to ensure that you did not sit on the Divisional Court Panel hearing the SOS Application;
 - c) You failed to disclose details of your involvement in the Thelma Road Project controversy and your criticisms of the City to Justice Greer and Justice Macdonald prior to the commencement of the hearing of the SOS Application; and,
 - d) You failed to disclose to Justice Greer and Justice Macdonald details of your dealings with Mr. Barber of the Globe and Mail, shortly before the hearing of the SOS Application; ;
 - e) You failed to disclose to the City and the other parties details of your dealings with Mr. Barber of the Globe and Mail, shortly before the hearing of the SOS Application;

- f) On October 2, 2005 and following, you identified yourself as a “Superior Court Judge” and contacted Mr. Barber of the Globe and Mail concerning your criticisms of the City and your opposition to the Thelma Road Project with the intention of persuading Mr. Barber to write a story based on your criticisms of the City and your opposition to the Thelma Road Project;
- g) You participated and undertook a leadership role as the “President” of Friends in respect of the Thelma Road Project controversy;
- h) You used language that was intemperate, improper and inappropriate in the course of your participation in, and leadership role as, the “President” of Friends, with respect to the Thelma Road Project controversy;
- i) You repeatedly communicated your status as a judge of the Ontario Superior Court of Justice to those engaged in the Thelma Road Project controversy and to the media. Your communications identified you as a “judge”, “Justice Ted Matlow”, or “Mr. Justice Matlow” or a “Superior Court Judge”; and,
- j) You publicly involved yourself in legal issues in the Thelma Road Project controversy that you knew or ought to have known were likely to come before the Ontario Superior Court of Justice, in particular, the processes before the OMB and the Application before the Ontario Superior Court of Justice.;
- k) Your conduct in taking the role that you did in the Thelma Road Project controversy, and in making out of court statements in relation to same, constituted conduct which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in your impartiality with respect to the City and issues relating to the City that could come before the courts;
- l) Given your participation in the Thelma Road Project controversy, you failed to take steps to ensure that you did not sit on any matter involving the City;
- m) You used the prestige of the office of judge to further your personal interests in the Thelma Road Project and, in particular, in the solicitation of support from elected officials and members of the media; and,
- n) Having been assigned on September 30, 2005 to sit on the SOS Application, you entered into communications on October 2, 2005, and subsequently, with Mr. Barber of the Globe & Mail on the subject of the Thelma Road Project, in the course of which you made allegations of impropriety by City officials.



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VIA E-MAIL

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Independent Counsel

Dear Counsel:

RE: Inquiry Committee into the Conduct of The Honourable P.T. Matlow

Having studied the complaint of the City Solicitor for the City of Toronto, Anna Kinastowski, the Committee has asked me to request that counsel be prepared to address at the hearing whether, the Committee, in order to carry out its mandate under the *Judges Act*, should consider:

- (i) Whether the conduct of Justice Matlow in taking the role he did in the Thelma Road Project controversy, and making out of court statements in relation to same, constituted conduct which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in his impartiality with respect to the City of Toronto and issues relating to the City of Toronto, that could come before the courts;
- (ii) Given Justice Matlow's participation in the Thelma Road Project controversy, his failure to take steps to ensure that he did not sit on any matter involving the City of Toronto;
- (iii) Whether Justice Matlow used the prestige of the office of judge to further his personal interests in the Thelma Road Project, and in particular in the solicitation of support from elected officials and members of the media; and
- (iv) Having been assigned to sit on the SOS Application on September 30, 2005, Justice Matlow's entrance into communications on October 2, 2005 and subsequently, with Mr. Barber of the Globe



and Mail, on the subject of the Thelma Road Project, in the course of which allegations of impropriety by City of Toronto officials were made.

Thank you.

Yours very truly
ORIGINAL SIGNED BY
NANCY K. BROOKS

Nancy Brooks
Counsel to the Inquiry Committee