

APPENDIX IV

Canadian Judicial Council

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

AGREED STATEMENT OF FACTS

Independent Counsel in this matter and Counsel for the Honourable Mr. Justice Theodore Matlow agree upon the following Agreed Statement of Facts and consent to the tendering into evidence and the admission of this Agreed Statement of Facts and Appendices at the hearing before the Inquiry Committee of the Canadian Judicial Council. Both counsel reserve the right to present such additional evidence and argument as they deem appropriate and as the Inquiry Committee may allow.

PERSONAL BACKGROUND

1. Theodore (Ted) Matlow was born in Kitchener, Ontario on 14 April 1940. He is now 67 years old.
2. He is a graduate of the University of Toronto [Com. (Hon.) - 1962], (LL.B. 1965) and a graduate of Osgoode Hall Law School (LL.M. 1979). He was called to the Ontario Bar in 1967. In 1967-1968, he served as the law clerk to the Chief Justice of the High Court, the Honourable Mr. Justice Gale.
3. He then practised law in Toronto from 1968 until 29 October 1981 at which time he was appointed as a judge of the County Court for the Judicial District of York.
4. Since 1981, Ted Matlow has served continuously as a judge. As a result of successive court amalgamations in Ontario, he became a judge of the District Court of Ontario in 1985 and of the Ontario Court (General Division) in 1990. In April 1999, the name of the Ontario Court (General Division) was changed to the Superior Court of Justice.
5. In his current position as a judge of the Superior Court of Justice, Ted Matlow's responsibilities include presiding over trials and other proceedings. In recent years he has served extensively on the Divisional Court, presiding over appeals and applications for judicial review. In 2005, he elected to become a supernumerary

judge.

6. Since 1977, Ted Matlow has also served as the editor of a national civil litigation journal, *The Advocates' Quarterly*, which is published by Canada Law Book.

THELMA AVENUE: TED MATLOW'S RESIDENCE and THE THELMA PARKING LOT

7. At all material times, Ted Matlow owned and resided in a house on Thelma Avenue in the City of Toronto. Attached as **Appendix 1** is a photograph of his house.
8. Thelma Ave. is a short, one-block long, dead-end residential street that runs east only off Spadina Road in an area of mid-town Toronto called Forest Hill Village. Attached as **Appendix 2** is a map of the area.
9. Thelma Ave. is an old residential street with very small workers' cottages dating from around 1930, 2- and 3-storey old frame houses and newer townhouse-like homes on narrow lots, and two low-rise apartment buildings.
10. Ted Matlow's house is approximately 20 metres from a surface parking lot (the "Thelma Parking Lot") which is located at the northeast corner of Spadina Road and Thelma Avenue. Attached as **Appendix 3** is a series of photographs of the Thelma Parking Lot and the immediate vicinity on Thelma Avenue and Spadina Road.
11. The Thelma Parking Lot is owned by the City of Toronto and operated by the Toronto Parking Authority ("TPA") which is a public corporation owned by the City of Toronto.

THE THELMA PARKING LOT DISPUTE

12. In October 1999, Ted Matlow attended a public meeting in his neighbourhood that was convened by the city councillors who represented the neighbourhood.
13. At this local public meeting, the TPA and a developer, First Spadina Place Inc. ("the Developer") announced a proposed joint venture to build a development on the lands occupied by the Thelma Parking Lot. The proposed development was ten residential townhouses (total 24,000 square feet) and a below-grade parking facility. Ted Matlow understood that the proposed development was to be in accordance with existing zoning and building by-laws. Attached as **Appendix 4** is a copy of the architectural drawings of the proposed development that were presented to the local community at the public meeting.

14. The authorization of City Council, by way of resolution, was required before any joint venture agreement could be executed on behalf of the City.
15. In March 2000, the TPA submitted a Report entitled "Spadina and Thelma [Municipal Carpark No. 164 Joint Venture (Midtown)]" to the City of Toronto Administration Committee seeking approval for the joint venture at the Thelma Parking Lot site. The TPA Report described the joint venture as involving "redevelopment of the site as a ten unit residential complex with approximately 62 or 63 public underground parking spaces." It also noted that "The residential development as proposed is permitted under the existing zoning". The Report noted that "With regard to the redevelopment of this property, it will be the responsibility of the Purchaser to obtain the appropriate development approvals from the City. We are only asking Council to approve the sale and the business terms of the Purchase and Sale Agreement." The Administration Committee Report recommended that Toronto City Council adopt the TPA Report.
16. At its meeting on 11, 12 and 13 April 2000, City Council adopted the Administration Committee Report ("April 2000 City Council Resolution"), providing authorization for the joint venture. Attached as **Appendix 5** is a copy of the April 2000 City Council Resolution which includes the Administration Committee Report.
17. Negotiations related to the Thelma Parking Lot development between City staff, the TPA and the Developer culminated in the execution of an agreement between the City of Toronto ("the City"), First Spadina Place Inc. and the TPA dated 8 November 2001 (the "2001 Agreement"). Section 1.1 of the 2001 Agreement states that:

" **'Development'** means the proposed mixed use commercial/residential development of approximately 30,000 square feet and the Parking Facility which the Purchaser proposes to construct upon the Lands."

Section 5.2 of the Agreement provides that the Purchaser is entitled to a seven month approvals period to obtain all necessary governmental approvals and building permits in respect of the Parking Facility and Development, including any necessary rezoning and that in the event the Purchaser is unable to obtain the approvals during the approval period, the approvals period may be extended by the Purchaser or the Purchaser, at its option, may terminate the Agreement. In s. 13.13, the parties to the Agreement also acknowledged and agreed that "nothing contained in this Purchase Agreement creating obligations on the part of the City shall in any manner limit or restrict the normal exercise of discretion by the various municipal departments and officials nor fetter the discretion of council of the City ... and nothing contained herein shall in any way require any such municipal department or official or council ... to

give its approval in respect of any matter." Attached as **Appendix 6** is a copy of the executed 2001 Agreement.

18. In March 2002, the TPA submitted a confidential report to an in camera session of the City Administration Committee, requesting approval to amend the 2001 Agreement in order "to contemplate a development of 40,000 to 47,000 square feet (not greater than 50,000 square feet), which the developer believes would provide greater flexibility regarding the form of the development." Attached as **Appendix 7** is a copy of the TPA's March 2002 Report.
19. An Amending Agreement between First Spadina Place Inc, the Toronto Parking Authority and the City of Toronto, dated 8 April 2002, was drawn up (but was not executed) reflecting the proposed larger development. Among other things, the April 2002 Amending Agreement proposed to delete the 2001 definition of "Development" and replace it with the following:

" 'Development' means the proposed mixed use commercial/residential development of not greater than 50,000 square feet (it being understood and agreed that the Purchaser intends to seek re-zoning to permit the gross floor area of the development to be increased to an amount not greater than 50,000 square feet in order to permit a fifth and sixth floor to be added thereto) and the (parking facility) Parking Facility which the Purchaser proposes to construct upon the Lands."

Attached as **Appendix 8** is a copy of the 2002 Amending Agreement.

20. In April 2002, Ted Matlow attended a public meeting at a local public school auditorium that was convened by the local City Councillor Michael Walker. At that meeting, the local community understood that the TPA and the Developer planned to develop a single, six-storey, mixed commercial-residential building of up to 50,000 square feet on the Thelma Parking Lot site.
21. On or after April 2002, Ted Matlow, along with other residents of Forest Hill Village, formed a single-issue, ad hoc neighbourhood group called The Friends of the Village opposed to the six-storey Thelma Parking Lot development. The "Friends of the Village" is the name by which they were collectively known. It was not a ratepayers' association or any other formal association.
22. Attached as **Appendix 9** to this statement of facts is a legal advisory opinion from the Advisory Committee on Judicial Ethics entitled "Municipal Democracy" with respect to judges' permissible involvement in municipal disputes. The Advisory Committee is not a committee of the Canadian Judicial Council. The Advisory

Committee on Judicial Ethics is a committee that acts independently and receives administrative support from the Office of the Commissioner for Federal Judicial Affairs. The Committee's members are appointed by a joint nominating committee of the Canadian Judicial Council and the Canadian Superior Court Judges Association. The advisory opinions of the Advisory Committee on Judicial Ethics are provided to federally appointed judges.

23. At all material times, Ted Matlow was generally known as the "president" of Friends of the Village. This was not a formal legal title but was descriptive of his role as one of the leaders of the Friends of the Village.
24. At its meeting of 5 November 2002, the City's Administration Committee adopted a confidential report from the City Solicitor dated 1 November 2002. The City Solicitor's report recommended that authority be granted to extend the condition dates in the Agreement by such reasonable period of time as determined by the TPA in consultation with legal counsel; and recommended that the appropriate City and TPA officials be authorized and directed to take the necessary action to give effect to the foregoing. City Council confirmed the Administration Committee's action at its meeting of 26-28 November 2002. Attached as **Appendix 10** is a copy of the City Solicitor's Report dated 1 November 2002. Attached as **Appendix 11** is a copy of the minutes from the Administration Committee dated 5 November 2002.
25. On or around 29 November 2002, the Developer, the TPA and the City of Toronto executed an Amending Agreement which amended the 2001 Agreement. In the 2002 Amending Agreement, the 2001 definition of "Development" was deleted and replaced with the following:

"Development means the proposed mixed use commercial/residential development of approximately 30,000 square feet of gross floor area above grade not exceeding four (4) stories above grade and comprising primarily residential units with a retail component and the Parking Facility which the Purchaser proposes to construct upon the Lands in accordance with the Current Plans, provided that any increase in the gross floor area or number of stories above grade shall require the TPA's prior written consent which may be withheld in TPA's sole and absolute discretion."

Attached as **Appendix 12** is a copy of the executed 29 November 2002 Amending Agreement.

26. In April 2003, the Developer applied to the City Planning Department to amend the applicable zoning by-law to permit construction of a 4-storey, mixed use "14 unit

condominium building with commercial at grade and 63 commercial parking spaces below grade" that measured 3053 square metres (32,863 square feet). An amendment to the by-law was required because at a density of 2.72 times the area of the lot, the 3053 square metres exceeded the permitted maximum density of 2.5 for the lot. In addition, the proposed height of 20 metres exceeded the maximum building height of 12 metres. Attached as **Appendix 13** is a copy of the Developer's April 2003 application to amend the zoning by-law.

27. In June 2003, the Director of Community Planning, South District submitted a Preliminary Report to the Mid-town Community Council about the Developer's application. This Report was considered at the Mid-town Community Council meeting on 8 July 2003. The Mid-town Community Council referred the Report back to the Director of Community Planning with a request that he submit a further report, in consultation with the City Solicitor, TPA, City Clerk and Ward Councillor with respect to the issues raised regarding the 2001 Agreement. The Director of Community Planning and the City Solicitor reported back to the Mid-town Community Council in a report dated 22 August 2003. Attached at **Appendix 14** is a copy of a memorandum from the City Clerk setting out the action of the Mid-town Community Council and the Director of Community Planning's Preliminary Report of June 2003. Attached at **Appendix 15** is a copy of the August 2003 report from the Director of Community Planning and the City Solicitor.
28. In or around July 2003, the Developer appealed to the Ontario Municipal Board ("OMB") from City Council's refusal or neglect to enact a proposed amendment to the applicable zoning by-law.
29. In September 2003, Friends of the Village sought and received two legal opinions from a solicitor, Michael Melling, on whether the 2001 Agreement was authorized by City Council's April 2000 Resolution. Attached as **Appendix 16** are copies of the two opinion letters from Michael Melling dated 2 September 2003 and 5 September 2003.
30. At its meeting of 22-25 September 2003, City Council adopted resolutions to appoint outside Counsel and instruct outside Counsel to investigate the facts surrounding the Thelma Parking Lot matter and to provide an opinion on whether City Council at its meeting in April 2000 authorized the terms of the 2001 Agreement and to provide an analysis of options available to City Council and a risk assessment of the options available. Attached as **Appendix 17** is a copy of the City Council Resolutions from 22-25 September 2003.
31. In October 2003, the OMB released a Notice of Hearing indicating that the Developer's appeal would be heard on 12-14 January 2004. Attached as **Appendix 18** is a copy of the Ontario Municipal Board Appointment for Hearing dated 30

October 2003.

32. In November 2003, the City of Toronto notified the OMB that in light of the City Council's September resolution it would be seeking an adjournment of the OMB hearing until City Council could consider the report of outside counsel. That motion was scheduled for 12 January 2004. Attached as **Appendix 19** is a copy of the City's Motion Record before the OMB.
33. In December 2003, Ted Matlow brought a motion returnable 12 January 2004 seeking status for himself only at the OMB hearing. He also sought an adjournment of the OMB appeal until either the legality of the Agreement had been determined in a proceeding commenced in the Superior Court or until City Council had an opportunity to reconsider the legality of the Agreement at its March 2004 meeting. In his supporting affidavit, Ted Matlow identified that he is "a judge of the Superior Court of Justice." Attached as **Appendix 20** is a copy of Ted Matlow's Notice of Motion and Affidavit filed with the OMB.
34. In December 2003, Ronald Lieberman and 23 other local residents and business owners commenced an application in the Superior Court of Justice ("the Lieberman Application") seeking a determination of the validity of the 2001 Agreement. Ted Matlow knew that Mr. Lieberman was bringing the litigation and was generally supportive of it but he was not a party to this litigation. Mr. Lieberman swore an affidavit in support of that application which included some paragraphs which were based on information from Ted Matlow. Attached as **Appendix 21** is a copy of the Notice of Application in the Lieberman Application. Attached as **Appendix 22** is a copy of the affidavit sworn by Ronald Lieberman and the accompanying exhibits.
35. On 28 December 2003, Justice Matlow sent an email to Chief Justice Heather Smith, Regional Senior Judge, Justice Lee Ferrier, and Justice Ian Nordheimer who was responsible for scheduling lengthy motions and applications. In that email he advised that the Lieberman application had been filed, that the claim involved an agreement that affected a property very close to his own and that the applicants were members of the Friends of the Village of which he was the president. He indicated that they may wish to decide that the application should be heard by a judge from another city. Attached as **Appendix 23** is a copy of the email from Justice Matlow dated 28 December 2003. Attached as **Appendix 24** is a copy of the Court's protocol addressing "Judges and their Families as Litigants or Witnesses".
36. In a letter dated 17 December 2003, David Boghosian, the outside counsel appointed by the City, provided his opinion regarding whether City Council had authorized the terms of the 2001 Agreement with respect to the Thelma Parking Lot. In that opinion he set out various options for how City Council could proceed. The opinion of Mr. Boghosian was provided to Ted Matlow by Councillor Michael Walker

under cover of Mr. Walker's letter dated 16 January 2004. A copy of Mr. Walker's letter is attached as **Appendix 27**. Attached as **Appendix 25** is a copy of Mr. Boghosian's opinion.

37. On 12 January 2004, the OMB granted the City's and Ted Matlow's motions and adjourned the OMB appeal proceedings until July 2004. Attached as **Appendix 26** is a copy of the OMB Decision dated 12 January 2004.
38. Local City Councillor Michael Walker wrote a letter dated 16 January 2004 to Mayor David Miller, copied to the members of City Council, the Auditor General for the City and Ted Matlow raising concerns about the Thelma Parking Lot matter. Attached as **Appendix 27** is a copy of the letter from Councillor Walker dated 16 January 2004 and the accompanying attachments.
39. At its meeting of 27, 28 and 29 January 2004, City Council passed a resolution which adopted one of the options recommended by Mr. Boghosian and ratified the Agreement between the City, the TPA and the Developer as amended to 28 January 2004. Attached as **Appendix 28** is a copy of the City Council Resolution of January 2004.
40. On or around 30 January 2004, the Developer, the TPA and the City of Toronto executed a further Amending Agreement. Attached as **Appendix 29** is a copy of the 30 January 2004 Amending Agreement.
41. Following the City's ratification of the Agreement, on the first day of the OMB hearing, Ted Matlow withdrew from the OMB appeal proceedings. The OMB, in a decision dated 19 July 2004, approved the Developer's project. Attached as **Appendix 30** is a copy of the OMB Decision dated 19 July 2004.
42. In August 2004, the Lieberman application was dismissed without costs. Attached as **Appendix 31** is a copy of the affidavit of Ron Lieberman sworn in support of the motion to discontinue. Attached as **Appendix 32** is a copy of the Court Order discontinuing the Lieberman Application.

TED MATLOW'S CONDUCT IN RELATION TO THE THELMA PARKING LOT

43. Through his involvement with Friends of the Village, Ted Matlow assumed a central, but not exclusive, public role as one of the spokespersons for Friends of the Village. He personally engaged in challenging the legality of the 2001 Agreement as amended from time to time, email correspondence, direct meetings with elected

officials, City Staff, the City Administration Committee, the Mid-Town Community Council and through his personal contact and comments to the media.

44. Ted Matlow made public comments to the media regarding his reasons for opposing the Thelma Parking Lot development and his personal views on the legality of the Agreement. Attached as **Appendix 33(a)** is a copy of the Town Crier Online article published 3 February 2003. Attached as **Appendix 33(b)** is a copy of the National Post article published 9 February 2004. Attached as **Appendix 33(c)** is a copy of the Town Crier Online article published 19 March 2004. Attached as **Appendix 33(d)** are copies of all other news articles in which Ted Matlow is quoted.
45. In or around 2002, Ted Matlow and two other members of Friends of the Village met with the then-Mayor of the City, Mayor Lastman regarding the Thelma Parking Lot development and their criticisms.
46. Ted Matlow appeared in person before the City's Administration Committee on 28 May 2002 to express his concerns about the Thelma Parking Lot development and his criticisms. Attached as **Appendix 34** is a copy of Report No. 14 of the Administration Committee of City Council.
47. Ted Matlow contacted Councillor Holyday, a member of the City Administration Committee, by email on 11 October 2002. Attached as **Appendix 35** is a copy of Ted Matlow's email to Councillor Holyday.
48. Ted Matlow appeared before the Mid-Town Community Council on 8 July 2003 to express his objections to the Thelma Parking Lot development and his criticisms.
49. Ted Matlow met with the Auditor General of the City on 22 August 2003. He sent an email message to the Auditor General for the City on 2 September 2003, stating that an opinion by a lawyer employed by 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." The solicitor referred to by Ted Matlow is a senior solicitor for the City, called to the Bar in 1983. Ted Matlow forwarded his email to the Auditor General under cover of his personal fax cover sheet which was produced from a personal template on his home computer. That sheet is headed "Justice Ted Matlow". Attached as **Appendix 36** is a copy of that email.
50. On 6 November 2003, Ted Matlow sent an email to the Attorney General of Ontario, who is also his Member of Provincial Parliament, seeking his intervention in the Thelma Parking Lot matter. Attached as **Appendix 37** is a copy of Ted Matlow's email to the Attorney General.

51. By letter dated 13 November 2003, Ted Matlow wrote to the mayor of the City (Mayor David Miller) and all members of City Council on behalf of Friends of the Village. The letter was printed on his personal stationery which was produced by a personal template on his home computer. That stationery was headed "Justice Ted Matlow" and provides his home address and telephone number. In that letter, he seeks Mayor Miller's intervention in the Thelma Parking Lot matter to, among other matters, "reverse a violation of law." Attached as **Appendix 38** is a copy of the letter dated 13 November 2003.

52. In and around the time that the Mayor received this letter from Ted Matlow, the City Solicitor, Anna Kinastowski, reviewed the letter and was aware of this position. She did not disseminate any information regarding Justice Matlow's involvement in the Spadina/Thelma matter beyond the management team, and did not issue any memorandum to City Staff expressing concerns about appearing before Justice Matlow.

53. Since 2002, Justice Matlow has presided as a single judge or as part of a panel in the Divisional Court over matters in which the City was either a party or an intervenor, as follows:

Toronto v. First Ontario Realty Corp. – This matter involved a costs award;

Smith v. Toronto – This matter was an insured claim for a fall on the sidewalk;

William v. DiCarlo – This matter was an insured claim;

Vincent v. DeGasperis – This matter was an appeal of an OMB decision on a minor variance. The City was an intervenor in the matter;

Toronto v. Alcohol and Gaming Commission of Ontario – This matter was a judicial review application from a decision of the Commission denying the City party status.

The City Solicitor would not have necessarily been aware that Justice Matlow presided over a particular matter. The City Solicitor did not issue any memorandum to all City Staff in her division expressing concerns about appearing before Justice Matlow.

54. Ted Matlow met with and corresponded with the City's outside counsel and, on 5 December 2003, referred to, among other matters, the "devious acts that have taken place" in relation to the Thelma Parking Lot matter. In his correspondence with the

City's outside counsel, he identified himself as "Ted Matlow". In his responding correspondence, the City's outside counsel addressed Ted Matlow as "Your Honour". Attached as **Appendix 39** is a copy of the email exchanges between Ted Matlow and David Boghosian.

TED MATLOW'S CONDUCT IN RELATION TO THE ST. CLAIR STREET CAR APPLICATION

55. St. Clair Avenue is a busy multi-lane east-west thoroughfare running across mid-town Toronto. St. Clair Avenue crosses Spadina Road at the first major intersection south of Forest Hill Village, approximately .5 km south of Thelma Avenue. Spadina Road is the main street running north through Forest Hill Village. The St. Clair West street car line starts at Yonge Street, a major north-south street in central Toronto and runs west for several kilometres to Gunn Road. Attached as **Appendix 40** is a map of the relevant part of Toronto.
56. The St. Clair West Transit Improvement Project ("the St. Clair Project") is a joint project between the City and the Toronto Transit Commission to reconstruct the existing streetcar tracks on St. Clair Avenue West to construct a dedicated right-of-way for streetcars. The St. Clair project was subject to significant ongoing public and political controversy and media articles regarding the merits of the proposed project. Attached as **Appendix 41** are copies of media articles related to the St. Clair Project.
57. SOS-Save Our St. Clair Inc. is an incorporated community organization of residents and business operators who opposed the St. Clair project's dedicated streetcar right-of-way.
58. In August 2005, SOS-Save Our St. Clair Inc. brought an application to the Divisional Court ("the SOS Application") seeking a declaration that the St. Clair project was in breach of s. 24 of the Planning Act because it was in conflict with the City's Official Plan and a declaration that the City of Toronto and Toronto Transit Commission had failed to complete a Class Environmental Assessment as required under the Environmental Assessment Act.
59. The SOS Application was originally scheduled to be heard on 3 October 2005 by a single judge of the Divisional Court.
60. Justice Matlow, Justice Susan Greer and Justice Ellen MacDonald were assigned to constitute a Divisional Court panel to hear applications in Sudbury, Ontario, commencing on Monday 3 October 2005. They had initially been scheduled to be in Sudbury for the entire week.
61. Late in the afternoon of Friday 30 September 2005, Livia Sessions, the Registrar of the Divisional Court sent an email to Justice Matlow, Justice Greer and Justice MacDonald advising that they had been scheduled for an urgent application involving SOS- Save Our St. Clair Inc. v. City of Toronto on Thursday 6 October 2007. Attached as **Appendix 42** is a copy of the email from Livia Sessions.

62. Justice Greer and Justice MacDonald independently recall that they learned on either Monday 3 October or Tuesday 4 October that they would be returning to Toronto to hear the urgent application.

Communication with John Barber

63. In February 2002, City Council passed a resolution requesting that the Superior Court of Justice conduct a public inquiry into the City's computer and computer leasing contracts with MFP Financial Services during the period from 1997 to 2000. The Honourable Madam Justice Denise Bellamy of the Superior Court of Justice was appointed the Commissioner of the Inquiry. The terms of reference for the Inquiry stated that they
- “authorize[d] the Commissioner to inquire into, or concerning, any matter related to a supposed malfeasance, breach of trust or other misconduct on the part of a member of council, or an officer or employee of the City or of any person having a contract with it, in regard to the duties or obligations of the member, officer, or other person to the corporation or to any matter connected with the good government of the municipality, or the conduct of any part of its public business”.
64. On 12 September 2005, Justice Bellamy released her Report into the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry. Attached as **Appendix 43** is a copy of the City News Release announcing the resolution to appoint the Inquiry. Attached as **Appendix 44** is a copy of Justice Bellamy's speaking notes on the release of the Inquiry Report. Attached as **Appendix 45** is a copy of the Executive Summary of Justice Bellamy's Report.
65. John Barber is a Toronto municipal affairs columnist for The Globe and Mail newspaper. He wrote a column on 13 September 2005 which commented on the release of the Bellamy Report. Attached as **Appendix 46** is a copy of Mr. Barber's column from 13 September 2005.
66. On Sunday 2 October 2005, Ted Matlow sent an email to John Barber of The Globe and Mail. In that email, he identified that he is a “Superior Court judge and was, until recently, the president of Friends of the Village”. He invited Mr. Barber to contact him about the Thelma Parking Lot matter. Attached as **Appendix 47** is a copy of the 2 October 2005 email.
67. On Tuesday 4 October 2005, Mr. Barber responded and requested relevant documents. Ted Matlow agreed to provide a “package” to him. Attached as

Appendix 48 is a copy of the email exchange of 4 October 2005.

68. On the evening of 4 October 2005, Justice Matlow, Justice Greer and Justice MacDonald returned to Toronto.
69. On 5 October 2005, Ted Matlow sent an email to Mr. Barber advising that he would drop off an envelope of materials for Mr. Barber at The Globe and Mail. That morning he delivered a package of documents relating to the Thelma Parking Lot matter to the mail room at The Globe and Mail office for Mr. Barber. Attached as **Appendix 49** is a copy of the email of 5 October 2005. Attached as **Appendix 50** is a copy of the documents that were delivered to Mr. Barber.

The SOS Application

70. On Thursday 6 October and Friday 7 October 2005, Justice Matlow chaired the panel of the Divisional Court consisting of himself, Justice Greer and Justice MacDonald and heard the SOS Application.
71. At the hearing, counsel appearing for the City and the Toronto Transit Commission requested that the panel's decision be released as quickly as possible because the construction of the right-of-way was ready to begin.
72. On Friday 7 October 2005, the City Solicitor Anna Kinastowski attended a management team meeting. At that meeting, Albert Cohen, the director of litigation, advised that he had become aware the previous evening that Justice Matlow was on the panel hearing the SOS application. Mr. Cohen raised a concern about Justice Matlow presiding over the SOS application given the similarity between it and the Spadina/Thelma matter.
73. Monday 10 October 2005 was Thanksgiving Day.
74. On Tuesday 11 October 2005, the Divisional Court panel released its decision on the SOS Application in a brief endorsement, stating that further detailed reasons would follow. The panel unanimously allowed the application.
75. The three judges on the Divisional Court panel came to their decision to allow the application independently. At no time did Justice Matlow try to influence the decision of the other two panel members.
76. On 19 October 2005, the City of Toronto brought a motion returnable on 25 October 2005 requesting that Justice Matlow recuse himself from the panel; that the panel which heard the SOS Application be struck and the matter be remitted for a new hearing before a new panel; and an order that the decision of the panel dated 11

October 2005 is null and void.

77. On 20 October 2005, The Globe and Mail published a column by John Barber. Attached as **Appendix 51** is a copy of Mr. Barber's column published on 20 October 2005. Attached as **Appendix 52** is a copy of emails in the possession of Mr. Barber from Ted Matlow dated 12 and 19 August 2002, 6 December 2003 and 14 February 2004.
78. On 25 and 26 October 2005, the Divisional Court panel consisting of Justice Matlow, Justice Greer and Justice MacDonald heard the recusal motion. On 3 November 2005, the panel released its reasons on the recusal motion. Justice Matlow dismissed the motion. In separate reasons, Justices Greer and MacDonald stood down from the panel.
79. Prior to the hearing of the SOS Application, Justice Matlow did not disclose details of his involvement in the Thelma Parking Lot matter to the other members of the Divisional Court panel.
80. Prior to the hearing of the SOS Application, Justice Matlow did not disclose any information concerning his dealings with Mr. Barber to the other members of the Divisional Court panel or the parties to the SOS Application.
81. Prior to the hearing of the SOS Application, Justice Matlow did not take any steps to ensure that he was not assigned to sit on the panel that would hear the SOS Application.