

REPORT TO THE CANADIAN JUDICIAL COUNCIL
OF THE INQUIRY COMMITTEE APPOINTED
UNDER SUBSECTION 63(3) OF THE *JUDGES ACT*
TO CONDUCT AN INVESTIGATION INTO THE CONDUCT OF
MR JUSTICE THEODORE MATLOW, A JUSTICE
OF THE ONTARIO SUPERIOR COURT OF JUSTICE

EXECUTIVE SUMMARY

The *Judges Act*, R.S.C., c.J-1 confers jurisdiction on the Canadian Judicial Council (the “CJC”) to investigate complaints made against federally appointed judges of the superior courts of Canada. The CJC has established procedures and by-laws respecting the carrying out of an investigation by an inquiry committee.

The CJC received a complaint from the City Solicitor of the City of Toronto respecting certain conduct of the Honourable Theodore Matlow, a justice of the Ontario Superior Court of Justice. An Inquiry Committee consisting of the Honourable Clyde K. Wells, the Honourable Francois Rolland, the Honourable Ronald S. Veale, Douglas M. Hurmell and Maria Lynn Freeland was constituted to investigate the complaint.

The complaint concerned Justice Matlow’s conduct in connection with his participation with others in opposing a proposed development (the “Thelma Project”) in their neighbourhood of the City of Toronto and the process of municipal approval of that development. The complaint made allegations respecting the conduct of Justice Matlow in: organizing and leading the group opposing the Thelma Project; meeting and corresponding with politicians; using his title “Justice” in connection with the activities; promoting news media involvement in the controversy; using intemperate language and inappropriate comment; sitting on an application concerning street use in which the City was a party (the “SOS Application”) and which involved a local group opposing a municipal development; the process of municipal approval of that development and failure to disclose to counsel and his judicial colleagues the extent of his previous involvement with the Thelma Project controversy. The complaint also made allegations concerning Justice Matlow’s promotion of renewed media interest into his allegations of municipal misconduct respecting Thelma Project related actions more than a year after the original controversy came to an end, when he knew he would be presiding over the SOS Application.

The Inquiry Committee resolved challenges to its jurisdiction in respect of certain issues and proceeded to hear evidence. A number of witnesses, including Justice Matlow, testified. A substantial portion of the evidence was put forward through an agreed statement of facts with attached documentary exhibits. Written and oral submissions were made by counsel.

The Inquiry Committee concludes that, by reason of Justice Matlow's conduct on several occasions during the years 2002, 2003 and 2004 in the process of leading opposition to the Thelma Project and municipal procedures relating to it, Justice Matlow has placed himself in a position incompatible with the due execution of the office of judge and has been guilty of misconduct. The Inquiry Committee also concludes that, by reason of his failure to take steps to ensure that he did not sit on any case involving the City of Toronto subsequent to the commencement of his leadership of the community opposition to the Thelma Project, Justice Matlow has failed in the due execution of the office of judge. With respect to his conduct subsequent to the termination of the community opposition to the Thelma Project, the Inquiry Committee concludes that, by renewing in October 2005 his allegations of municipal misconduct by staff employed by the City and at the same time knowingly deciding to participate as a judge in the SOS Application, Justice Matlow has failed in the due execution of the office of judge, has placed himself in a position incompatible with the due execution of the office of judge and has been guilty of misconduct.

The Inquiry Committee notes Justice Matlow's expressions of regret but concludes that those expressions of regret, because of their limited nature, do not cause the Inquiry Committee to vary its characterization of Justice Matlow's conduct or its conclusions regarding how that conduct has engaged paragraphs (b) through (d) of subsection 65(2) of the Judges Act.

On consideration of:

- the breadth and extent of Justice Matlow's failure to conform to generally accepted ethical standards for judges, in the course of the conduct investigated;
- the several conclusions that Justice Matlow has failed in the due execution of the office of judge, has been guilty of misconduct and has placed himself in a position incompatible with the due execution of the office of judge;
- Justice Matlow's currently expressed views as to the propriety of his conduct at the time, and his current views as to conduct appropriate for a judge who becomes concerned about what he or she perceives as misconduct in public office, indicate little or no prospect that Justice Matlow would conduct himself differently in the future; and
- Justice Matlow's limited expressions of regret,

the Inquiry Committee concludes that Justice Matlow's conduct is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, have been undermined, rendering the judge incapable of performing the duties of his judicial office. Accordingly, the Inquiry Committee expresses the view that a recommendation for removal of Justice Matlow from office is warranted.