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Council issues apology to sued bloggers

By Brock Weir

For three local families, a nearly 32 month battle began innocently enough on Thanksgiving weekend 2010, when they were served with a $6 million defamation lawsuit.

The plaintiff was ?Phyllis Morris in her capacity as Mayor of the Town of Aurora?, and named among the numerous defendants were residents and bloggers Bill Hogg, Richard Johnson, and Elizabeth Bishhenden, who were alleged to have information that could identify anonymous online commentators who Ms. Morris alleged were defamatory.

After thousands upon thousands of dollars were spent by each side in the fight, Aurora Council took a step in trying to turn that page last week, voting to issue a formal apology to those who were identified in the lawsuit.

Following his motion to bring that into the fore, Councillor Michael Thompson said it is Council's role to ?represent the public, to maintain the integrity and ensure the accountability of operations of the municipality.? This accountability, he said, extends to standing up to the consequences of decisions made by the municipality, whether or not they were made during their term of office.

?It is about accountability, responsibility and being an agent for change,? he said, speaking about the lawsuit which Master Thomas Hawkins deemed to be a SLAPP lawsuit, or Strategic Litigation Against Public Participation. ?It is my belief, a belief shared by many residents that the Town should not have gotten involved in this lawsuit. SLAPPs are seen as a serious threat to public engagement and debate and are often launched with the intent to silence, intimidate, or deter people from participating in discussions on public interest and challenge the very freedoms we hold dear: freedom of expression, freedom of speech, and the freedom to actively participate in the democratic process.?

Various levels of government, the Attorney General, the Ontario Bar Association, among others, share this view, he said of the ?chilling effect? such lawsuits can have on the public discourse and democratic processes. He said the intention of his motion was to ask the ?difficult questions? and be that agent for change so no other individuals and municipalities will ever again experience what unfolded following the pivotal September 2010 Council meeting.

His motion called on Mayor Geoffrey Dawe to issue a formal apology on behalf of Council to the people named in the action, as well as the community at large ?stating our commitment to freedom of speech and our regret the Town of Aurora was ever associated with the SLAPP motion.?
Proceeding would not put a town, such as Aurora, in the face of any increased liability for a lawsuit and was simply an ?opportunity to do what's right?, he added, following advice from the Town Solicitor.

?Those named and their families have had to endure much more than any of us can imagine,? said Councillor Thompson. ?Even though the ordeal is over, there are still some who perceive that they did something wrong, even though they have never been shown to make defamatory statements. The statement from the Town will now change this opinion to restore some of their lost reputation.

?There will be some who will say we are not the ones who should apologise because we did not create it, but this Council is now the ones who are responsible and accountable to this Town. Whether we create or inherit an issue, it is our role to act upon, if needed. In this case, I believe in the simple principle when you are wrong, do the right thing, admit it, and make amends where possible.?

The amendment to the main motion on the table to issue the apology was passed 7 ? 1 with Councillor Chris Ballard voting against it. Councillor Wendy Gaertner was not in attendance. The overall motion, which also called upon the Town to petition the Province to introduce tougher anti-SLAPP measures passed 6 ? 2 with Councillors Ballard and John Gallo voting in the negative.

Councillor Ballard, disputed whether the lawsuit was ultimately a SLAPP lawsuit as previous rulings on the matter were silent on that issue.

?Noble sentiments, obviously, talking about freedom of speech and regret, but I have one major concern with the amendment and that is, as I do with the motion itself, the continued reference to SLAPP action,? he said. ?I have said it before [that] not all the facts are on the table. I look forward to one day all the facts being on the table. I am not convinced it was a SLAPP action.?

This comment prompted a point of order from Councillor Michael Thompson who said Councillor Ballard ?does not have the legal background to make that statement.? He said it was ?unequivocally? proven to be a SLAPP in Master Hawkins' ruling and elsewhere.

?There is no ambiguity on their part and I do not appreciate him stirring the pot by throwing in some what ifs and some ambiguity when there isn't any,? said Councillor Thompson.

?There is plenty of ambiguity and everybody knows it,? replied Councillor Ballard, before both insinuated the other was telling a little bit less than the truth and Councillor Ballard questioning the merits of relying on the ruling of a Master rather than a judge.

?You can go back and forth on the he said, she said, but Master Hawkins explicitly talks about an expressed ruling, direct unambiguous, distinct language which does not require thought, guessing, inference or implication,? said Councillor Thompson.

While requests to Ms. Morris for comment were unsuccessful, Mr. Hogg said he was pleased six Councillors ?showed the character? to apologise for a lawsuit ?designed to silence? them from expressing their right to freedom of speech.

?At the time, we decided to stand up for what was right ? we hoped the courts would exonerate us and render a precedent setting decision that it was a SLAPP lawsuit ? now that we have been fully vindicated,? he said. ?I am glad to see some politicians have the courage to also stand up for what is right, especially when they have nothing to gain and it is easier to do nothing.

?Winning this decision was a costly experience, so I hope it causes future politicians to pause when considering using the courts to bully citizens into silence.?