

Morris, Councillors testify as Buck trial winds towards a close

By Brock Weir

Former Aurora mayor Phyllis Morris and members of the last term of Council continue their testimony this week as Councillor Buck's trial draws to a close.

Lawyer John Mascarin was the first witness to take the stand for the defence. He told the court Wednesday he was asked initially to review two specific entries on Councillor Buck's blog and advise if he had any concerns "with respect to a possible contravention" of Aurora's Code of Conduct and procedural bylaws.

Although he said he was given direction to look at the two blog posts in question, he thought it was "appropriate" to look at further blog posts on the website as well as comments made elsewhere to provide some "context."

"I provided my complete opinion and I was asked a number of questions with respect to it, and that would have included a summary of my findings, my rationale, and then my conclusions," said Mascarin. "I had numerous concerns with the blog postings and possibly having contravened various provisions of the Code of conduct."

Directed to blog posts by defence lawyer David Boghosian, Mascarin said there was "certainly derogatory language" in the passages.

Upon review of similar posts, he said he made recommendations on how to rectify the situation before proceeding further. A letter was produced to Morris, Evelina MacEachern, and Bob McRoberts before being sent to Buck asking her to apologise for her claims, but McRoberts suggested it should be toned down to "make it somewhat more palatable" for Buck.

"There is a concern with the enforcement of the Code of Conduct that there could be damage to reputation," said Mascarin. "Council had been very clear in instructing me it wanted to maintain the high road. Therefore, my letter as drafted to Ms. Buck was given privately and delivered by Councillor McRoberts."

In all, the Court heard Mascarin charged \$47,125 in all to look into this matter as he was "very hands on" with the file combing through blogs and videos of Council meetings.

These costs, however, were at issue during cross examination by Kevin MacDonald, lawyer for Buck. MacDonald questioned the veracity of Mascarin's cost logs in while many issues were itemized, things were vaguer on which blogs were reviewed (and when) in relation to when he gave his opinion.

"It sounds to me like you were biased because you only looked at one side of things," said MacDonald.

Countered Mr. Mascarin: "I strove to provide the correct information to my client."

While MacDonald said the correct opinion "was the one [Councillors] wanted", Mascarin maintained it was given objectively. Putting every item reviewed as a docket entry would take up too much time, said Mascarin.

Earlier, MacDonald argued it was "risky" for Council to publish a legal opinion from an outside lawyer before a complaint had been thoroughly reviewed by an integrity commissioner. This was a view Mascarin disputed. He also disputed claims that Morris was more concerned about blog posts criticising herself.

Following Mascarin's testimony, it was time for members of the 2006 - 2010 term of Council to take the stand. As she was one of three Council members tasked with reviewing the complaint against Buck in addition to Morris and MacRoberts, MacEachern was up first.

MacEachern characterised her time on Council as two halves of a whole. When everyone started, she said, they were 'excited and working together as a team' although no Council ever agrees entirely all the time. Eventually, she said, Buck became the 'lone vote' against the majority.

Increasingly, she added, Buck's blog posts became a concern after they became less about 'commentary around issues' to 'personal attacks on members of the community, members of staff, and members of Council.'

'Council needed to do something,' she said, paraphrasing a conversation and concerns shared with Neil Garbe. 'If we, as a Council, didn't deal with this matter, we could be losing one or more senior staff persons. The comments, as I saw them, were very serious and it was a matter I thought could potentially have some serious consequences to the Town and the Community. I felt we needed to show staff that Council didn't support what was being done.'

Under cross-examination, MacEachern said she couldn't agree with statements made by MacDonald that Buck was a politician with 'an outstanding record' and 'reputation for honesty and integrity.' While she said she often agreed with some of her positions, she did not align with Buck's 'means of delivery.'

'I would agree that what happened at the meeting was a very uncomfortable situation and I wish it didn't happen, but at the same time I think Mayor Morris did a great job in cutting off the dialogue in a way that addressed everyone's interests,' said MacEachern on MacDonald's characterization of the May meeting as 'outrageous.'

As for the statement that was published in the two local newspapers, MacEachern said she didn't actually give Buck's reputation thought before it went to press as her overriding concern was 'restoring the integrity and show staff we supported them.'

Similar views were shared by Councillor Wendy Gaertner when she took the stand. Having been at the Council table with Buck for over 10 years she said sometimes they agreed, sometimes they disagreed, sometimes things were said that 'weren't too nice' about her but at the end of the day, 'it's politics.'

While she said she shared the concerns that the reputations of municipal staff had been put at risk through the blogs, they retained Mascarini to make sure they did everything properly. With his 'informal' letter in hand, Gaertner said she was 'frustrated' it didn't solve the matter.

'The frustrating thing was had [Councillor Buck retracted or apologised] it would have been very simple and none of us would be here today and none of our time would have been wasted,' she said, noting Council had a 'moral' and 'obligation under the law' to 'make things right.'

Under cross examination, MacDonald took issue with her characterisation that this was a 'waste of time', to which she said her words were being 'twisted.'

'We have been at this for almost four and a half years,' she said. 'A lot of my personal time has been wasted. It hasn't been pleasant and sometimes it has made me feel sick to read what has been written. I think there are a lot of people in this court who feel the same way.'

MacDonald contended the true time waster was not taking down and retracting the Councillors' statement against Buck when they were served with libel notice in 2009.

As The Auroran went to press on Tuesday, Morris was beginning her second day in the witness stand. On Monday, she contested claims last week made by Aurora resident Peter Storms, a volunteer with the last mayoral campaign of Tim Jones, in which he was defeated by Ms. Morris, that she had 'thrown [Councillor Buck] under the bus' at the May meeting.

Up until that point in 2009, Ms. Morris testified her biggest concerns were comments against Town Staff which had been escalating.

"There had been some concerns, but staff had been trying to deal with them on a number of occasions," she said. "This wasn't the first time, but it accelerated at this point. The comments were getting very serious. There were serious allegations of wrongdoing, breach of trust, conspiracy. They are awful things."

Boghosian then took her back to claims made by McRoberts earlier in the trial that he believed there might have been a window for him to persuade Councillor Buck to apologise. Had he succeeded, she said, things would have been different.

"I would have encouraged him to help Mrs. Buck make that apology; I would have held the letter, that's for sure. I could have asked for more time. I would have done everything in my power to get this resolved. It would have prevented us having to take that final step.

"I voted [to publish the statement] for the simple reason I felt it was important we protect our staff and [say] we do trust them and value them."

Under cross-examination, MacDonald characterised Morris as "irresponsible" for not stepping in during the May 2009 meeting and nipping some of these concerns in the bud. She said she disagreed with his statements that the meeting was "offensive" and against the "principles of decency" while he outlined St. Kitts' relationship with Morris.

She contended she was merely trying to give the proper opportunity for people to address their concerns while "Trying to diffuse the situation."

While MacDonald said she appeared "aggressive" in videos presented to the court, she disagreed stating she was "trying to control a difficult situation."

"I was frustrated with what was happening, but I was not aggressive."

Going into this week's cross-examination, at issue was Mascarin's retention of Toronto PR Firm StrategyCorp in 2009 which he described under cross-examination.