

Buck's election results refute damages claim, says lawyer

By Brock Weir

After more than two weeks dedicated to Councillor Evelyn Buck's side of things in her ongoing trial against former mayor Phyllis Morris, Councillors Wendy Gaertner and John Gallo, and former Councillors Stephen Granger, Evelina MacEachern, and Al Wilson, week three concluded with the defence making their case.

Lawyer David Boghosian began laying the groundwork Wednesday, rejecting Councillor Buck's claim a 2009 statement by Ms. Morris and the named councillors published in two local papers damaged her reputation.

The statement stemmed from a raucous Council meeting in May 2009 in which then local volunteer Sher St. Kitts made allegations of harassment against Councillor Buck during an open forum session. Subsequent blog postings from Councillor Buck, were deemed to be critical to municipal staff and the statement, the defence argues, was intended to support those scrutinized in the blog.

Councillor Buck claims damages of \$1 million for misfeasance in public office and abuse of power, conspiracy, intentional infliction of mental suffering, injurious falsehood, breach of confidence and breach of privacy with a further \$1 million for infringement or breach [of her] Charter Rights of Freedoms, a further \$1 million in punitive damages, and \$250,000 in aggravated damages.

Often in a case like this when their reputation is alleged to have been damaged [a person] comes to court saying they have lost their job, they have been shunned by their community [and] if they are a politician, that they have been kicked out of public office, said Mr. Boghosian. This is a very different case in that Ms. Buck hasn't suffered any damages or losses.

Most significantly, not only wasn't she kicked out of public office, she actually got more votes after the events at issue than she had in the previous election.

Mr. Boghosian argued this is a case about a Councillor wanting to preserve her legacy, her own sense of a record in Aurora's public life, but suggested there was even more to the lawsuit than that.

Going back to the events that started it all, he claimed that lashing out on her blog at Ms. St. Kitts when she came to the podium, Ms. Morris, or any of the councillors in question would have been fair game but Councillor Buck took things a step too far when she focused her anger and her venting at defenceless staff.

But the real meat of the case is the blogs that stemmed from this, he continued, alleging Councillor Buck accused town staff of, among other things, conspiracy and breach of trust. All serious allegations, he said, against staff who are not in a position to respond in kind in a public forum.

I am going to ask you to conclude at the end of the day that my clients' decisions and actions were based on a genuine desire to protect and support staff and to ensure [these] kinds of attacks on staff did not happen in the future, Mr. Boghosian told the jury of four men and two women.

My clients were concerned about the blog posts and the staff that were named were concerned as well. Rather than taking immediate action on their own, they did the prudent thing. They did the thing Ms. Buck herself has blogged was the prudent thing to do and that was consult legal advice to make sure you are on firm ground for launching a Code of Conduct complaint.

Mr. Boghosian said the Councillors hired a specialist in municipal law in John Mascarin, who was his first witness as the trial progressed last week, to see if Ms. Buck contravened the Code of Conduct. He found against Councillor Buck and recommended an informal complaint.

Arguing that this could have been avoided had Councillor Buck simply apologised or issued a retraction, she refused to do so and then tried to 'deflect criticism' by claiming her free speech was under attack and she was being 'muzzled' as a critic of the administration.

'Each and every action that was taken was based on the desire to protect and support staff,' said Mr. Boghosian in his defence. 'There was no effort to stop her from criticising Councillors or to complain about policies of the Town.

'We say our clients publically published that statement as a matter of public interest based on legal advice. We say that my clients acted in good faith for the sole purpose of protecting and supporting Town Staff and to stop further attacks on staff from happening in the future and not in any way to injure or muzzle Ms. Buck as she has been trying to claim to deflect criticism from herself.

The claims have not been proven in court. The case continues this week.

Lawyers on both sides told the court they hoped to wrap the case by this Friday.