

Morris, Town to continue fight over lawsuit costs this week

By Brock Weir

Representatives for the Town of Aurora and former mayor Phyllis Morris are due in a Kitchener courtroom this week to continue the fight over whether the municipality is responsible for costs spent by Ms. Morris in her aborted 2010 defamation lawsuit against three local bloggers.

Ms. Morris, who launched a lawsuit against the Town last year for court costs coming out of her own pocket after the Town discontinued its involvement in the lawsuit in December 2010, is seeking to move the case to small claims court in Newmarket after slashing the costs sought by 90 per cent from \$250,000 to \$25,000.

According to the amended Statement of Claim, Ms. Morris was actually out \$27,821.46 after continuing the lawsuit without municipal involvement, but waives any claim above \$25,000 to bring this to Small Claims Court.

“At the time this Action was commenced, the total legal fees to be indemnified had not yet been determined and could have totalled the sum she initially claimed,” said Steven O’Melia, lawyer for Ms. Morris, in the recent motion. “The Plaintiff has since learned that her exposure is significantly less, just over the monetary jurisdiction of the Small Claims Court. In order to expedite the matter and to minimize costs, the Plaintiff has now decided to abandon her claims beyond the jurisdiction of the Small Claims Court and limit her claim to \$25,000 as a contribution to her damages.”

Prior claims outlined in the first Statement of Claim are carried over with minor amendments into this week’s hearing.

“Prior to the initiation of the Town Action, Ms. Morris was advised by the Town CAO [Neil Garbe], the Town Solicitor and the law firm that had been retained by the Town that it was necessary for the Town Action to be brought in the names of individuals,” reads Ms. Morris’ statement claim. “Ms. Morris was advised that the Town Solicitor, the Town’s Integrity Commissioner and she would be those named individuals.

“Ms. Morris consented to having her name listed as a plaintiff on the Notice of Action and Statement of Claim issued by the Town in support of the Town Action because she was advised that this was the only way that the identities of the anonymous bloggers could be determined. At some point prior to the issuance of the Notice of Action that commenced the Town Action, the Town Solicitor and the Town’s integrity Commissioner declined to have their names listed on the pleading, without notice to Ms. Morris. Ms. Morris states that at the time she provided her consent to have her name listed as a plaintiff in the Town Action, she was not aware that she would be the only named plaintiff.”

While Mr. O’Melia goes on to claim Ms. Morris was advised by then-Town Solicitor Christopher Cooper “unconditionally and in writing” that she would be “indemnified for any legal costs that might be incurred in the pursuit of the Town action,” this is something contested by lawyers on behalf of the Town of Aurora.

The Town of Aurora claims they have not been provided enough information from Ms. Morris to adequately respond to her statement of claim. According to a Notice of Motion made public late last week from lawyer Michael T. Lax, on behalf of the Town of Aurora, Ms. Morris failed to sign two proposed indemnification agreements presented to her in November of 2010 as well as in January, 2011.

“It is unclear whether Phyllis Morris is solely relying upon Christopher Cooper’s comment in his [October 2010 email that] he had confirmed with Mr. Garbe that, in the absence of an indemnification policy/bylaw and given the current Council hiatus, the Town would provide her with the undertaking referenced” or whether she is relying upon any other oral or written communications or representations,” reads the Notice of Motion.

“It is further unclear with respect to Paragraph 10 of the Statement of Claim if there were separate ‘representations’ by Neil Garbe or

Christopher Cooper, aside from the alleged 'indemnity provided by the Town,' that Phyllis Morris relied upon in 'allowing her name to be used in order to accomplish the Town's objectives in the Town action.'

A significant portion of the Town's arguments, expected to be put forward this week, focuses on just who was driving the lawsuit against the local bloggers. In the initial lawsuit against Mr. Hogg and Mr. Johnson, it was argued by Ken Clark, the then-lawyer for Ms. Morris, that it was a lawsuit brought about by Ms. Morris in the interests of protecting her own reputation as Mayor of Aurora.

In a subsequent lawsuit brought unsuccessfully against Ms. Morris by Aurora resident George Hervey who alleged Ms. Morris breached the Municipal Conflict of Interest Act by not declaring a pecuniary interest before participating in the closed session meeting which ultimately led to the lawsuit, Mr. O'Melia successfully argued before the courts that the lawsuit was driven by the Town of Aurora in Ms. Morris' name.

This latest Notice of Motion introduces a series of emails as exhibits which, they say, muddies the waters on that position.

'In order to provide a complete and proper answer to this claim, the Town requires [complete emails from Ms. Morris' representatives] to determine the extent that Phyllis Morris was controlling the litigation, whether there were opportunities available to Phyllis Morris, after she knew or ought to have known that the Town would be withdrawing funding, to resolve the matter and mitigate her damages,' reads the document.'

After the newly elected Council of 2010 discontinued municipal involvement in the lawsuit, the Town was later advised it was liable for approximately \$55,000 worth of legal costs that had been wracked up to December 2010.