

Talks leading up to lawsuit made public ahead of court date

By Brock Weir

According to a revised Statement of Claim by former Aurora mayor Phyllis Morris, the Town of Aurora "had complete carriage" over a lawsuit brought forward against three local bloggers in the fall of 2010 over what she claimed were "defamatory comments" made on the Aurora Citizen Blog.

From the perspective of the Town's lawyers, however, more documentation needs to be put forward by Ms. Morris' side "to determine the extent that Phyllis Morris was controlling the litigation, whether there were opportunities available to [Ms. Morris] after she knew or ought to have known that the Town would be withdrawing funding, to resolve the matter and mitigate the damages," according to their Notice of Motion.

In a demand for particulars from the Town of Aurora to Ms. Morris put before the courts last week, numerous emails between Ms. Morris and current and former Town Staff outline the behind-the-scenes discussions that took place in the days surrounding the September 2010 closed session Council meeting which ultimately led to the initial lawsuit in question.

In emails filed by the Town of Aurora, Ms. Morris is shown discussing the blog posts in question with lawyer Howard Winkler.

"These are shockingly defamatory comments about me contained in the blog," she wrote. "They are extremely over the top. I am astounded that the Aurora Citizen allowed it to be posted. I wish to ask Council to have a lawyer write to them to request that it immediately take this blog down. Furthermore, I wish to have an application made to the court to get an order to find out who is writing that defamatory material in order to sue them or at least write to them threatening to sue unless they cease and desist."

The email quoted here was appended to a further email from Ms. Morris to Aurora CAO Neil Garbe, which states, in regards to having the blog posts on that evening's closed session agenda, "Please note, I am waiting to hear back from my lawyer. I will then advise you and the Town how I wish to proceed."

A further email the following day from Christopher Cooper, then Solicitor for the Town of Aurora, states Ms. Morris consulted with Mr. Winkler on a "preliminary basis" before asking for Mr. Winkler's opinion on whether the blog posts were "libelous" and appropriate direction if that was indeed the case.

By the end of that week, further emails between several staff members passing on a message from Ms. Morris questioning Mr. Cooper on whether Mr. Winkler had been retained, as well as asking if she should be "taking her own steps, retaining her own lawyer," and so forth, indicating an emergency Council meeting would then be called if she did not receive an update.

Mr. Winkler's opinion was received dated that same day advising that, in his opinion, the words were defamatory of Ms. Morris and David Tsubouchi, Aurora's then-integrity commissioner, and "potentially" Mr. Cooper.

"While it is our view that any application or proceeding must be brought by individuals affected, it is our view that all of the comments made by the blogger are against the individuals in their capacity as elected officials or employees of the Town of Aurora," said Mr. Winkler in his letter "In our view, none of the comments made relate to the actions of the Mayor, the Town Solicitor, or the Integrity Commissioner in their personal capacities.

"Any damages ultimately awarded by the court would be made payable to the individuals defamed, rather than to the Town. We are aware of precedents where public bodies have funded the litigation of elected officials and employees where defamatory statements have been made about them in their official capacities. In these circumstances, the public body usually enters into an agreement with the elected official or employee for the reimbursement of any costs incurred out of any award or damages or costs ordered payable by the court."

Such an agreement is confirmed in a subsequent email to Ms. Morris from Mr. Cooper.

A further email from Ms. Morris to Mr. Cooper and copied to Mr. Garbe questions whether the Town's lawyers have advised those for the bloggers ?that it is not the Government that is bringing the action ? it is Phyllis Morris, Mayor, Town of Aurora [and] as Mayor ? I intend to pursue all options against all parties.?

Further correspondence between Ken Clark, by then lawyer for Ms. Morris, and Jordan Goldblatt, lawyer for Bill Hogg and Richard Johnson, two of the three residents named in the original suit, quotes Mr. Clark as saying. ?We further note that you indicated in your letter [of October 14, 2010] that you believed that in some way that this action was being brought by a ?government.' We note that this action is being brought by Mayor Morris with respect to defamatory comments made by anonymous individuals with respect to her profession or calling, namely as Mayor of the Town of Aurora. This action is not being brought by a ?government' nor by the Town of Aurora.?

As the matter is still before the courts, Steven O'Melia, lawyer for Ms. Morris in this matter, declined to comment further other than to point to exhibits in his own affidavit which will be part of this week's proceedings, on ?who was driving the case.?

The first is correspondence from September 17 from Mr. Winkler to Mr. Cooper confirming ?The Town of Aurora has directed you to retain? their law firm and that, in their opinion, the statements made on the blog were made against Ms. Morris, Mr. Cooper, and Mr. Tsubouchi in their capacities as Town officials.

Further documentation includes cited include an email from Mr. Cooper to Ms. Morris confirming the undertaking, attached to which was a letter again from Mr. Winkler seeking Ms. Morris' signature advising her to ?seek an undertaking from the Town? for reimbursement for any liability stemming from the case, signed and dated by Ms. Morris on October 6, 2010, and an email from Aurora CAO Neil Garbe instructing Mr. Winkler ?to take any steps necessary to bring a motion to obtain the identity of the blogger who has made comments at the centre of this matter.?

Finally, he cites an affidavit from Mr. Cooper, affirmed on October 19, 2010 outlining his knowledge of the case.

Claims have not been proven in court.