# Buck lawsuit dismissed by judge

**By Brock Weir**

An Ontario Superior Court judge has dismissed the defamation lawsuit brought by former councillor Evelyn Buck against members of the 2006 ? 2010 Council term after more than five years in the legal system.

Justice Edwards rendered his decision late last Tuesday.

Ms. Buck, a former mayor of Aurora, was a sitting Councillor when she launched her lawsuit against then-mayor Phyllis Morris, then-Councillors John Gallo, Stephen Granger, Evelina MacEachern, and Al Wilson, and incumbent Councillor Wendy Gaertner.

She cited a July 21, 2009 statement published in local media on behalf of Council coming out against certain posts made on Councillor Buck's blog ?that?were highly critical and very disparaging of Town Staff? and outlined Council's course of action to retain ?independent legal counsel? to review the postings with an eye of advising them on a way forward.

The statement went on to note their legal counsel recommended they request Councillor Buck to apologise for her statements, retract them, and stick to Council's Code of Conduct, which she had not signed.

In her lawsuit, Councillor Buck contended the published statement, which was subsequently read aloud by Councillor Gaertner at a televised Council meeting, was defamatory and conveyed she was ?incompetent to hold public office, had abused and attacked unidentified senior Town staff, had interfered with the Town's ability to serve the residents of Aurora, and had acted unlawfully, had breached numerous provisions of the Code, had acted unethically, and had wrongly refused to apologize.?

?In summary, it is argued that the statements published by Council defendants discredited the plaintiff and lowered her in the minds of right-thinking members of society,? said Justice Edwards in his 37 page decision.
But, it was not an argument he agreed with, dismissing the case.

?There can be no doubt that politics, whether it be federal, provincial or municipal, is not for the faint of heart,? he concluded. ?Some might say a thick skin is a prerequisite for any politician. A thick skin, however, does not mean a politician is fair game for those intent on damaging their reputation with false, malicious and defamatory statements. Freedom of speech, whether in political forum or not, does not extend to statements that are untrue and have as their sole purpose an intent to damage someone else's reputation.

?While freedom of speech is a cherished right in a free and democratic society, there are reasonable limitations. The Town of

Aurora, like many towns and cities in Ontario, has a Code of Conduct that purports to codify parameters of reasonable conduct for elected officials. One of the provisions in the Town Code is a requirement that elected officials refrain from publically criticizing Town Staff. The reason for this limitation is obvious.

Employees of the Town of Aurora are like federal and provincial civil servants. They have no ability to respond to public criticisms made of them in a public forum.

?The plaintiff (Buck) chose to post what I consider criticism of senior Town staff in a public fashion in her blog entries and in her commentary to [The Aurora Citizen]. Members of Town Council have every right to be concerned about such conduct and how it would ultimately impact on those who the plaintiff has criticized in a public fashion. It was not unreasonable on the part of the Council defendants, acting in their capacity as elected Town officials, to consider what course of conduct was appropriate, and in doing so, to retain the services of outside legal counsel to provide guidance in that regard.?

Justice Edwards said he viewed Ms. Buck as ?clearly? having a perception she has ?an unfettered right to freedom of expression and freedom of speech?, but that is limited by the Code of Conduct. The defendants were right, he added, in perceiving they ?had a duty and responsibility to set the record straight.?

?In my opinion, the defendants' response was a measured response to a measured audience, and in no way exceeds the bounds of qualified privilege attached to the occasion,? the Judge concluded.

In an email, David Boghosian, lawyer for the defendants, said they were ?relieved? with the decision.

?My clients are relieved that this difficult and emotionally trying time in their lives is now behind them and that Ms. Buck's lawsuit has been determined to be thoroughly unmeritorious, as they were always confident it would be,? he said.

Responding to the decision, Ms. Buck told The Auroran she would not be in a position to comment further until she had an opportunity to sit down with her lawyer ?to discuss the meaning of the various reasons that were given.?

?I can't make a comment until I understand the ramifications of this decision,? she said, noting it was unfortunate the defendants' legal fees were covered by the Town's insurance policy. ?I regret the Town's resources have been expended to the horrendous extent they were and I don't understand why that was allowed to happen, either. As a taxpayer in the Town of Aurora, I had the same reaction to that as everyone else.?

In dismissing the action, Justice Edwards has tasked both parties with agreeing on the costs of the action. If they do not do so, written submissions must be made to the court within 30 days from September 15.