

## Buck trial resumes Thursday amid uncertainty

**By Brock Weir**

A judge is weighing his options this week on how Councillor Evelyn Buck's lawsuit against former mayor Phyllis Morris, two sitting Councillors, and three former members of Council will proceed.

As The Auroran went to press, Justice Edwards adjourned the case until Thursday morning after hearing arguments on why he should strike the jury and make a decision himself.

That particular motion was made Monday by David Boghosian, the lawyer for the defence, arguing that Kevin MacDonald, lawyer for Councillor Buck made an "improper" submission to jurors in the first part of his closing on Friday afternoon.

Justice Edwards is expected to make his decision when the trial resumes as scheduled on Thursday morning.

After Mr. MacDonald finished his closing on Monday morning, Justice Edwards adjourned for the day so Mr. MacDonald could prepare his submissions on why the trial should proceed as scheduled. Justice Edwards noted options available to him would be to strike the jury, make a strongly worded statement to the jury, or declare a mistrial.

Heading into this week, it was expected the trial would be wrapped up quickly, with the Judge making his final statement to jurors on Tuesday morning before the four men and two women began their deliberations. Monday's motion put a wrench into those plans.

At issue are several posts made by Councillor Buck on her blog in which the defendants argue unduly criticized town staff. It was these posts, and rectifying any issues resulting from them, that were the centrepiece of the defence's closing on Friday.

In his arguments, Mr. Boghosian said his clients hired lawyer John Mascarin to determine whether Councillor Buck's blogs violated the Code of Conduct. Affirming they did, a letter of complaint was sent to Councillor Buck asking her to retract and apologise for her words. She refused and, he argued, "tried to turn the tables" by disclosing the complaint on her blog and in a letter to The Auroran.

That letter erroneously said Mr. Mascarin's report made no conclusions and claimed Ms. Morris acted improperly in her capacity as mayor in the process, he said.

"They were lies designed to deflect the issue from Council's genuine concerns about improper conduct towards staff, to make it appear Ms. Buck was the victim," said Mr. Boghosian. "Now, Council was faced not only with serious insults to staff, but a public attack on the integrity and actions of Council.

"My clients are not in some sort of alliance. They just happen to be of the same view regarding Ms. Buck's statements and what should be done about it."

In his closing, Mr. Boghosian challenged Councillor Buck's image as an "85-year-old great-grandmother", an image which he claims conjures up one of "sweetness and innocence", but that is not the case, he argued.

"The plaintiff is a seasoned politician with 30-plus years in municipal politics," he said. "She is a survivor. She has learned how to survive politically and that does not always mean being nice. We know that she can at time be, to the point of ruthlessness, cutting in her criticism of people, including Councillors, staff and members of the public."

Evidence indicated that Councillor Buck is often the "lone wolf in looking after her own political interests, not being a team player, and going for her own political purposes", consequences be damned "not unlike Toronto Mayor Rob Ford, he alluded.

?She came to the courts and asked you to punish my clients for daring to criticize her in that Council statement,? he said. ?If someone is going to publically malign and insult people, don't you think they should have a thick enough skin to accept criticism, especially as here when it was warranted? The plaintiff doesn't appear to get that. Ms. Buck does not accept responsibility for her actions.

?She has said she and nobody else, except for the electorate at election time, should be the sole judge of her actions. Doesn't that sound familiar to someone in the media right now who feels the same way? That is why she felt at liberty to take so many unfair shortcuts at staff?because, in her own mind, she is a law unto herself.?

Jurors, he said, need to decide whether there was any damage to Councillor Buck's reputation, an idea he rejected as she went up in the polls in the election immediately following the statement in question, as well as if there was any malicious intent in his client's actions. The latter is not the case as their intentions were to protect Town staff.

That was an argument that didn't hold water with Councillor Buck's lawyer, Kevin MacDonald, who painted a very different picture for the jury of what transpired.

?If their concern is staff, they used a machine gun to kill an ant,? said Mr. MacDonald on the Council's decision to publish their statement in two local newspapers, as well as the Town's website. ?They so far exceeded the occasion that you have to question the motive of malice. You have to question what their larger purpose and intent was. It had nothing to do with Town Staff.?

To that end, he questioned just where Town Staff were in this trial. Although there was testimony from former Town Solicitor Christopher Cooper, the other Town Staff mentioned by Councillor Buck in the blogs in question were conspicuous in their absence.

?One would have expected the defendant would have called various Town employees to tell how objectionable these blogs were,? he said. ?It is not about what some other person thinks, some third party. It is about the person who is subject of the blogs. Where are these employees? There is no documentary proof [of] any complaint or concern. There is no evidence before this court that anyone referred to in blogs, or subsequent blogs, not a single person has written anything to the effect of [remove the blogs]. Not a word.

?In a way, it is like being in a murder case without a body. We were prepared to meet head on anyone who had an objection to much of anything, but they are not here.?

The test jurors must make in their decision, he argued, is the actual people who might feel their reputations are at stake with the words that are written and not what other people such as the defendants might think, if this was truly about staff.

?You have to seriously question the motive of a group of people when they can't even produce anybody to back up their concerns, which they held,? he said. ?It is not up to my neighbour to decide whether or not I am offended by something that was said or not said. It is up to me.?

Continuing with the jurors, he invited them in their deliberations to take a close look at the blogs in question and how they were written. He rejected the idea they were unjustly critical and either pointed out facts or were written in such a way to ?educate? the reader on the inner workings of municipal government.

Highlighting heated emails sent by Mr. Wilson to Councillor Buck, he indicated there was an ulterior motive to go about ?attacking? Councillor Buck. Looking into the published statement, comments that ?Council respects and supports its staff and efforts? to make sure residents are well served would imply Councillor Buck did not. Passages that Councillor Buck, by refusing to sign the Code of Conduct to ?adhere to the ethical standards expected of an elected representative to the public? discounted her being bound to a very similar Code of Ethics she signed in her previous term of Council, and was not accurate in stating she refused to apologise twice for her words.

?That is exactly what happened here,? said Mr. MacDonald on earlier words from Mr. Mascarin that municipalities with Codes of Conduct have to tread carefully in case reputations are damaged. ?I can't imagine a better way to ruin a politician's life in the arena of politics than going out and suggesting they are conducting themselves in the manner in that statement.?

Councillor Buck argues the statement was an ?abuse of power? which damaged her reputation and seeks \$1 million in damage, a further \$1 million for a breach of her Charter freedoms, \$1 million in punitive damages, and \$250,000 in aggravated damages. The claims have not been proven in court.