

## Buck verdict is in Judge's hands as trial draws to a close

**By Brock Weir**

The verdict in Councillor Evelyn Buck's long-standing lawsuit against former mayor Phyllis Morris and six members of the 2006-2010 term of Council will be in Justice Edwards' hands next week as the six week trial drew to a close.

Lawyers for both sides have until April 7 to submit written closing arguments to the judge after this week's court date was called off.

The trial resumed in Oshawa for a brief hearing on Friday before being adjourned once again until Tuesday, following a request from Councillor Buck's lawyer, Kevin Macdonald, who sought further time to review an objection made on Thursday by lawyer David Boghosian.

Mr. Boghosian represents Ms. Morris, along with incumbent Councillors Wendy Gaertner and John Gallo in the matter, as well as former councillors Stephen Granger, Evelina MacEachern and Al Wilson. As all six were sitting members of Council at the time the lawsuit was commenced, they are all covered under Aurora's insurance policy.

The seven, all members of the 2006 - 2010 term of Aurora Council, are facing off in court in a multi-million dollar defamation lawsuit launched by Councillor Buck against the others in 2009.

It stems from a notice published by the defendants in local newspapers entitled "Statement from Town of Aurora Council", explaining Council "retained independent legal counsel" to review posts made on Councillor Buck's blog which, they allege, criticised municipal staff.

It concluded the posts "contravened numerous provisions of the Council Code of Conduct, which included unfounded and completely unmerited public criticism of staff in a manner that unjustifiably maligned their professional competence in credibility."

Councillor Buck argues the published statements were defamatory, damaged her reputation, and 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."

The defendants strongly deny the claims, and argued in court they were acting within their duties as councillors, and to "protect" municipal staff from criticism.

After five weeks, the trial came to a dramatic halt in December following closing arguments when Justice Edwards dismissed the jury of four men and two women citing an improper submission made during Mr. Macdonald's closing.

The judge opted to continue hearing the trial, and to render a decision on his own.

The trial was expected to continue in that fashion on Thursday, with Mr. Macdonald calling expert witnesses Don Cousens, former mayor of the City of Markham, as well as municipal lawyer Valerie M'Garry, to the stand. He also intended on calling Councillor Buck, and former councillors Bob McRoberts and Alison Collins-Mrakas to re-testify.

The latter three, however, were dropped, with the intention of wrapping everything up on Friday alone.

Mr. Boghosian's objection, however, threw a wrench into that plan. Mr. Macdonald requested a brief adjournment to examine his colleague's objections, but said he was prepared to go ahead there and then if necessary. On the other hand, Mr. Boghosian said he was hoping to end the trial on Friday and that his objection was no different from one expressed in an email in December.

Justice Edwards nevertheless agreed to allow Mr. Macdonald a few more days to respond.

Let's assume in the case they should have By Monday, however, Councillor Buck's lawyers dropped plans to spend the morning arguing whether Mr. Cousens and Ms. M'Garry would be accepted and, if they were, proceeding to testimony in the afternoon. Instead, written submissions will be made to the court.

We are not calling any further reply evidence, Jamie Sanderson, Councillor Buck's co-counsel, told The Auroran, declining to elaborate as to the reasons why, or if depositions from either Mr. Cousins or Ms. M'Garry would be included in their written documents.

In closing arguments made last fall before the jury was dismissed, Councillor Buck's lawyers argued the action of the defence to publish a statement about her in the local newspapers, as well as on the municipal website and read aloud in public at a televised Council meeting was over-the-top compared to their original concerns.

At the last minute, however, the defence introduced section 448 of the Municipal Act, which states "no proceedings for damages or otherwise shall be commenced against a member of council for any act done in good faith [in their] duty or authority."

Speaking to The Auroran after Monday's decision to submit their final arguments in writing, Mr. Boghosian said he was "relieved" that the trial was coming to its conclusion after taking "far longer" than they had envisioned.

We are looking forward to completing our written submissions and receiving the judge's decision.