

Councillors are free to sit on Cultural board, rules judge

By Brock Weir

Councillors can sit on the Aurora Cultural Centre board and not fall afoul of the Municipal Conflict of Interest Act, an Ontario Superior Court justice has ruled.

Justice H.J. O'Connell handed down the decision last week on a long-standing issue that needed to be resolved before the redrafted agreement between the Town and the Centre could be fully executed. As part of the new agreement, Council is able to appoint two of their own to sit as full members of the Cultural Centre's board of directors.

Before the deal was inked earlier this year, however, some Councillors raised concerns that members who found themselves on the board could find themselves in a conflict of interest if anything pertaining to the Centre came up for a Council vote.

?It is readily apparent to me that the hallmarks of good governance by Council are fully manifest in the objectives of the placement of two councillors on the board of directors.? said Justice O'Connell in the decision.

In the ruling, the Judge outlined arguments put before the court by Warren Mar, Solicitor for the Town of Aurora, on some of the issues that were considered by Council.

?Mr. Mar argues that without a determination of this application by the court, Council members would be faced with the unenviable choice of either risking their political careers by taking actions that might create a risk of subsequent challenge, abstaining from serving on the board in question, or removing themselves from participation at Council meetings should a matter about the [Church Street School Cultural Centre (CSSCC)] be before the Council for consideration.? reads the decision.

The court ruled in favour of hearing the case because ?a determination and declaration in this instance is a matter of serious practical importance and public interest.?

?Although I cannot say it would be an inevitable result in the case at bar that someone would contest a Council member's participation in voting on the issue of concern on this application, I nonetheless find that it is most certainly an easily foreseeable and more than likely result.? said Justice O'Connell. ?I am fortified in this view utilizing the very recent barometer of municipal conflict of interest issues involving both the Mayors of Toronto and Mississauga and the report of Associate Chief Justice Cunningham.?

In reaching his decision, Justice O'Connell considered key questions; the first question being whether a Councillor sitting on the board would have a pecuniary interest if a matter related to the Cultural Centre was being decided by Council. The second was if the situation changed if a Councillor was appointed by their own Council to sit on the board.

?I agree with the Town that the appointment of a Council member to act on the CSSCC can only be to serve the duties of the municipality and the interests of the ratepayers of Aurora.? ruled the Justice.

?The Councillors who sit on the board have no personal interest in the organization. In the case at bar no compensation direct or indirect would flow to the Council member. Nor could any personal benefit be derived from being a member of the board of directors. I find that any indirect pecuniary interest if there is one, and I cannot see one, would be so remote and/or insignificant that it could not likely or even possibly influence the Council member who [is on the board.] As Mr. Mar notes, the most that would likely be involved would be a free coffee proffered at a board meeting.?

Justice O'Connell also underscored the fact having Councillors sit on the board was an agreement reached by both sides.

The issue was heard before the Ontario Superior Court on February 26.

The previous December, some Councillors said they were concerned over this one lingering cloud hanging over the new Cultural Services agreement. This cloud also hovered over some recent decisions of Council including denying a \$3,000 sponsorship for next Wednesday's inaugural induction dinner for the Aurora Sport Hall of Fame.

In voting down the recommendation, some Councillors, including Councillors Chris Ballard, Wendy Gaertner and John Gallo, questioned whether the fact Councillor John Abel and Parks and Recreation director Al Downey sitting as members of the Aurora Sport Hall of Fame board could be construed as a conflict.