

Decision could mark end of a long, dramatic road in Council history

By Brock Weir

It took over four years for a judge to make a decision, so when Justice Edwards rendered his decision in former mayor Evelyn Buck's defamation lawsuit against several members of the 2006 ? 2010 Council term last week, it was the end of a long and dramatic road in Aurora's political history.

Of the seven players involved in the action on either side, only Councillor Wendy Gaertner remains a duly elected lawmaker. The rest were either eventually defeated at the polls or failed to seek re-election. Nevertheless, the ongoing litigation kept them in close company.

After years of working its way through the court system, the trial formally commenced in the fall of 2013, originally slated for a two week trial before a jury of four men and two women. This two weeks eventually stretched into five, reaching closing arguments before Justice Edwards dramatically dismissed the jury after he contended Ms. Buck's lawyer made an improper submission to the jury, suggesting past cases on which the jury should award Ms. Buck damages.

From there, the matter was entirely within Justice Edwards' hands.

In his 37-page summation of the case, Justice Edwards cast his eye back to when events began to unfold during a particularly raucous period in the contentious 2006 ? 10 Council term in the late spring of 2009, a term characterised by former councillor Alison Collins-Mrakas, a character witness appearing in court on Ms. Buck's behalf (and currently a columnist for The Auroran), as ?mentally, emotionally and physically exhausting? and, in the words of former councillor Bob McRoberts, ?dysfunctional.?

?There is, in my view, no doubt that Buck is a person of integrity and honesty, she is equally opinionated and was more than anxious to express her opinions in a public fashion,? said Justice Edwards. ?Her expressions of those opinions largely lie at the foundation of how it was that the statement was published and this trial ultimately proceeded.?

Subsequently, in June 2009, a majority of Council members, said Justice Edwards, ?became concerned? about Ms. Buck's blog postings which ?were said to be highly disparaging? of senior Town Staff, including the then-Town Solicitor and CAO, questioning their competence and professionalism.

?Plaintiff's Council argued that there is no documentary proof of any employee complaints or concerns regarding these blog posts,? wrote Justice Edwards. ?However, the Town Solicitor, Christopher Cooper, did testify he found the blogs objectionable in the manner in which they maligned Town Staff and, in particular, the one that cast aspersions on his own professional reputation. He testified he brought his concerns to the attention of the Mayor and Town CAO Neil Garbe.

?While the Plaintiff's counsel may be accurate in his written closing submissions that there were no written complaints from Town Staff, I accept the evidence of Cooper both with respect to the blog's impact on him professionally and the fact he brought to Garbe's attention how he felt about Buck's blog writing.?

In rendering his decision, Justice Edwards set out two questions that needed to be satisfied before a ruling could be made: whether Council's subsequent statement on Ms. Buck's blog posting ? and a similar statement from John Mascarin, legal counsel retained by Council in the matter -- were defamatory to the plaintiff, and whether the statement was ?substantially true.?

The statement, he said, was accurate in its outlining ?disparaging comments about staff? from Ms. Buck ?that maligned their professional competence and credibility?, as well as in stating Ms. Buck had not signed Council's Code of Conduct.

?Whether or not Buck had executed a document similar to the Code, and whether she considered herself bound by it even though she had not signed it, does not detract from the fact the statement is accurate when it indicates that every member of Council, other than

Buck, had executed the Code. Such a statement was not only accurate, it was true.

?What is particularly telling with respect to the suggestion that the statement and Mascarin opinion were defamatory and contained not only inaccurate, but also untrue statements as they relate to Buck, is that no evidence as called by Buck other than her own evidence that would in any way lend credence to the arguments now made on her behalf to suggest that the statement contained true statements of fact. In my view, Buck read more into the Statement than could possibly be warranted by any reasonably informed reader of that document.?

In his conclusion, Justice Edwards says politics is not for the faint of heart and thick skin may be a ?prerequisite? for the field, but this does not mean a politician is ?fair game? for those intent on damaging their reputation with ?false, malicious and defamatory statements.?

?The response by the Council defendants was to publish a statement and the legal opinion that they had received in a similar public fashion, by having it published in the same paper that the plaintiff had published her letter to the editor,? he wrote. ?One can hardly describe that part of the response as an inappropriate response to inappropriate people.

?As to the publishing of the statement in the other local paper, there is no evidence that the Statement would have reached any more people by being published in the other paper than would otherwise have been reached. Finally, as to the publishing of the Statement in a public forum at a local Town Council covered by Rogers Cable Television, again there is no evidence to suggest that this reached any wider audience than Buck's letter to the editor. 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 that occasion.?