

Fighting King tower could cost Aurora over \$100,000

By Brock Weir

If Aurora goes ahead with seeking an injunction against Bell Canada for an 18-storey cell phone tower in King this week, it could cost the Town upwards of \$100,000, according to Town Solicitor Warren Mar.

Mr. Mar gave his preliminary findings at a Special Council meeting Wednesday stemming from heated discussions around the Council table the previous evening centred around the concerns of residents on the Town's west side over a new telecommunications tower dominating certain sections of the neighbourhood.

Council directed Mr. Mar to look into what it would take to launch an injunction and after some preliminary work over the following 24 hours and consulting with several lawyers, he said going forward would be a costly option on a number of fronts.

"The tower has completed its construction at this stage but it is not yet activated," he said. It is not transmitting signals, but is completed and done [so] in a sense seeking an injunction at this stage is rather moot. That is the advice I am hearing and that is what I am seeing in terms of the injunction process.

"If the Town were to move forward with the injunction, it would need to show three things - that there is a serious question to be tried, that the Town would suffer irreparable harm if it was not granted an injunction, and the Town would suffer greater harm from the refusal of the granting of the interlocutory order as opposed to if Bell would be subject to it. That is a difficult test to make at this stage because the Tower is already completely built.

"In terms of irreparable harm, the difficulty to the Town would be to show that by turning on the tower and activating it, the Town would suffer the irreparable harm and be forced to argue public health. From what I understand, [neither] Health Canada nor York Region Public Health have comments or complaints with regards to the use of cell phone towers and there are 20 or so located in the Town already so it would be difficult to prove at this stage it is a credible health concern that would cause irreparable harm to residents."

Adding to the cost, he said, was the urgency in putting something together. Turnaround time for an injunction such as this would take between 48 and 72 hours with several lawyers working around the clock to get things done. While this could cost upwards of \$100,000, an unsuccessful case could tack on a further \$50,000 in costs to the communications giant.

"In the opinion [of one noted expert I spoke to] he has never seen an injunction get past the cross-examination of affidavit stage since 1989," added Mr. Mar. "There is a reason why it doesn't go forward [and that is] because the time and expense involved in trying to do something like this. [The recommendation] is that it is not advisable for the Town to proceed in this matter, especially now that the construction of the Tower is completed. The only thing we can enjoin Bell Canada from doing is turning on the tower and at this stage that is a very difficult argument to make."

Lawyers, he said, would be happy to take the Town's money but the ones he consulted said they would be concerned about putting their reputations at stake to fight the fight. Even without this reluctance, it would also be difficult to find a lawyer to take this on as Bell uses many law firms in the GTA for its business. Then there is the twofold complication that Industry Canada controls the use of cell towers and the fact that, at the end of the day, the tower is in King.

"In this particular case, King Township drives the bus and by that I mean Industry Canada needs King Township to sign off on the fact the protocol was met, which they did in a letter on November 19, 2012 to Industry Canada and Bell Canada telling them that the protocol was met and everything was okay to go. At that stage, Bell Canada can put the tower up when they have met Industry Canada codes. Industry Canada does not hand out specific site-by-site licenses for the placement of cell phone towers. They simply manage the process to ensure it is inherent to its very basic level.

?Their position is once King Township has signed off on it, there is no way for them or jurisdiction for them to interact and get involved. They do not have any formal objection from King Township on this matter and King Township is the local approval authority. It is their jurisdiction regardless of the fact Bell Canada put it 27 metres into the boundary of King Township.

?Bell Canada does have to obviously keep putting up these towers and if they put them in Aurora they will have to adhere to Aurora's protocol. If they want to continue to work with us in good faith, there was suggestion to put a little bit of pressure on Bell Canada to make them aware there are resident complaints we want them to address and take seriously and that would be my suggestion. Given the fact the tower is already up puts the Town in a bit of a bind as to what it can do and at this stage it is, for lack of a better word, just flipping a switch in Bell Canada's eyes.?

Bell is in the midst of submitting an application with Aurora for a 30 metre tower slated for construction at the Longo's Plaza at Bayview and Wellington, added Marco Ramunno, Aurora's Director of Planning. An application was also received last year for one shared by three carriers near St. John's Sideroad and Industrial Parkway.