

Former Mayor's lawsuit hits Council table

By Brock Weir

Aurora is preparing its case against claims made by former mayor Phyllis Morris in her \$250,000 lawsuit launched against the Town on June 7.

Councillors went into closed session at last week's Council meeting to discuss the ramifications of Ms. Morris' lawsuit, which claims \$250,000 in costs stemming from her \$6 million lawsuit against three local bloggers, among others.

Ms. Morris claims that in the discussions during the fall of 2010 which ultimately lead to her defamation lawsuit, she was "advised" that then Town Solicitor Christopher Cooper and Integrity Commissioner David Tsubouchi would be named as plaintiffs in the suit, and that around October 5 of 2010 Mr. Cooper advised her "that she would be indemnified for any legal costs that might be incurred in the pursuit of the Town Action." Her statement goes on to claim this was confirmed in writing.

The Town of Aurora told The Auroran on June 10 that Ms. Morris' claims were "without merit" and they would defend the action "vigorously."

Last Tuesday's Council meeting was the first time Councillors had a chance to tackle the issue, with the matter due to be discussed behind closed doors that evening. Before going in-camera, they tackled the issue with equal vigour.

Speaking to The Auroran on June 7, Steven O'Melia, lawyer for Ms. Morris, said that the lawsuit was the result of unsuccessfully trying to get the Town to "honour their obligations through communications." Communications on the part of Mr. O'Melia accounted for a significant chunk of the discussions both before and after Councillors went behind closed doors to discuss the specifics in the case.

"I am a little concerned that the Town has been taking some action and direction without Council authority in terms of the issue we're going in-camera with," said Councillor John Gallo, referring to earlier emails on the subject.

Warren Mar, Solicitor for the Town of Aurora, said that he was "disappointed in Mr. O'Melia's conduct" in contacting Councillors directly on the matter. He said he thought it was "inappropriate and a potential violation of the rules of professional conduct with the law society."

"My initial view at that point was I would let Mr. O'Melia know that this matter would be brought before Council for consideration," said Mr. Mar. "Upon my further review of the matter, I realised Council already made a very clear issue over two years ago about this and it would be inappropriate for me to bring that before Council and second-guess Council's decision two years ago."

Councillor Gallo countered there have been many instances where solicitors have communicated directly to Councillors in regards to items such as planning applications, but Mr. Mar was adamant.

"It is in my opinion completely inappropriate for those solicitors to continue lobbying Council to get an answer, especially when those solicitors know that litigation is already commenced against the Town and may be setting a potential trap for Council to make prejudicial statements that would further expose the town to liability," he said.

"Councillors would have no idea of the claims made in the statement of claim. That is the particular reason why I have a concern about Mr. O'Melia's communication with Council because it was done inappropriately knowing that Council as a whole has sought my advice on this matter over the past two years and lobbying directly to Council was inappropriate."

In his closed session report, Mr. Mar outlined the particulars of this case, including the fact the Notice of Action was filed by Mr. O'Melia in December 14, 2012, in Kitchener at the Ontario Superior Court of Justice.

?At this time, the allegations made in the claim are unproven,? said Mr. Mar in his report. ?A full defence of the claim is recommended and it is the default position of the Town against all claims against it.?

A statement of defence, he said, must be filed within 20 days of the statement of claim. Mounting a defence will involve ?the preparation of numerous legal documents, the review of a great deal of information and a full evaluation and analysis of the allegations.? He recommended hiring external legal counsel to represent the Town in the interests of limited staff resources at Town Hall.

The report also reminds Councillors of their duties to ?protect the Town from suffering of any harm and not to expose the Town to any liability? in this case.? There was also a further word of caution.

?In addition, Councillors must avoid communications with Ms. Morris and inform the Town Solicitor if Ms. Morris or her lawyer attempts in any way to contact them. If any Councillor becomes privy to information that may be of assistance to the Town, the Town Solicitor must be informed about this information as soon as possible.?

Costs for the Town's defence, he added, will be covered by the external advocacy section of the Town's legal budget, but cost estimates are undetermined. Although they are still waiting to see if any of the costs here would be covered by the Town's insurance, they will seek to recover costs from Ms. Morris if they are successful.