

"SLAPP" lawsuit brought back into forefront

By Brock Weir

It has nearly been a month since former Aurora mayor Phyllis Morris was awarded over \$45,000 in costs following resident George Hervey's unsuccessful Conflict of Interest lawsuit, but the issue that started it all persists in public talks.

Mr. Hervey's lawsuit stemmed from Ms. Morris' actions leading up to her \$6 million defamation lawsuit against three local bloggers, among others, over allegedly defamatory comments on the Aurora Citizen blog in the fall of 2010. While that lawsuit was ultimately aborted by Ms. Morris, it was deemed a Strategic Litigation Against Public Participation (SLAPP) lawsuit by a Master in determining costs for two of the three bloggers last year.

It was this decision which brought the issue back into the limelight last week as Councillors recommended asking Premier Kathleen Wynne and the Province to institute tougher regulations to prevent SLAPP lawsuits from happening in the future.

The recommendations stemmed from an earlier motion from Councillor Michael Thompson which also called for the Town to consider ways to make some sort of 'amends' to bloggers Bill Hogg, Richard Johnson, and Elizabeth Bishenden. That matter was discussed behind closed doors last week, but the recommendation to write a letter to the province encouraging the Premier and Attorney General to bring forward Anti-SLAPP legislation was the centre of a heated public debate.

'I would urge, as I have every time the topic of the Town-initiated defamation lawsuit comes up, that we be very careful about pouring gasoline on a fire that is not yet out,' said Councillor Chris Ballard. 'Any other Council in Ontario that wants to move this motion ahead, I think that would be fine, but for us, given our recent history that we have not yet put behind us, I think it would be foolish and I can't support it for that reason alone.'

Councillor Wendy Gaertner agreed, stating it was 'unfortunate' that further information was not put into the public record relating to the lawsuit.

Shying away from supporting the motion, but for wholly different reasons, was Councillor Evelyn Buck. She told her fellow Councillors that the lawsuit was launched with the support of a Council resolution and Aurora was 'pretty unique in its preoccupation with lawyers and lawsuits at that time.'

'I think there is more than enough useless, confusing legislation on the provincial books right now without asking them to create more chaos with more legislation,' she said.

Speaking in favour of the resolution, however, Mayor Geoffrey Dawe said he didn't disagree there are many pieces of confusing legislation, but encouraging the Province to step up is a step in the right direction.

'There are a number of people who have been impacted by these things, and a few families in Aurora that have been affected by this,' he said. 'I think it is incumbent on Council to ensure that we do whatever we can do to keep this from happening again.'

Councillor Paul Pirri shared these sentiments and said regardless of the Town's history, 'any SLAPP legislation is something we should be advocating for in the future, so that is what I believe this is, to prevent it from happening in the future, and ultimately this is the best we can do right now.'

As for the original mover of the motion, Councillor Michael Thompson said SLAPPs present a 'serious threat against public engagement and debate' and speaks toward freedom of speech. Anything that acts as a 'deterrent' to public discourse and has a 'chilling effect' on debate needs to be addressed.

'There are no winners, and there are only losers in this situation, so I think it is always incumbent to look upon the past and look forward,' said Councillor Thompson. 'Part of that motion was to look forward and be advocates so this situation does not occur

again, to look at our own policies and procedures and make sure the best practices are implemented so that the situation never happens again and no other resident within Aurora has to experience and go through what those who did. It is a tragedy and the best we can do at this point is look at ways in which we can prevent it to the best of our ability.?

Despite Councillor Ballard's caution that the fire was not yet out on the matter at hand, he is expected to pour some fuel on the embers at this week's Council meeting with an introduction of a notice of motion to revisit certain aspects of Mr. Hervey's lawsuit.

In his notice of motion, which is likely to come up for debate on May 7, the Councillor calls on Council to place on the public agenda a letter written by Steven O'Melia, Ms. Morris' lawyer in the Hervey case, to members of Council.

Mr. O'Melia wrote his letter in response to Councillor Thompson's original motion in November and the letter was circulated to members of Council. Councillor Ballard calls on the letter to be made public ?in the interest of openness and transparency.?

Further, he requests that the Town Solicitor report back in closed session to provide ?legal advice on the implications and judgement? of Justice Gilmore ?with specific reference to the level of potential ?liability? on the part of The Corporation of the Town of Aurora and its Council, if any, based on the Town's actions to date in this matter.?

Mr. O'Melia's letter spoke to Mr. Hervey's lawsuit rather than the SLAPP matter directly. It says the motion Councillor Thompson brought forward did not reflect all the facts, facts that were not known to the Master. It also notes the Town launched the lawsuit through CAO Neil Garbe, Mr. Hervey's testimony that he discussed the possibility of a lawsuit with others, and the belief Ms. Morris was treated ?unfairly? by the Town after they discontinued funding of the lawsuit without advanced notice.

?I think it contains important information that Council needs to acknowledge and the public needs to understand that we had several months ago,? Councillor Ballard told The Auroran. ?It has never been formally on the record and it was circulated to us.?

As for the question of liability, the Councillor said he would not elaborate on what he feels those issues might be.

?I wanted it on the record that I have concerns but I think it is really up to Council and staff to look at that, get an opinion and look at that in private.?

Mayor Geoffrey Dawe, however, thinks otherwise.

?It is inappropriate and it is not Town business,? he said. ?It was a private lawsuit so it is inappropriate that we should be discussing it with Council.?