

Trial will resume next month questioning motives and malice

By Brock Weir

When the Buck Trial resumes next month, lawyers will address a question of malice.

Following closing arguments made at the end of the fifth week, in which it was argued the defence's action to publish a statement on Councillor Buck in two local newspapers, as well as the municipal website, and read aloud at a public, televised Council meeting was over-the-top compared to their original concerns.

The defence introduced section 448 of the Municipal Act late in the run. The section states that "no proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act."

It will now be up to Kevin Macdonald, lawyer for Ms. Buck, to argue that former mayor Phyllis Morris, Councillors Wendy Gaertner and John Gallo, and former councillors Stephen Granger, Evelina MacEachern and Al Wilson, acted maliciously and not out of good faith in their statement, while David Boghosian, lawyer for the defendant, to argue the opposite.

These were issues touched upon earlier in the trial superficially in the examining of witnesses, but in more detail during closing submissions.

"Even if you find [malice] was a minor thing for one or more of my clients, that is not enough," argued Mr. Boghosian in his closing to the dismissed jurors. "[It has to be] the overriding, overarching purpose. [If] the main purpose of publishing it was to protect Town Staff and defend the corporation, then there is no malice. Even if there was some animosity from Ms. Morris against Ms. Buck, malice would have had to have been the dominant purpose. Mere dislike or animosity does not prove malice."

Mr. Macdonald, on the other hand, argued publishing the statement in so many places and hiring a lawyer to review Councillor Buck's blog posts before Aurora's Integrity Commissioner could be formally installed does not constitute good faith.

"If the concern is [comments made on the blog against Town] staff, they used a machine gun to kill an ant," said Mr. Macdonald. "They so far exceeded the occasion that you have to question the motive of malice. You have to question what their larger purpose and intent was. It had nothing to do with staff."

While the trial is in recess, Mr. Macdonald told the Court he will bring forward an expert witness in January to speak towards the malice issue, as well as re-examine some of his own witnesses, including former councillors Alison Collins-Mrakas and Bob McRoberts.