

Metroland Publications: York Region

Aurora re-working litigation policy

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The situation that led to former mayor Phyllis Morris filing suit against three local blog participants, among others, will never happen again, the Town of Aurora says.

A statement issued Friday announced changes are coming to the town's litigation policy, including obtaining more than one quote or estimate for outside legal services, time permitting, and not retaining lawyers or firms privately representing individual members of council.

The town will also prepare an indemnification policy to determine, among other issues, when and how a councillor or employee can be reimbursed for legal expenses incurred in the performance of duties.

The town doesn't have a policy on how to handle this sort of a situation and that's what its acting solicitor is working on now, Mayor Geoff Dawe said.

The statement was an attempt to address some of the lingering concerns residents have voiced in person or via e-mail, Mr. Dawe acknowledged.

The biggest question that has been asked by the public and media has been how the lawsuit could happen in the first place, he said, noting an open-ended motion from Sept. 14 was enough to put things in motion.

Council has struggled with the lawsuit issue, Mr. Dawe continued. It's been frustrating, he said, as councillors have been advised not to answer questions for fear doing so could open the town up to potential liabilities.

"A lot of that is confidential," he said.

However, the town has ended its support of the lawsuit and is now taking steps to prevent a re-occurrence of what took place, Mr. Dawe said.

Hopefully, given enough time, the town as a whole will move past the matter, he said.

"I'm not sure what else we can do," Mr. Dawe said. "I know that a lot of people are still very vexed about this."

Beyond changes to the litigation policy, the statement issued late last week acknowledges a municipality has the right to protect a public servant from defamatory comments made in connection with his or her job performance. But it also states taking a legal course of action should be done with utmost care and only as a last resort.

The statement goes on to say the trust between residents and the town may have been damaged and will take time to repair.

"The town reiterates that we welcome constructive criticism from everyone who lives, works, plays and pays taxes in Aurora," the statement says. "The town also reaffirms its commitment to freedom of expression, which is a pillar of Canadian democracy, as enshrined in Canada's Charter of Rights and Freedoms."

The media advisory comes just weeks after the release of a four-page executive summary from lawyer George Rust-D'Eye, which suggested Mrs. Morris "appeared to have a pecuniary interest" when Aurora council was discussing a *carte blanche* motion that led to her \$6-million libel lawsuit.

In that document, Mr. Rust-D'Eye explains that following the Sept. 14 council decision directing the town solicitor "to retain external legal counsel and to take any and all actions to bring a resolution to his matter", the town retained Aird & Berlis on the basis the allegedly defamatory comments on the Aurora Citizen blog were made in connection with her reputation as an elected official of the municipality.

"Since a municipality cannot sue for defamation, it became accepted that the mayor would be the appropriate party to bring the proceedings in court, supported by the town," Mr. Rust-D'Eye writes. "At the same time, Phyllis Morris appeared to have a pecuniary interest in the matter under consideration by the council in view of the fact that the debate involved a proposal that the town provide or pay for legal services for her defamation action, whether she was successful or not -the town appeared to assume the entire financial risk, with the mayor standing to obtain a personal benefit from success in the proceedings."

A notice of action on Mrs. Morris' behalf was filed with a Toronto court Oct. 8 seeking, amongst other things, general damages of \$5 million and punitive, aggravated and exemplary damages worth \$1 million plus her legal costs.

Mr. Rust-D'Eye's summary further states the town solicitor forwarded a draft agreement to Mrs. Morris Nov. 25, acknowledging any damages awarded by the court would go to her, rather than the town, but that she would then reimburse the municipality for costs accrued in connection with successful litigation.

There was no evidence the agreement was ever

executed, Mr. Rust-D'Eye added.

Mrs. Morris would not comment on Mr. Rust D'Eye's summary and referred all questions on the matter to lawyer Steven O'Melia of Miller Thompson.

"It is clear that Mr. Rust-D'Eye was not given all of the relevant documents and background information necessary to form his opinion," Mr. O'Melia said via an e-mail. "As a result, it contains factual inaccuracies and omissions."

More specifically, the document does not mention the notice of action was issued prior to the Oct. 25 election, Mr. O'Melia said and also states Aird & Berlis have removed themselves from the record, which they have not.

"The key point is that it is obvious from my review that Mr. Rust-D'Eye has not been provided with all of the materials and information that he should have been given to complete his opinion," Mr. O'Melia said. "While this is a concern, it simply wouldn't be productive for our client to engage in a debate on the matter at this point."

Councillor Wendy Gaertner also took issue with the summary and contended some information contained within was not correct. The document puts forward that council was discussing a lawsuit during the closed session of Sept. 14, but that simply isn't true, she said.

"A debate about a proposal for the town to pay for or provide legal services to pay for a personal lawsuit was not a part of the closed session deliberations," Ms Gaertner said. "The direction coming out of closed session ... does not express the intent of launching a personal lawsuit."

"It was well after the Sept. 14 meeting that town staff and outside legal counsel determined the course of action necessary to address the defamation issue."

Former councillor Evelina MacEachern alleged the summary contained errors and omissions as well, but wouldn't elaborate further.

Last week, council voted to cover the more than \$55,000 in legal expenses incurred by Mrs. Morris to Dec. 15, for the amounts owed to Aird & Berlis, and to Dec. 21 for the additional outside legal services provided by Paterson MacDougall.

The latter firm was retained in connection with the cross examination of now former town solicitor Chris Cooper's affidavit.

Council made its decision based on the advice of Mr. Rust-D'Eye, who was retained in February to determine whether or not the town had an obligation to pay the former mayor's legal bills.

As of March 24, his services have cost more than \$5,600.

"One of the reasons we went out and retained Mr. Rust-D'Eye was to get a sober second thought (and

he was pretty clear in saying, 'You don't have much choice, but to pay.'" Mayor Dawe said.

"If the town didn't pay, it leaves us open to being sued by the law firm."

The motion to pay the legal fees and pursue indemnity against the former mayor should she receive damages or costs passed on a 5-2 recorded vote. Councillors Evelyn Buck and Michael Thompson voted against the move, Ms Gaertner left the table prior to the vote and Councillor Chris Ballard was absent.

The town ended its involvement in the former mayor's legal action against local bloggers Richard Johnson, Bill Hogg and Elizabeth Bishenden, a trio of anonymous blog participants and Word Press, the blog's web host in December. That decision effectively reversed the Sept. 14 council ruling.

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Mississauga News

Four strikes on Sue

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It appears another member of the infamous Group of Seven has been nipped in the behind by the ethics watchdog at City Hall.

Ward 10's Sue McFadden violated the new Code of Conduct that governs our municipal councillors when she used her taxpayer-funded website and email to promote a federal Conservative candidate's campaign event.

Unfortunately, this is just the latest in a string of missteps by the second-term councillor.

Three strikes and you're out? By our count, this is the fourth serious gaffe by McFadden in the past three years.

In 2009, she was acclaimed as the federal Tory candidate in Mississauga-Streetsville, announcing to one and all that she was perfectly content to leave her Ward 10 constituents high and dry at the drop of a writ.

Then she referenced Hitler while explaining to students about dictators - specifically Mayor Hazel McCallion - during last year's municipal election campaign.

Recently, she wanted to spend our tax dollars - \$625 an hour, to be exact - to have new Integrity Commissioner George Rust-D'Eye investigate the mayor's bully-like behaviour towards her.

That one prompted the rest of us to wonder, "Are you new in town, Sue?"

And now she uses City resources to invite Ward 10 residents to meet a Tory candidate at a Meadowvale restaurant.

McFadden needs to demonstrate a higher degree of professionalism in carrying out her duties as a city councillor. She owes it to her peers, her staff and to the residents of Ward 10.

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