

May 27, 2019

EMAIL

The Mayor and Council of the City of Barrie
c/o City Clerk
70 Collier St
Barrie, ON L4M 5R5
wendy.cooke@barrie.ca; council@barrie.ca

Dear Mayor Lehman and Councillors:

**Re: Complaint Investigation Report Under the City of Barrie Council and Committee
Member Code of Conduct Concerning Councillor Keenan Aylwin, May 22, 2019**

We are legal counsel to Councillor Keenan Aylwin, in connection with the above-noted Report of the City's Integrity Commissioner, and related civil actions. This Report is on the agenda for the preliminary consideration of Council at its meeting later today.

Unfortunately, the analysis in the Report is based on fundamental errors of law and misconceptions of fact. Many of these were pointed out to the Integrity Commissioner by Councillor Aylwin in his comments on the Draft Report, which we understand he has provided to you. It is unfortunate the Commissioner has chosen to ignore them.

The Report also fails to recognize that the underlying Complaint to which it responds is an abuse of the process of the Integrity Commissioner and of City Council, because it is collateral to and was commenced in aid of a legal action commenced against Councillor Aylwin by the Complainant. In our submission, that legal action is a SLAPP – a strategic lawsuit against public participation – designed to silence political speech on a matter of public interest. We ask Council to consider and to find that the Complaint process conducted to date, and the further proceedings now recommended to Council, are in furtherance of this SLAPP suit, and also fall within the provisions recently enacted to deter and put an end to such proceedings in s. 137.1 of the *Courts of Justice Act*. These matters are addressed in the Statement of Defence that we are filing with the court on behalf of Councillor Aylwin today, a copy of which is attached as a courtesy.

Unfortunately, despite recognizing that it is unwise (to say the least) to do so, the Integrity Commissioner has not only weighed in on a highly political debate, she has done so in a way that may leave her Report open to allegations of political partisanship. She not only refers to the Leader of the Opposition in Parliament by name, and to the interests of another Conservative MP, she goes on to pass judgment on the references to them in Councillor Aylwin's post, even though no complaints from or about them were before her. She completely fails to acknowledge that the Office of the Prime Minister of Canada has also commented on these matters, based on the same facts, and in very similar terms to those used by Councillor Aylwin. So far as we are aware, no complaint about that commentary has been placed before the Integrity Commissioner of Parliament. Yet she dismisses these comments, and others by major media, as "quote[s] from lay person[s] who [are] giving their opinion on matters of fact". With respect, Canadians may well

question whether the Integrity Commissioner of the City of Barrie is better placed than the Office of the Prime Minister of Canada to know the facts relating to events occurring on and around Parliament Hill.

However, the most disturbing result is that the Report now before Council completely misinterprets the subject Facebook post by Councillor Aylwin, and gives it exaggerated meanings that it is incapable of bearing as a matter of law. The law is clear that the interpretation to be given to the words of this post must reflect on what an ordinary, reasonable reader, with no special knowledge or axe to grind, would understand. The words actually used must be the primary basis of its meaning. The post was written, and would have been read, in the heat of an online political debate that occurred that very day, as a result of the tragic and violent events in New Zealand. It must be interpreted in that light. When that analysis is properly applied, the post cannot reasonably be interpreted in the manner proposed by the Complainant, based upon his personal and political interests. The Integrity Commissioner clearly erred in simply accepting such a biased interpretation. Comments on the post at the time, and since, make it clear that reasonable readers would and did recognize that it is an expression of Councillor Aylwin's personal opinions on a matter of public importance, and that it does not in fact convey the very extreme meanings that the Complaint and the Integrity Commissioner suggest.

We urge Council to carefully review the Complaint, Councillor Aylwin's responses and the press reports linked therein, and the enclosed Statement of Defence, before making any determination as to whether Councillor Aylwin is in breach of the Code and whether he ought to be reprimanded. In our considered view there was no such breach, and there is no legal basis for further action by Council. Any reprimand or other consequences imposed on Councillor Aylwin may be judicially reviewed, with a focus on Council silencing political speech.

Yours truly,



M. Philip Tunley
Partner
MPT/am

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JOHN BRASSARD

Plaintiff

and

KEENAN AYLWIN

Defendant

STATEMENT OF DEFENCE

1. The defendant denies all of the allegations in the Amended Statement of Claim (the “Amended Claim”) dated May 23, 2019, except as hereinafter expressly admitted.

2. The defendant specifically denies that the plaintiff is entitled to the relief claimed in paragraph 1 of the Amended Claim, or any relief, and puts the plaintiff to the strict proof thereof.

The Parties

3. The plaintiff, John Brassard, resides in the City of Barrie and is currently the elected Member of Parliament for Barrie-Innisfil. Mr. Brassard is a member of the Conservative Party of Canada.

4. The defendant, Keenan Aylwin, resides in the City of Barrie and is currently the elected City Councillor for Ward 2 in the City of Barrie. As a City Councillor, Mr. Aylwin is not associated with any political party.

The Post

5. Mr. Aylwin admits that on March 21, 2019, he authored and posted the following on his Facebook page:

Today is the International Day for the Elimination of Racial Discrimination and we have to talk about the white supremacy problem we have in this country and in this community.

I haven't yet spoken publicly about the recent white supremacist terrorist attack where 50 innocent people were murdered out of hatred and Islamophobia in Christchurch, New Zealand. I've been reflecting and listening. I stand in solidarity with the Muslim community in Barrie and around the world in this time of mourning.

I'm heartbroken, I'm angry, but I'm not surprised.

I'm not surprised because there are people in positions of power that are using racist and white supremacist rhetoric for political gain across the world and right here in Canada. We have to make the connection between this rhetoric and the violence that is perpetrated against Muslims and other vulnerable communities here in Canada and abroad.

We have two Conservative MPs in Barrie that have been silent on their leader's appearance on the same stage as a neo-Nazi sympathizer, Faith Goldy, at a United We Roll rally. This is unacceptable and it is dangerous. They are playing footsies with white supremacists who have inspired violence through Yellow Vest Canada social media channels and elsewhere.

Even worse, the MP for Barrie-Springwater-Oro-Medonte is Facebook friends with that neo-Nazi sympathizer that shared the stage with his party leader. Let that sink in - our Member of Parliament is Facebook friends with an actual neo-Nazi sympathizer that his party leader has refused to denounce in strong terms.

It's time for us to hear from both Alex Nuttall MP and John Brassard - MP for Barrie-Innisfil. The people of Barrie need to hear them clearly denounce Faith Goldy, anti-immigrant groups and all white supremacist and hateful rhetoric. We need a clear apology from both of them for the harm that they have caused by not doing so. We need a clear commitment to substantive policies that will support racialized communities and other marginalized peoples in Canada.

There are those who will say it is absurd to connect this racist rhetoric and the failure to denounce it to the real-life violence we have seen. But we heard from the perpetrators of the violence in Christchurch and in Quebec City that they were inspired by this type of rhetoric. We know that when people in positions of power allow these forces to gain mainstream acceptance, that creates an environment where this violence can thrive.

Words matter. Words have power.

Today is the day. Let's all commit to fight racism and white supremacy everywhere and to call out politicians and leaders that are using these forces for political gain.

For more context:

<https://www.thespec.com/.../9200086-bernier-and-scheer-hop-o.../>

<https://www.cbc.ca/news/opinion/united-we-roll-1.5030419>

<https://www.canadalandshow.com/guide-to-reporting-on-faith.../>

#Barrie #cdnpoli

(the "Post").

6. The defendant relies on the entirety of the Post, including the web links provided, as context for the words complained of in the Amended Claim.

7. The Post was written, and would have been read, in the heat of an online debate that occurred that very day. Major media outlets at the time of the Post and subsequently – including national media outlets – reported on many of the same events in the same or similar terms, as did the Office of the Prime Minister of Canada and many other public and private institutions and commentators.

8. Four days later, on March 25, 2019, the plaintiff served the defendant with his notice of libel in this matter.

The Post is not Defamatory

9. The defendant denies that the words complained of in the Post were or are capable as a matter of law of giving rise to any of the defamatory meanings alleged in the Amended Claim, and specifically the meanings listed at paragraphs 12 and 13 of the Amended Claim. Further, and in the alternative, those meanings would not in fact have arisen in the minds of reasonable readers.

10. Further and in the alternative, if any of the issues related to such alleged meanings were raised in the minds of any readers of the Post, then the defendant states that they were raised as questions by the plaintiff's own conduct and in failing or refusing to provide information or to respond to the questions of legitimate public interest raised by the Post.

11. The defendant denies that the words complained of in the Post as giving rise to any defamation as alleged were of or concerning the plaintiff.

12. The defendant further denies that any words of and concerning the plaintiff in the Post were defamatory of him.

13. The defendant further denies that any defamatory meanings alleged are capable of arising from the words complained of, or that the Post provides a context capable of supporting or contributing to any alleged defamation.

Defences

14. The defendant states that the Post, and the words complained of, were understood by an ordinary, reasonable reader to mean:

- (a) Canadians have to make the connection between failing to confront and condemn racist and white supremacist views and rhetoric, wherever they occur in the world, and the violence we have seen in New Zealand, Canada and elsewhere;
- (b) failing to make this connection is "unacceptable" and "dangerous";
- (c) Mr. Sheer is an example of a person in power who, by his recent actions and inactions, has failed to make this connection;

- (d) the plaintiff has failed to comment on these failures by Mr. Sheer;
- (e) failing to comment on, denounce and condemn racist and white supremacist views and rhetoric, wherever they occur in the world is “unacceptable” and “dangerous”; and
- (f) the plaintiff at the time of the Post had also failed to denounce Faith Goldy, anti-immigrant groups and all white supremacist and hateful rhetoric, as the Post called on him to do.

15. In the alternative, the defendant states that if any of the words complained of refer to the plaintiff and/or bear any one or more of the meanings alleged in the Amended Claim, then to the extent any such words complained of, in their plain and ordinary meaning and in their full and proper context are statements of fact, such facts are true or substantially true. In particular, it is true that:

- (a) the plaintiff has been silent on his leader, Mr. Sheer’s, appearance at the United We Roll rally at which Faith Goldy also appeared; and
- (b) the plaintiff has not condemned the matters, or provided the apology, explanation or commitments referred to in the Post.

16. Further, there is nothing inaccurate in the factual context for the words in the Post that are of and concerning the plaintiff, as alleged. In particular:

- (a) Mr. Sheer and Ms. Goldie did in fact speak to the same United We Roll Rally, and the reference in the Post to them appearing “on the same stage” was, and would

have been understood to be a characterization of, and comment on, those true facts, and would not have been understood as a reference to the specific physical podium on which they each stood as alleged;

- (b) the statement that the plaintiff had caused harm by failing to comment on and condemn the matters, or to provide the apology, explanation or commitments referred to in the Post, was also not a statement of fact, but rather was an expression of opinion that all such failures contribute to the violence we have seen in New Zealand, Canada and elsewhere; and
- (c) the expression “playing footsies” was used in its commonly understood and accepted meaning, not as a statement of fact, but rather a characterization of, or comment on, the totality of the plaintiff’s actions and omissions as set out in the Post.

17. Further and in the alternative, the defendant states that if any of the words complained of refer to the plaintiff and/or bear any one or more of the meanings alleged in the Amended Claim, then to the extent any such words complained of, in their plain and ordinary meaning and in their full and proper context, are expressions of opinion or comment:

- (a) they are fair comment, made in good faith and without malice on matters of public interest;
- (b) they constitute opinions or comments a person could honestly hold or make based on facts presented in the Post, or facts generally known by the public, which are substantially true and/or which were privileged or responsibly communicated;

- (c) in particular, it is the plaintiff's honest opinion, based on reasonable grounds and shared by many other fair-minded Canadians,
 - (i) that staying silent in the face of white supremacy and hate is dangerous and harmful, in that it encourages or increases the risk of the violence we have seen in New Zealand, Canada and elsewhere;
 - (ii) that this conduct and inaction is particularly harmful when it is done by politicians and other opinion leaders; and
 - (iii) the opinions and characterizations referred to in paragraph 16 of this Statement of Defence are appropriate and fair in all the circumstances.

18. In conclusion, the Post invited the plaintiff to engage in a dialogue on these topics, which he failed to do.

19. The words complained of were published in good faith, without malice, on an occasion of qualified privilege. They relate to matters of public interest.

20. The defendant, as a City Councillor, had and has a duty, and a special responsibility and interest, to report his observations, comments and opinions as expressed in the Post, and the public generally, and the voting public in the Barrie area, had and has a corresponding interest in receiving this communication. The recent public reporting on the tragic events that had occurred in New Zealand, including expressions of opinion similar to those in the Post, were a proper occasion for the plaintiff to exercise that duty, responsibility and interest, as he did, and the Post is therefore protected by a qualified privilege.

No Malice

21. The Defendant specifically denies the allegations of malice in the Amended Claim, and denies that the matters set out in the Amended Claim are capable of constituting malice on his part. The Post touches on issues of high public interest affecting Canadians at large.

The Action is a SLAPP

22. The defendant pleads that this action discloses no reasonable cause of action, and that there is no genuine issue to be tried in this case. The defendant further pleads that the relief sought by the plaintiff cannot be ordered by this Honourable Court.

23. This action is an abuse of this Court's process and meets the classic profile of a SLAPP suit – a strategic lawsuit against public participation. This claim has been brought to silence Mr. Aylwin and arises from an expression made by Mr. Aylwin that relates to a matter of public interest, namely, the causes contributing to the occurrence of recent Islamophobic events, on which a large number of Canadians from all social and political groups felt compelled to comment.

24. The characterization of this action as a SLAPP suit is confirmed by the extraordinary lengths that the plaintiff has gone to silence Mr. Aylwin and draw attention to this litigation in collateral proceedings designed to attract further public and media attention to the Post.

25. It is clear that the plaintiff is conducting a coordinated public relations campaign and is using this litigation to silence not only the defendant, but anyone who speaks out against Conservative politicians in anticipation of the upcoming federal election.

26. This is a classic SLAPP.

The Plaintiff has Suffered No Damages

27. The defendant denies that the plaintiff suffered the damage alleged in the Amended Claim, or any damage at all, including any damage to the actual reputation enjoyed by the plaintiff, and puts the plaintiff to the strict proof thereof.

28. In the alternative, if the plaintiff has suffered any damage to his reputation or otherwise, the defendant pleads that the damages claimed are excessive, exaggerated, remote, unavailable at law, unmitigated and unconnected with any alleged act or omission on his part. In addition, the plaintiff has failed to explain how the damages claimed are related to the Post as opposed to the various other major media outlets who reported the occurrence of the same events in the same or similar terms.

29. The defendant specifically denies that the plaintiff is entitled to aggravated, punitive or special damages, and states that the amount of such damages claimed in the action is another indicia of the strategic and improper purposes of the action.

30. The defendant pleads and relies on the *Libel and Slander Act*, R.S.O. 1990, c. L. 12 and in particular upon ss. 22, 23 and 24, as applicable; on section 2(b) of the *Canadian Charter of Rights and Freedoms*; and on the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

31. The defendant asks that this action be dismissed with costs.

32. The defendant asks that the trial of this action be heard at the same time as, or immediately after, the action bearing Court File No. CV-19-932.

May 27, 2019

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JOHN BRASSARD
Plaintiff

-and- KEENAN AYLWIN
Defendant

Court File No. 19-695

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

STATEMENT OF DEFENCE

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Lawyers for the Defendant

From: Brent Elsey
Sent: Sunday, May 26, 2019 11:02 AM
To: cityclerks <cityclerks@barrie.ca>
Subject: Agenda Item 7 General Committee May 27 2019

Dear Mayor City of Barrie and City Council,

Thank you for representing me, a resident of Ward 8, at Barrie City Council. I moved into the area last year. This is the first time I have written to a City Councillor but this matter concerns me greatly and hence this email.

The issue is Agenda Item 7 General Committee City of Barrie May 27, 2019 – “Report of the Integrity Commissioner dated May 22, 2019”.

In preparation of writing this letter I have read the entire report, reviewed the Facebook posting of Keenan Aylwin on March 21, 2019, reviewed multiple different press reports on the issue, reviewed what is available on the internet around the “United We Roll” events including the speeches of Andrew Scheer and Faith Goldy (among others) , reviewed The Honourable John Brassard’ voting record in the House of Commons (particularly around relevant issues) and reviewed the events that led to the International Day for the Elimination of Racial Discrimination. I did this preparation in an attempt to not make statements that are “ know to be false or with the intent to mislead the Council”.

Before moving to my present location, I lived in Springwater and that is where I first observed Keenan Aylwin in the public forum when he ran in the 2018 provincial election. I was impressed with his knowledge of key issues and his passion for social justice. Since then I have encountered him in different forums – Barrie’s Spring into Clean where we spent the morning with others (including his mother) tackling a park with large amounts of needles and other abandoned drug related garbage, every Friday at lunch time for Friends for the Future , Alex Nuttall ‘s Town Hall for the Safe Consumption Site and others . In all those settings , I have found him to “ to advance the public interest with honesty and treat members of the public with dignity , understanding, and respect.”

Integrity Commissioner Craig’s report of May 22, 2019, I found to be an excellent overview of the issues involved. I also concur with her recommendations.

First, “I strongly recommend that the Respondent take every opportunity to review and thoughtfully consider my comments and recommendations made in this Code Complaint Investigation Report. “ This is excellent advice and coaching for a young man at the beginning of , what I hope will be a long career, in public service. Her report outlines how we should behave when engaging in public discourse. And her recommendations are particularly important at this time.

Second, “The Integrity Commissioner recommends: 1. that Council impose the penalty of a reprimand on the Respondent in respect of his comments made on March 21, 2019 on Facebook which violated sections 5.12(e) and 20.6 (b) of the Code. “ Unfortunately, given the present rules that govern municipal level politics, Commissioner Craig’s finding is correct, in the letter of the law. But in the spirit of justice, I am asking you, as my representative, that the reprimand (Oxford definition = act of telling somebody officially that they have done something wrong) be delivered without any other penalty. This young man was acting on his values and principles. We should be encouraging that and supporting him. And reminding him of the correct way to engage in the public forum. “Accordingly, while elected municipal

officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations. These are guidelines for exercising their right to comment, which has been repeatedly reaffirmed by the courts.”

Third, “ In addition to the recommended penalty, the Integrity Commissioner recommends that Council consider the development of a City-wide Social Media policy that will include clear rules to guide Members of Council and Local Boards in the appropriate use of social media in their role as elected officials. “ This recommendation, I strongly support. Unfortunately, once again technology has outstripped policy. But I hope Barrie Council can set an example in this area.

I must declare I have concerns about the motivations of The Honourable John Brassard. By launching a civil suit, he allows himself to avoid public discussion on the issues, behind the position “ I can not comment on matters before the court.” That being said, and if actions do speak louder than words, his voting record in the House of Commons on similar issues (eg Motion 103 ... that in the opinion of the House, the government recognize the need to quell the increasing public climate of hate and fear...) may reflect his values.

Finally, my greatest anxiety over this situation, and the one that I believe pushed Keenan Aylwin to speak up (albeit inappropriately , given the Code of Conduct required in his position as Councillor) is the potential silence of our leaders, our representatives at all levels of government when we live in a time of rising hate, racial and gender discrimination. “Hate speech is vile, and denigration of humanity is offensive. The real issue in the matter before me is not about curtailing free speech or whether a call to decry senseless actions of hate is “the right thing to do”.

History has shown us repeatedly the extreme consequences of silence, of not speaking up. Hence my email.

Sincerely,

Brent Elsey, MD