

Dispute over city hall firings headed to court

Quoting Carol Chan

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The city is girding for a court battle over a four-year-old wrongful dismissal suit that has already cost taxpayers more than \$600,000 — while it defends a contentious six-figure payout to a fired HSR manager.

Former licensing employees Randy Charlton, Susan McGrath and Tom Redmond launched a \$7-million lawsuit against the city in 2009, arguing they were fired two years earlier as a result of a botched harassment investigation.

Their lawyer, Jim Fyshe, said settlement discussions have failed for Charlton and Redmond, who are now scheduled to go to trial in March. McGrath has reached a tentative confidential settlement.

Fyshe said he was “perplexed” by the city’s “aggressive” approach to the settlement negotiations. He said the city “could have easily settled” the lawsuit for less cash than it will spend defending the case.

City labour relations director Lora Fontana said she can’t comment on an ongoing court case, but acknowledged the length of time spent on the matter is “quite unusual.”

The latest development comes as the city faces public outrage over a six-figure severance payout to former HSR manager Bill Richardson, who was fired in the midst of an arbitration hearing that found he sexually harassed a female subordinate. The arbitrator’s report listed his severance package at \$200,000, although city sources argue it was closer to \$133,000.

Regardless, council has asked for a report on severance payouts that Fontana expects to bring to council in December.

Councillor Sam Merulla said the two examples show the city is “damned if we do and damned if we don’t” when it comes to firing employees.

“If we give in on these types of payouts, we’re seen as weak,” he said. “But if we fight, in many cases the courts have given blank cheques to the people who litigate against us.”

Employers “must meet a high standard” when trying to terminate with cause, especially over misconduct, said Sherrard Kuzz employment lawyer Carol Chan.

“Making that decision without sufficient evidence can be costly in the long run,” she said, pointing to the prospect of court-awarded damages.

Chan, who declined to comment on the specific Hamilton scenarios, said not every case of misconduct warrants termination with cause.

She pointed to a 2012 case involving a machine operator who was fired for slapping a coworker. The court found the assault could have been dealt with via progressive discipline and the misconduct was not serious enough to warrant termination with cause.

Charlton, McGrath and Redmond were fired in 2007 for allegedly mistreating a taxi inspector, Mike Francoeur. The city had asked an outside investigator to probe Francoeur’s harassment allegations, which included a profane tirade by Councillor Bernie Morelli.

The resulting report led to the firings and a recommendation to order Morelli to undergo sensitivity training — a suggestion rejected by council in favour of retraining all elected officials.

Redmond, McGrath and Charlton said in their statement of claim they were scapegoats and pointed the finger of blame at Morelli. The trio claimed they were never told they were under investigation and were never given specific details of the related allegations.

The city’s statement of defence countered each of the three plaintiffs had bullied Francoeur and had abused their authority in dealing with him. The city also argued Redmond and Charlton were informed of the allegations against them and had the opportunity to “respond in full.”

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