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**CITY OF WELLAND INTEGRITY COMMISSIONER, H.G. ELSTON**

Citation: Van Vliet v. DiMarco; DiMarco v. Van Vliet  
Date: November 3, 2020

**REPORT ON THE MATTER OF A COMPLAINT AGAINST COUNCILLOR DIMARCO  
BY COUNCILLOR VAN VLIET AND A COMPLAINT AGAINST COUNCILLOR VAN  
VLIET BY COUNCILLOR DIMARCO**

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Notice: Municipal Integrity Commissioners conduct inquiries and provide reports on their findings to their respective municipal councils. They may make recommendations for the imposition of a penalty or other remedial action to the municipal council. Reference should be made to the minutes of the municipal council meeting where the Commissioner's report was presented, to obtain information about council's consideration of each report. When possible, a link to the relevant municipal council minutes is provided.

[[Link to Council Decision](#)]

## PART I – VAN VLIET v. DIMARCO

1. The City of Welland (the “**City**”) approved Policy Number HUM-001-0031, establishing a Code of Conduct for Members of Council, on February 5, 2013, revising it on January 17, 2017 (the “**Code**”).
2. The purpose of the Code is to ensure that the Members of Council share a common basis for acceptable conduct. On or about October 4, 2016, I was appointed as the City’s Integrity Commissioner, pursuant to section 223.3(1) of the *Municipal Act, 2001*, R.S.O. 2001, c. 25 (the “**Act**”).
3. This report presents my findings and recommendations to Council, following my inquiry into a complaint made to me on May 26, 2020 by Councillor Van Vliet, alleging that during the meeting of Council on May 19, 2020, Councillor DiMarco breached Part XI of the Code “Discreditable Conduct”.
4. Councillor Van Vliet recalls that Councillor DiMarco complained to Mayor Campion that he, Van Vliet, was smiling at him and asked the Mayor to make him stop. Councillor DiMarco then became upset and threatened Councillor Van Vliet.
5. Councillor Van Vliet alleges that this type of confrontational behaviour over his expressions has been going on since 2014 – if Councillor Van Vliet smiles when Councillor DiMarco is talking, Councillor DiMarco becomes upset. Lately, however, Councillor DiMarco’s reactions have become threatening and bullying.
6. Part XI of the Code describes what constitutes discreditable conduct.

### DISCREDITABLE CONDUCT

As a representative of the City, every Member has the duty and responsibility to treat members of the public, one another and staff, appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment.

A Member shall not use indecent, abusive, or insulting words or expressions toward any other Member, any member of staff, or any member of the public. A Member shall not speak in a manner that is discriminatory to any individual based on that person’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status, or disability.

During Council and Standing Committee meetings, Members shall conduct themselves with decorum and in accordance with the City's Procedural By-law.

7. I have watched the video recording of the May 19, 2020 Council meeting, a viewing that leaves me no doubt that Councillor DiMarco was very upset and aggressive, directing abusive and threatening language in a loud voice at Councillor Van Vliet. At one-point Councillor DiMarco said to Councillor Van Vliet: "You think it's a big joke? We'll talk face-to-face". Councillor DiMarco's facial expression and tone left me with no doubt that this was intended as a threatening invitation to a confrontation.

8. Unfortunately, this is another in a series of complaints that I have received about Councillor DiMarco's behaviour. I have dealt with complaints that he was abusive towards and tried to intimidate a member of the public at a public meeting, that he has tried to assault a fellow Member of Council in the ante room during a break in a meeting of Council, and that he has disclosed sensitive, confidential information in an open session of Council.

9. While I have always tried to give Councillor DiMarco the benefit of the doubt, and respect his sincere commitment and contributions to the City of Welland, I fear he has lost perspective on his role as a Councillor, and his relationship with not only his fellow Councillors, but with staff and members of the public. His angry outbursts and often fierce attacks against people who disagree with him has become a serious impediment to the civilized debate of important matters. His contributions, however well-intended and meritorious, are diminished, and his colleagues become reluctant to engage with him, for fear of his response.

10. In my view, Councillor DiMarco was in breach of Part XI of the Code. It is my recommendation that Council denounce, in the strongest terms, Councillor DiMarco's behaviour and make it known that it is losing patience with him.

## PART II – DIMARCO v. VAN VLIET

1. I asked Councillor DiMarco to respond to Councillor Van Vliet's complaint. Rather than addressing the allegations in that complaint, however, Councillor DiMarco chose to make a separate complaint against Councillor Van Vliet.

2. On June 4, 2020, Councillor DiMarco sent me an email telling me that he felt the need to make a complaint against Councillor Van Vliet. His complaint was about what he characterized as Councillor Van Vliet's "intimidation, taunting and harassment", during meetings. Councillor DiMarco alleges that, during the May 19, 2020, virtual meeting of Council, as he was speaking, Councillor Van Vliet was laughing at him. Councillor DiMarco says that this explains his reaction.

3. In response to my request, Councillor DiMarco filed a formal complaint form with me on June 18, 2020. Councillor DiMarco states:

*While I have the floor and speaking whether in a live or virtual meeting Councillor Van Vliet will laugh prompting a reaction from me and despite a feeble warning from the Chair. It is my belief that the taunting is a form of harassment as per questions asked of presenter in regards to decorum.*

4. I sent the complaint to Councillor Van Vliet, who responded on June 28, 2020. Councillor Van Vliet notes that he is somewhat troubled by the wording in the Complaint from Councillor Tony DiMarco. Having reviewed a number of the Livestream tapes which are available to the public, Councillor Van Vliet sees a major discrepancy. In all of the tapes he has reviewed, Councillor DiMarco continues to complain that Councillor Van Vliet is smiling at him, but now that he is officially filing a complaint, he has decided to embellish the complaint by stating that Councillor Van Vliet was laughing at him.

5. Councillor Van Vliet states that at no time has he intentionally laughed at anyone making a presentation. These complaints from Councillor DiMarco have, apparently, been ongoing since 2014. Councillor DiMarco's complaints at the time were against former Councillor John Mastroianni and Councillor Van Vliet every time either of them were to smile. Councillor Van Vliet observes that there are many reasons why a person may smile, and finds it incredulous that this is challenged as harassment.

6. Councillor Van Vliet also alleges that during the week commencing June 15, 2020 he received an email from Councillor DiMarco asking if he was proceeding with the Integrity Commissioner complaint against him. Councillor Van Vliet believes Councillor DiMarco's complaint to be baseless and is only in retaliation for his complaint against him.

7. While a Council meeting is certainly no place for any form of deliberately taunting or mocking behaviour, at the same time, politics requires a thick skin and, with all due respect to Councillor DiMarco, it is beyond the pale to consider smiling as a form of harassment. Accordingly, I am dismissing Councillor DiMarco's complaint against Councillor Van Vliet.

8. In closing, I would remind all Members of Council of the need to maintain a respectful attitude and tone towards each other. Your nights are long enough.

All of which is respectfully delivered this 3<sup>rd</sup> day of November 2020.



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H.G. Elston  
Integrity Commissioner City of Welland