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CHAMBERS

Integrity Commissioner Office
for the City of Welland

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August 18, 2022

SENT BY EMAIL TO:

Mayor Campion, Councillors Moote and McLeod and Steve Zorbas, CAO

AND TO:

Councillor DiMarco

**Re: Investigation Report
Complaint No. IC-17075-0322**

Dear Mayor Campion, Councillors and Mr. Zorbas:

This is my report respecting a complaint brought by Mayor Campion, Councillors Moote and McLeod and Steve Zorbas, CAO (the “Complainants”) against Councillor DiMarco under the Council Code of Conduct of the City of Welland (the “Code”).

In accordance with the Complaint Procedure of the *Code*, via section 223.4(1) of the *Municipal Act, 2001*, Council, a Member of Council, an employee of the city, or a member of the public may request that the Integrity Commissioner conduct an inquiry about whether a member of Council has contravened the *Code*.

The Complaint

Overview

In their Complaint, the Complainants note that during an in-camera session on March 8, 2022, Councillor DiMarco was ejected from the Zoom meeting by the Mayor due to comments the Councillor had made during the meeting. The Complaint outlines those comments specifically. The Mayor requested that Councillor DiMarco be excluded/ejected from the meeting. The City Clerk then placed Councillor DiMarco in the “waiting room” of the Zoom meeting.

Following the ejection of Councillor DiMarco, he travelled to the Civic Square and came to the Council Chambers to attend the meeting in person. At one point in the meeting, Councillor DiMarco taunted Councillor Moote, stating “You come and eject me”. Councillor DiMarco made the beckoning sign implying he wanted Councillor Moote to come to him and make him leave his seat.

Councillor DiMarco was told to leave the meeting. He ultimately packed up his laptop and papers to leave the meeting. Security escorted him out of the building.

Code of Conduct - Citations

The Complainants cited the following sections of the *Code*:

- **Section 9.0**
- **Section 14.0.**

The cited sections state as follows:

9.0 RESPECT IN THE WORKPLACE

9.1 Without limiting the generality of Section 8.0 of the Code, Members shall be governed by Welland’s Workplace, Discrimination, Harassment and Workplace Violence Policy, and any similar policy or

procedure, made pursuant to the Occupational Health and Safety Act and the Human Rights Code.

9.2 Members have a duty to treat members of the public, one another and staff appropriately and without engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination or workplace violence.

9.3 Members have a further responsibility to support a workplace within Welland that is free of workplace harassment, workplace sexual harassment, abusive conduct, discrimination and workplace violence.

14. DISCREDITABLE CONDUCT

14.1 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.

14.2 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.

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

Investigative Process

The process of investigation for this matter included:

- a. a review and exchange of the written submissions of the Parties;
- b. an interview with all of the Complainants;

- c. an interview with Councillor DiMarco;
- d. an interview with the City Clerk;
- e. a review of other relevant information and law as may be referenced periodically herein.

Procedural Fairness and Evidentiary Standard

The principles of procedural fairness were followed in this matter. This Complaint was investigated with input from all involved Parties who were provided with the opportunity to review the written statements of the other side, and to provide oral evidence by way of interviews. The evidence obtained from all sources has been assessed in a fair and neutral manner.

As with any civil matter in such an adjudicative process, the standard of proof to be applied in this case is the *balance of probabilities* standard.

Statements and Evidence of the Parties and Witnesses

Complaint Particulars

The Complaint provided significant detail. As noted in the Complaint, currently meetings of Welland City Council are held with staff and some Councillors present in person in the Council Chambers and others via Zoom. This is to ensure that the municipality is following COVID-19 regulations and protocols.

During the in-camera session on March 8, 2022, Councillor DiMarco was ejected from the Zoom meeting by the Mayor due to comments the Councillor made during the meeting. Some of the comments and actions included these:

At 1:06:00 of the recording, Councillor DiMarco indicated an issue from the prior week had not been resolved. Councillor DiMarco was asked to limit his comments to the current matter on the floor. Councillor DiMarco advised that he would be leaving the meeting. He continued to interrupt the Mayor.

After this exchange, Councillor DiMarco advised he was leaving the meeting and turned off his camera.

At approximately 1:15:00 of the recording, Councillor DiMarco came back into the Zoom meeting and commented that this was “brutal” and continued to argue with the Mayor. At that point, the Mayor requested that Councillor DiMarco be

excluded from the meeting. The City Clerk placed Councillor DiMarco in the “waiting room” of the Zoom meeting.

Following this exchange, Councillor DiMarco travelled to the Civic Square and came to the Council Chambers to attend the meeting in person. He arrived at approximately 7:07 p.m.

At approximately 1:51:00 in the recording, Councillor DiMarco asked a question about the matter on the floor. Councillor Moote then requested clarification from the Mayor with respect to Councillor DiMarco’s status in the meeting.

After this exchange, Councillor DiMarco said to Councillor Moote: “You come and eject me”. Councillor DiMarco gestured to Councillor Moote to come to him and force him to leave his seat.

At this point, the Mayor asked Councillor DiMarco to leave the meeting. After another five minutes, Councillor DiMarco packed up his laptop and left the meeting. He was escorted out of the building by security.

Councillor DiMarco’s Response

Councillor DiMarco delivered a written response. Unfortunately, the formatting made it difficult to comprehend and it was quite disjointed. Although the Councillor’s response was typed, the formatting made it largely illegible. It took considerable time to obtain a legible response from the Councillor, leading to a delay in my investigation.

In his written response, the Councillor disputed the Complainants’ assertion. Some of the Councillor’s responses were as follows:

- 1) The Mayor interrupts him at least 85% of the time when he has the floor;
- 2) Councillor DiMarco was not at all aware that he was removed from the Zoom meeting;
- 3) He was not escorted out of the building by security. When he was leaving the Council Chambers, he passed a security guard. However, he left of his own volition;
- 4) Councillor Moote asked for a point of order after Councillor DiMarco had been sitting in Council Chambers for 45 minutes to an hour. Councillor DiMarco asked what the point of order was. Councillor DiMarco had not been able to

hear the point of order, because of his severe hearing disability. The Mayor refused to repeat the point of order. Both the Mayor and Councillor DiMarco became agitated. The Mayor then called a recess. Councillor DiMarco packed up his items and left the meeting.

Mayor Campion's Reply

The Mayor indicated that most of Councillor DiMarco's response was not relevant to the Complaint. The Mayor noted that the Councillor was clearly ejected from the Zoom meeting around 1:15:00 in the recording. The City Clerk placed him in the "waiting room" as he did not leave the Zoom meeting by signing off.

Councillor DiMarco entered the Council Chambers at approximately 1:31:00 in the recording and was ejected at 1:51:00. He was in the Council Chambers for twenty minutes.

With respect to the issue of the security guard, the Mayor noted that the Clerk contacted security to escort Councillor DiMarco from Council Chambers when he refused to leave. As the Councillor finally left through one door, the security guard came in the other door. Seeing that he had left, the guard followed the Councillor out to ensure he left the building.

Councillor McLeod's Reply

In his Reply, Councillor McLeod indicated that the reported breach of the *Code* was accurate. Councillor DiMarco was clearly gesturing to Councillor Moote for a physical altercation. Councillor McLeod noted that Councillor DiMarco's conduct was unacceptable and impeded respectful debate.

Councillor Moote's Reply

Councillor Moote questioned how he could have glared at Councillor DiMarco throughout the term, when they haven't been in the same room together since before the pandemic.

CAO Zorbas's Reply

Mr. Zorbas did not provide a substantive reply. He merely stated that his complaint remained unchanged.

Interview with Mayor Champion

Mayor Champion noted in our interview that Councillor DiMarco was aware that he was ejected from the Zoom meeting. When Councillor DiMarco began to interrupt him, the Mayor wanted to silence him. However, his understanding was that the City Clerk can't put anybody on mute. The only remedy is to remove the person into the waiting room.

Councillor DiMarco then attended the Council Chambers in person. The Mayor gave him time to sit down, since Council was in the middle of debating an item. At that point, Councillor Moote asked a point of order with respect to Councillor DiMarco's in-person attendance.

Councillor DiMarco engaged in an exchange with Councillor Moote, where he challenged Councillor Moote to physically remove him from the meeting. At that point, after a few minutes, Councillor DiMarco left the meeting after being asked to leave.

Interview with Councillor Moote

Councillor Moote provided further details with respect to the exchange once Councillor DiMarco was asked to leave the in-person council meeting. He noted that Councillor DiMarco made a beckoning motion to him, apparently inviting a physical altercation.

At that point, security was called. Councillor DiMarco ultimately left the meeting unescorted.

Interview with CAO Zorbas

Mr. Zorbas indicated that when Councillor DiMarco arrived to Council Chambers he used inappropriate body language. Approximately fifteen minutes elapsed until Councillor DiMarco was told to leave the meeting. Councillor DiMarco threatened Councillor Moote with his fist.

Interview with Councillor McLeod

Councillor McLeod indicated that it was clear to everybody on the Zoom call that Councillor DiMarco was ejected from the meeting. The Mayor first warned

Councillor DiMarco to stop interrupting, and then had the Clerk place him in the Zoom waiting room.

Sometime after he arrived at Council Chambers in person, Councillor DiMarco gestured toward Councillor Moote, inviting a physical altercation. When he was told to leave, Councillor DiMarco begrudgingly packed up his things.

Interview with City Clerk Tara Stephens

Ms. Stephens recalled from the recording that Councillor DiMarco kept talking over the Mayor. The Mayor stated that if he continued, he would be excluded. Ms. Stephens put him in the Zoom waiting room. Councillor DiMarco was notified that he was being placed in the waiting room.

At 1:30:00 in the recording of the meeting, Councillor DiMarco returned to the meeting in person at Council Chambers. He was ejected approximately twenty minutes later at 1:51:00 minutes into the recording. Councillor DiMarco threatened Councillor Moote with a physical altercation. He was taunting Councillor Moote, and this led to the Mayor demanding that he leave the meeting.

Ms. Stephen also provided me with written comments. Her notes indicated that Mayor Champion was attempting to rule on a point of order that was raised by another member of council. When the Councillor continued to interrupt the Mayor, the Mayor indicated that people needed to stop talking over him, and stop arguing, as he was trying to get through the meeting.

The Mayor commented to Councillor Chiochio that if the interruptions continued, Council Members would be excluded from the meeting. Following that comment, Councillor DiMarco interrupted the meeting and began to argue with the Mayor. Councillor DiMarco continued to argue and interrupt the Mayor. The Mayor then stated "You are going to be excluded".

Following the comment to Councillor DiMarco, Mayor Champion advised Ms. Stephens to place Councillor DiMarco in the waiting room.

Interview with Councillor DiMarco

Councillor DiMarco's explanation for the incident was that he was unaware that he had been ejected from the Zoom meeting. If he knew that he had been eliminated from the Zoom meeting, he would not have attended in person at Council Chambers.

Councillor DiMarco explained that he has a significant hearing loss in his left ear. He can't wear hearing aids. When he was placed in the Zoom waiting room, he thought he had lost his connection to the online meeting.

Once he attended in person, he was there 45 minutes to an hour before he was asked to leave.

Councillor Moote was glaring at him throughout his in-person attendance. Councillor DiMarco denied gesturing to Councillor Moote. He was trying to hear what Councillor Moote had said. He only gestured because he was trying to hear the point of order.

Councillor Moote would not repeat his point of order. Once Councillor DiMarco was asked to leave, he didn't wait. He packed up his things and left the meeting on his own.

Analysis of Evidence and Findings

Credibility

Regarding the statements of the Complainants and Councillor DiMarco, all of whom I interviewed, I have considered the generally accepted factors in assessing their credibility in this complaint including their demeanour, ability and opportunity to observe, power of recollection, interest, bias, prejudice, sincerity, inconsistency, and the reasonableness of their statements when considered in the light of all the evidence: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at pp. 356-8, per O'Halloran J.A.

John Sopinka, in his text, *The Trial of an Action* (1981, Toronto, Ontario: Butterworths) at p. 77, wrote of the role of the assessment of credibility through probabilities as follows:

“Probability is the great touch-stone of all evidence. A witness whose credibility strays from the truth will often have built into it some inherent improbability.”

As the British Columbia Court of Appeal stated in *Faryna v. Chorny, supra*:

...the real test of the truth of a story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Issues

The key issues raised in this matter are as follows:

1. Did the Councillor breach Section 9.0 of the *Code*?
2. Did the Councillor breach section 14.0 of the *Code*?

Analysis and Findings

The following section lays out my analysis of the evidence and my findings. For all of the reasons set below, I find that the Councillor acted improperly; that is, his actions breached the Code of Conduct as asserted by the Complainant.

Did the Councillor breach section 9.0 of the *Code*?

This section deals with respect in the workplace. In particular, Section 9.2 of the *Code* states that members have a duty to treat one another appropriately and without engaging in workplace harassment, workplace sexual harassment, abusive conduct, discrimination or workplace violence.

I had the advantage of listening to the entire recording of the March 8, 2022 meeting. From my interviews of the Complainants and Ms. Stephens, their recollection of events is similar. They all are of the view that the Councillor was aware that he had been ejected from the Zoom meeting, when he arrived at the Council Chambers in person.

On the other hand, Councillor DiMarco advised me that he was unaware that he had been ejected from the meeting. He told me that had he known that, he wouldn't have travelled to the meeting in person.

I am not convinced on a balance of probabilities that Councillor DiMarco was aware that he had been ejected from the Zoom meeting. I have noticed throughout this investigation that Councillor DiMarco has challenges when dealing with technology. Further, I accept his submissions with respect to his hearing loss. His hearing disability has not been called into question by any of the other Council Members or the Mayor.

On balance, I will accept the Councillor's position that he was unaware that he had been told to leave the Zoom meeting.

However, leaving that issue aside, I find that his threatening motion to Councillor Moote when he arrived in person was a violation of Section 9.2 of the *Code*. I find this behavior, while not equivalent to workplace violence, to be abusive. All of the Complainants were of the view that this was a violation of Section 9 and I agree. It is not appropriate for Council Members to threaten each other with physical violence.

The Complainants and the City Clerk all presented almost identical accounts of Councillor DiMarco's motioned threat to Councillor Moote. In my view, this is unacceptable conduct on the part of Councillor DiMarco, and a violation of Section 9.

When assessing the Complainants' credibility as compared to Councillor DiMarco's, I was struck by the similar recollection held by all four Complainants. I found their recollection to be more credible given the consistency in their memory. Ms. Stephen's recollection of events also matched the Complainants'.

Did the Councillor breach section 14.0 of the Code?

Section 14 deals with Discreditable Conduct. This section is somewhat similar to Section 9. Section 14.1 stipulates that every council member has the duty to treat one another appropriately and without abuse, bullying or intimidation. When Councillor DiMarco invited Councillor Moote to remove him from the meeting, this can be said to be an action of bullying or intimidation.

Section 14.3 of the Code is much broader. It states that Members shall conduct themselves with decorum during Council meetings. When Councillor DiMarco motioned to Councillor Moote as he did when he was asked to leave the meeting, this was clearly a breach of decorum.

I did not have the advantage of viewing video of the in-camera session. I was provided with the full audio recording. So, I must rely on the written material and my interviews with the parties.

In this sense, as noted above, I find the Complainants and Ms. Stephens to be more credible than Councillor DiMarco. Once again, I will accept the Councillor's statement that he was unaware that he had been removed from the Zoom meeting.

However, even leaving that issue aside, I can isolate his gesture to Councillor Moote. When Councillor DiMarco invited Councillor Moote to physically remove him from the meeting, this behavior was clearly a violation of Section 14.3 of the *Code* in the sense that it clearly showed a lack of decorum.

And while Councillor DiMarco argued that he did not make such a gesture, the evidence of the Complainants and Ms. Stephens was identical on this point. I find on a balance of probabilities that Councillor DiMarco did challenge Councillor Moote to physically remove him from the meeting. I also am mindful of the fact that Councillor DiMarco interrupted the Mayor during the Zoom call before he was placed in the Zoom waiting room.

Using this analysis, it is clear that Councillor DiMarco's conduct was a violation of the *Code*.

In respect of the penalty, I have taken into account Councillor DiMarco's interruption of the Mayor during the Zoom session, and his gesturing to Councillor Moote once he attended in person. I am selecting an intermediate penalty – not the most serious in terms of a long suspension of pay, and something more than a reprimand.

Councillor DiMarco's behavior during both the Zoom call and his in-person attendance was inappropriate and showed a lack of decorum. This should not be tolerated at Council meetings. At the same time, his behavior fell short of actual physical violence. These are the factors that I have taken into account when deciding upon an appropriate penalty.

Conclusion and Recommendation(s)*Conclusion*

Based on the foregoing, I have concluded that Councillor DiMarco contravened Sections 9.0 and 14.0 of the *Code*. Therefore, I make the following recommendation to Council of the City of Welland:

Councillor DiMarco shall be reprimanded. In addition, Council shall impose a suspension of the remuneration paid to Councillor DiMarco in respect to his services as a member of council for a period of 14 days.

Concluding Remarks

I trust this Investigation Report provides clarity to the Parties regarding the matters at issue raised in this Complaint. I thank the Parties for their assistance and cooperation.

This matter is now concluded.

Respectfully submitted by,



Deborah Anschell
Integrity Commissioner
City of Welland