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CHAMBERS

Integrity Commissioner Office
for the City of Welland

DEBORAH ANSHELL
Integrity Commissioner
City of Welland
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February 20, 2024

SENT BY EMAIL TO:

Sherri-Marie Millar

AND TO:

Councillor Tony DiMarco

**Re: Investigation Report
Complaint No. IC-27155-1023**

This is my report respecting a complaint brought by Sherri-Marie Millar (the “Complainant”) 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 her Complaint, the Complainant notes that at the September 5, 2023, Welland City Council Meeting, Councillor DiMarco was ejected from the meeting by Mayor Frank Campion. After the Mayor had recessed the meeting, Councillor DiMarco began gathering his items to leave the Council Chamber.

While he was leaving, Councillor DiMarco called loudly across the room at Rob Axiak, the Director of Community Services.¹ He said: *“Axiak, you’ve got to go buddy, you have screwed up every project you have touched in this city. Everything you touch, you have screwed up in the past two years, get out of here.”*

Code of Conduct - Citations

The Complainant cited the following sections of the Code:

- **Section 8**
- **Section 9**
- **Section 14**

The cited sections state as follows:

8.0 CONDUCT RESPECTING STAFF

8.1 Members are elected legislators and representatives of their constituents. Staff are ultimately accountable to the Chief Administrative Officer, and are responsible for implementing the decisions of Council, and ensuring the efficient and effective operation of municipal services.

8.2 Members are expected at all times to treat staff with respect, professionalism and courtesy. Members who contact staff shall ensure that their request is within the employee’s realm of responsibility, approved work plan, or available resources.

8.3 Members and staff will work cooperatively based on shared values of honesty, trust, mutual respect, and leadership for continuous improvement.

8.4 Members shall be respectful of the fact that staff are charged with making recommendations that reflect their professional expertise and corporate perspective without undue influence from any individual Member or group of Members.

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.

¹ Note that Rob Axiak was appointed to be Welland’s Chief Administrative Officer on November 1, 2023, but held the role of Director of Community Services until that date.

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 the Complainant;
- c. an interview with Councillor DiMarco;
- d. an interview with Rob Axiak;
- 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 both 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

The essence of the Complaint is described above. The Complaint also referenced an article published in the Welland Tribune on September 6, 2023. In that article, Reporter Dave Johnson noted that Councillor DiMarco put forward a motion asking that an Infrastructure Canada Grant Award for the Community Trails Strategy report approved in late January 2023 be rescinded.

Mayor Champion indicated that Councillor DiMarco was precluded from bringing the motion forward because he had declared a conflict of interest on the same subject matter earlier in the year. The Mayor declared that the City had obtained legal advice that since it had already started the project and spent federal grant money, the approval could not be rescinded. The Mayor therefore ruled the Councillor's motion to be out of order based on this legal advice.

After words were exchanged between the Mayor and the Councillor, Councillor DiMarco was asked to leave the Council meeting. The Mayor declared a five-minute recess. Dave Johnson noted as follows with respect to the incident in question:

"Once livestream cameras were off and with several councillors and staff still in chambers, DiMarco directed his attention to Axiak, who was sitting on the opposite side of council chambers. 'Axiak, you've got to go, buddy. You have screwed up every project you have touched in this city. Everything you touch, you have screwed up in the past two years. Get out of here,' said DiMarco."

I reviewed this matter with the Complainant, Ms. Millar. On the date of the Council Meeting Ms. Millar had been acting as the Interim Chief Administrative Officer for 3 months. Ms. Millar confirmed that the excerpt referenced above was an accurate description of the comments that Councillor DiMarco directed to Rob Axiak.

I also spoke to Rob Axiak. At the time of the meeting, Mr. Axiak was the Director of Community Services. He confirmed that Councillor DiMarco used the words reported by the journalist at the Welland Tribune. Mr. Axiak advised me that he has had ongoing conflict with Councillor DiMarco. The Councillor has indicated his displeasure that Mr. Axiak has a senior role in Welland when he has not always been a Welland resident.

Finally, I reviewed this matter with Councillor DiMarco. He acknowledged that he made the quoted disparaging comments to Mr. Axiak. In his written reply, the Councillor noted that the Complaint and the allegations against him were correct. The Councillor stated however that he treats staff as he is treated, and generally better. He noted that the public would confirm that there have not been previous problems in his dealings with constituents.

Councillor DiMarco's only explanation for his insulting comments was that he has a lengthy history with Mr. Axiak. He indicated to me in our discussion and in his written reply to the Complaint that he had a number of issues with Mr. Axiak's performance in his role – he identified a list of 17 items.

Councillor DiMarco also provided me with email communications to Mr. Axiak dated September 6, 2023, that contained an apology for his outburst at the Council meeting. Mr. Axiak indicated to me that he has blocked emails from the Councillor, and therefore was unaware of the apology.

Councillor DiMarco also advised me that he spoke to the Mayor to apologize, and tried to contact Mr. Axiak by phone to apologize.

Analysis of Evidence and Findings

Credibility

Regarding the statements of the Complainant and Councillor DiMarco, both of whom I interviewed, it was not necessary for me to make findings of credibility. The statements that Councillor DiMarco made to Mr. Axiak are not disputed and were acknowledged by the Councillor.

Issues

The key issues raised in this matter are as follows:

1. Did the Councillor breach Section 8.0 of the *Code*?
2. Did the Councillor breach Section 9.0 of the *Code*?
3. 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 out 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 8.0 of the *Code*?

I find that Councillor DiMarco breached Section 8.2 of the *Code*. While clearly the Councillor and Mr. Axiak have a history of prior conflict, there is no doubt that the Councillor's outburst as he was leaving the Council Meeting showed a lack of respect, professionalism and courtesy. The Councillor's criticism of Mr. Axiak was disrespectful and unprofessional.

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 find that Councillor DiMarco's comments to Mr. Axiak as he was leaving the meeting were a violation of Section 9.2 of the *Code*. I find his commentary, while not equivalent to workplace violence, to be abusive.

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 members of the public, one another and staff, appropriately and without abuse, bullying or intimidation. When Councillor DiMarco insulted Mr. Axiak, this could be seen as treating Mr. Axiak inappropriately.

I also find that the Councillor breached Section 14. 2 of the *Code* insofar as he used insulting words to a staff member.

Section 14.3 of the *Code* is much broader. It states that Members shall conduct themselves with decorum during Council meetings. When Councillor DiMarco insulted Mr. Axiak, this clearly showed a lack of decorum.

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 the fact that all of the people I interviewed accepted the version of events as reported in the Welland Tribune. I find that Councillor DiMarco's remarks to Mr. Axiak as reported in the press, negatively impacted the reputation of the City. Furthermore, Council meetings must be a safe place for City staff. Councillor DiMarco had no adequate excuse for his outburst, other than to indicate to me that he has a long list of complaints against Mr. Axiak.

Councillor DiMarco's criticism of Mr. Axiak was inappropriate and showed a serious lack of decorum. This should not be tolerated at Council meetings. At the same time, Councillor DiMarco's behavior did not include actual or threatened physical violence. These are the factors that I have taken into account when deciding upon an appropriate penalty.

I see this as a serious violation of the sections of the *Code* that I have referenced above and accordingly recommend a serious penalty.

Conclusion and Recommendation(s)

Conclusion

Based on the foregoing, I have concluded that Councillor DiMarco contravened Sections 8.0, 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 60 days.

Respectfully submitted by,



Deborah Ansell
Integrity Commissioner
City of Welland

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.



Deborah Ansell
Integrity Commissioner, City of Welland