



**ADR**  
CHAMBERS

Integrity Commissioner Office  
for the City of Welland

**MICHAEL L. MAYNARD**

Integrity Commissioner

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July 8, 2024

SENT BY EMAIL TO:

**Mayor Campion**

AND TO:

**Councillor DiMarco**

AND TO:

**Welland City Council**  
**c/o Tara Stephens, City Clerk**

**Re: Investigation Report**  
**Complaint No. IC-30705-0324**

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## INTRODUCTION AND MANDATE

This is my report respecting a complaint (“Complaint”) brought by Mayor Frank Campion (“Mayor Campion” or the “Mayor”) regarding the conduct of Councillor Tony DiMarco (“Councillor DiMarco”) (collectively the “Parties”) under the City of Welland’s (the “City”) Code of Conduct for Members of Council (the “Code”).

I was appointed Integrity Commissioner (“Integrity Commissioner” or “IC”) on April 16, 2024, through an amendment to the existing agreement for IC services between the City and ADR Chambers. I am tasked with carrying out statutory duties pursuant to section 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act*”), including the

application of the City's Code through its Integrity Commissioner Procedures document (the "Protocol").

## PROCESS OF INQUIRY

I received this Complaint following my appointment to this role on April 16, 2024, though it was initially filed with our office on or about March 26, 2024. An executed Consent and Confidentiality Agreement was provided by the Mayor on April 16, 2024, at which point I commenced my inquiry.

My investigation afforded procedural fairness to both sides and included: (i) an exchange of written evidence; (ii) oral interviews conducted by telephone; (iii) an impartial analysis of evidence as set out in this report; and (iv) an opportunity for the Respondent Councillor to review and comment on a draft of this report prior to its finalization and publication. The evidence was weighed impartially on a balance of probabilities.

### *Note to the Reader on Confidential Matters*

This Complaint refers to matters of a confidential nature, including items which were considered during a closed (i.e., in-camera) session of Council. Due to the sensitive nature of these matters, I have been careful to generalize as much as possible while still communicating the essential elements of the matters at issue.

## COMPLAINT

Mayor Campion alleged that Councillor DiMarco breached confidentiality by disclosing confidential in-camera information during an open session of Council on February 13, 2024. The verbal exchange, commencing at approximately 00:04:09 of the meeting, went as follows<sup>1</sup>:

**Councillor DiMarco:** "Mr. Mayor, I have a personal point of privilege."

**Mayor Campion:** "Councillor DiMarco..." [recognizing him to speak]

**Councillor DiMarco:** "I have a personal point of privilege."

**Mayor Campion:** "Okay."

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<sup>1</sup> Not a certified verbatim transcript.

- Councillor DiMarco:** “Mr. Mayor, I received an email on December 20th, that stated ... that being confirmed that council has approved the recommendation that you are not permitted to attend City Hall.”
- Mayor Campion:** [interjecting] “Councillor, that’s an in-camera item.”
- Councillor DiMarco:** “It involves me, Mr. Mayor.”
- Mayor Campion:** “It’s a confidential item, Councillor.”
- Councillor DiMarco:** “Confidential?”
- Mayor Campion:** “Yes, it is Councillor.”
- Councillor DiMarco:** “It’s about me, and I would like it out in the open.”
- Mayor Campion:** “Well, I’m sorry, but it’s confidential information. You cannot do that.”
- Councillor DiMarco:** “Well, you won’t allow in-camera time to discuss...”
- Mayor Campion:** “That’s correct. It’s an in-camera item. It’s part of our Code of Conduct. You cannot speak about it in open session.”
- Councillor DiMarco:** “Yes, but you won’t allow in-camera time, when it was requested.”
- Mayor Campion:** [Interjecting] “Are you going to...are you gonna stop? Councillor, you have to stop that line of conversation.”

The Mayor asserted that a further attempt to discuss this same confidential information was made by Councillor DiMarco at a Council meeting on February 27, 2024, commencing at 00:04:19, as follows<sup>2</sup>:

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<sup>2</sup> Ibid.

- Councillor DiMarco:** "Mr. Mayor, I have a personal point of privilege."
- Mayor Campion:** "As long as it has nothing to do with an in-camera item, you can proceed. If it has anything to do with an in-camera item, you may not."
- Councillor DiMarco:** "Well, it's just in regards to my request to attend the meeting ... [inaudible]."
- Mayor Campion:** "Councillor, that's an in-camera item. It's been addressed with you and we will not discuss that in session."
- Councillor DiMarco:** "Well, Mr. Mayor, the interpretation that I received..."
- Mayor Campion:** [interjecting] "Councillor, you've had your answer ... you've had your answer multiple times. I'm not going to go down this road again with you."
- Councillor DiMarco:** [interjecting] "Multiple times?"
- Mayor Campion:** "You may not bring this up."
- Councillor DiMarco:** "No, I'm just talking about the original email and the way that you have interpreted it..."
- Mayor Campion:** [interjecting] "Councillor, that was listed as confidential information, it remains confidential, and you will not discuss it. And I told you that through email multiple times so you should understand that."
- Councillor DiMarco:** "Well, you should read the original email that I received, Mr. Mayor."
- Mayor Campion:** "Councillor DiMarco, if you don't stop right now, you're going to be leaving the meeting."

As a result of each of these verbal exchanges, the Mayor asserts that Councillor DiMarco contravened the following Code of Conduct provisions:

## 5.0 CONFIDENTIAL INFORMATION

5.1 Members have access to confidential information by virtue of their position with the City of Welland.

5.2 Confidential information includes:

- (b) a matter that has been debated or discussed at a meeting of Council closed to the public, unless the matter is subsequently discussed in Open Council, or it is authorized to be released by Council;

5.3 No Member shall:

- (b) disclose, release or publish by any means, including social media, any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;
- (c) provide to any other person to disclose, release, or publish any confidential information acquired by virtue of his or her office, in any form, except when required by or authorized by Council or otherwise by law to do so;
- (e) disclose or discuss, through written, electronic or oral communication, to any individual or corporate third party, any information that has been or will be discussed at a closed session meeting of Council or a Committee until such time that Council or the Committee has determined or has been advised by staff that the matter, or any part of the matter, can be made public subject to review by the head or designate under the *Municipal Freedom of Information and Protection of Privacy Act* or if directed to do so by a court.

## RESPONSE

Councillor DiMarco provided five emails in response to these allegations, which included various forwarded emails between himself and City staff and/or others. These forwarded emails voiced his various grievances concerning the confidential matter discussed at a closed meeting (i.e., the subject matter he attempted to raise at the Council meetings of February 13 and 27, 2024, precipitating this Complaint).

However, while the Respondent's submissions dealt with the core issue of the above-referenced in-camera information itself, and his opposition to certain procedural, substantive, and interpretive elements related thereto, the Councillor did not deny the allegation that he raised and commented on this confidential information openly during the two Council meetings in February, as alleged.

## REPLY

Mayor Champion was provided with an opportunity to make submissions in Reply but opted not to do so.

## INTERVIEWS

### *Interview with Mayor Champion*

I spoke with Mayor Champion on June 3, 2024. He observed that this was a "touchy situation" given that it deals with an in-camera item. I assured him that I would deal with the issue delicately in my report.

The problem Mayor Champion noted was that Councillor DiMarco twice tried to raise, via a "point of privilege", the subject matter of an in-camera item. On both occasions, the Respondent Councillor began to discuss certain details of the in-camera item publicly. Though the Mayor attempted to stop the Respondent Councillor from speaking on these matters at the February 13<sup>th</sup> meeting, he tried again to raise the issue at the subsequent Council meeting on February 27, 2024.

It was noted that the subject matter does involve the Councillor personally, but it also involves others. The matters are confidential and ought not to be discussed in open session as attempted by the Respondent Councillor.

### *Interview with Councillor DiMarco*

I spoke with Councillor DiMarco on June 6, 2024. He asserted that there was a pattern of harassment against him, and though he advised that he does not like to use the term lightly, he feels "harassed" by the Mayor.

He stated that the in-camera issue he attempted to discuss at the February meetings is about him, and he wants it to be made public. When I pointed out to the Councillor that the in-camera item is not about him alone but that it also concerns other people, he responded that he had not considered that when he tried to raise his points of privilege.

He also asserted that “the whole city knows about it” and “it’s not hard to figure out” so he just wanted it out in the open.

In addition to these comments, Councillor DiMarco raised several of his own concerns about political and administrative matters at the City, but they are not relevant to the specific matters at issue.

## ANALYSIS AND FINDINGS

The question before me is whether Councillor DiMarco improperly disclosed, discussed, released or published confidential in-camera information.

I accept that the information is confidential. In my view, Councillor DiMarco did improperly disclose and discuss this information and would have done so at greater length and in greater detail had the Mayor not stopped him.

In his Complaint, the Mayor cited sections 5.1, 5.2 (b), and 5.3 (b), (c), and (e) of the Code.

Section 5.1 does not provide a rule, but rather notes that Members may be exposed to confidential information in carrying out their role. Similarly, section 5.2 (b) does not set out a rule but provides a definition of “confidential information” that includes in-camera business that has not been discussed by Council in open session or otherwise authorized by Council for release.

Section 5.3 (b) and (c) broadly provide rules which govern the treatment of confidential information and are generally applicable to these circumstances. Section 5.3 (b) prohibits the improper disclosure, release or publishing of such information, while section 5.3 (c) prohibits the disclosure of such information to another individual so they may publish it (i.e., it prohibits what is commonly referred to as “leaking” information).

However, in my view, section 5.3 (e) is the most applicable to these circumstances, as it deals specifically with in-camera (i.e., “closed session”) information which has not been authorized for release by Council or otherwise subject to release under the *Municipal Freedom of Information and Protection of Privacy Act* or as ordered by a court.

The evidence before me supports that on both February 13<sup>th</sup> and February 27<sup>th</sup>, Councillor DiMarco began to discuss and started to reveal certain information which is clearly subject to closed session confidentiality. The Mayor attempted to stop him from doing so, and the Councillor argued that he ought to be able to discuss such information, irrespective of its confidential status.

By discussing this confidential information openly and revealing certain details of that confidential information to the public, Councillor DiMarco breached section 5.3 (e) of the Code on both February 13, 2024, and February 27, 2024. Arguably, these breaches also contravene section 5.3 (b) of the Code, but I do not believe it would be appropriate to make duplicative findings for the same incidents of breach.

## CONCLUSION AND RECOMMENDATIONS

I have determined that Councillor DiMarco contravened section 5.3 (e) of the Code of Conduct on two occasions:

- i. At the Council meeting on February 13, 2024; and
- ii. At the Council meeting on February 27, 2024.

### *Recommendation(s)*

Section 223.4 (5) of the *Municipal Act, 2001* allows the City Council to impose either of the following penalties on a Member of Council if the Integrity Commissioner finds that a Member has contravened the Code of Conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council ... for a period of up to 90 days.

In the near-neighbouring jurisdiction of Grimsby, I considered the following factors<sup>3</sup>, initially set out by Ottawa's Integrity Commissioner in *re: Chiarelli*<sup>4</sup> and noted by the Divisional Court in *Chiarelli v. Ottawa (City of)*<sup>5</sup>, to be relevant to consideration of a statutory penalty:

- a. Sanctions are normally progressive in their severity;
- b. The Councillor's experience;
- c. The flagrancy of the behaviour; and
- d. Whether the Councillor made any acknowledgement of wrongdoing, remorse, or regret.

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<sup>3</sup> <https://pub-grimsby.escribemeetings.com/filestream.ashx?DocumentId=30507>

<sup>4</sup> <https://pub-ottawa.escribemeetings.com/filestream.ashx?documentid=34088>

<sup>5</sup> *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256 (CanLII), <<https://canlii.ca/t/jlh5f>>



I am aware that Councillor DiMarco has been subject to numerous Code complaints and findings in the past. He is no stranger to the Code of Conduct. I have reviewed some of the recent Code matters involving Councillor DiMarco and observe that penalties have variously included reprimands and suspensions of remuneration. I note per reporting in the local press that the Councillor has been the subject of eight Integrity Commissioner reports since 2017 and has had his pay suspended by Council for a total of 240 days over that period<sup>6</sup>. The issues in those matters appear to be varied.

In this case, the issue is the very serious matter of publicly discussing and revealing private information that was subject to closed session confidentiality. While the issue does involve the Respondent Councillor personally, that does not give him license to breach Council's confidences. The Councillor is experienced, yet he allowed his personal agenda to cloud his judgment respecting his public obligations. While arguably there was little, if any, real damage resulting from these actions, this is likely in great part due to the Mayor's timely interventions. In his discussions with me, the Respondent Councillor acknowledged that he had not considered the impact on others and seemed somewhat remorseful about this oversight – though he still expressed his persistent belief that the matter should be made public, which is an opinion he is entitled to have (even if not to act on). I must also consider the fact that the in-camera issue itself is of a serious nature and the Councillor's actions must be viewed within that broader context.

In view of the above, I recommend a suspension of Councillor DiMarco's remuneration for a period of fifteen (15) days.

#### *Review Period*

Section 9.24 of the Protocol provides as follows:

In the event of a finding of contravention, the Integrity Commissioner shall provide a draft report to the Member and allow ten (10) calendar days for the Member to provide any comments on the findings and/or recommended penalty.

I confirm that Councillor DiMarco was provided with an advance draft version of this report on June 24, 2024, with instructions to return any comments for my consideration by July 4, 2024, at 11:59 p.m. The Respondent Councillor did not provide any new information in response to the draft report. This final report contains a few minor non-substantive revisions, including this section concerning the draft review and publication

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<sup>6</sup> [DiMarco says he's never had an issue with constituents \(wellandtribune.ca\)](https://www.wellandtribune.ca)

instructions.

*Publication*

In accordance with sections 9.25 and 9.26 of the Protocol, I hereby deliver this final report containing my findings and recommendations to Council for its consideration at the next available public Council meeting.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "M. Maynard", with a long horizontal flourish extending to the right.

Michael L. Maynard  
Integrity Commissioner