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CHAMBERS

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February 21, 2023

SENT BY EMAIL TO:

Steve Zorbas, CAO

AND TO:

Councillor Tony DiMarco

**Re: Amended Investigation Report¹
Complaint No. IC-20878-1122**

Dear Mr. Zorbas and Councillor DiMarco:

Introduction

This is my report respecting a complaint brought by Steve Zorbas, CAO (the “Complainant” or “Mr. Zorbas”) against Councillor DiMarco (“Respondent” or “Councillor DiMarco”) under the: (1) [Council Code of Conduct of the City of Welland](#) (the “Code of Conduct”) and (2) [Policy on Workplace Discrimination, Harassment and Workplace Violence](#) (the “Policy” and/or “Workplace Policy”).

¹ This is an amended version of the Investigation Report dated February 20, 2023. The amendment corrects a section heading on p. 13, as marked.

In accordance with the Complaint Procedure of the *Code of Conduct* and the *Workplace Policy*, via section 223.4(1) of the [*Municipal Act, SO 2001, c 25*](#) (the "Act"), 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 of Conduct* or *Workplace Policy*.

Delegation of Investigative Powers

Pursuant to a written delegation of powers dated January 16, 2022, Ms. Deborah Anshell ("Ms. Anshell" or the "Integrity Commissioner"), in her capacity as Integrity Commissioner for the City of Welland ("Welland" or the "City"), delegated to Mr. Jeffrey Shapiro, an Investigator in the ADR Chambers Office of the Integrity Commissioner, pursuant to section 223.3(3) of the *Act*, certain of her powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to her review and approval) with respect to the complaint (the "Complaint") described herein.

The Complaint

Overview

Mr. Zorbas alleged that Councillor Tony DiMarco breached several provisions of the City's *Code of Conduct* and *Workplace Policy* during a Council Meeting, when he engaged in a verbal confrontation with the Mayor, physically approached him in an angry and threatening manner with finger pointing, and would not follow the Mayor's instructions to return to his seat and apologize. The event required the Mayor to recess the meeting for 5 minutes to allow Councillor DiMarco to calm down.

As discussed below, the investigation revealed that the parties are in general agreement to the basic outline of the incident, with relatively minor differences.

Legislation, Codes and Policies Alleged to be Violated

Mr. Zorbas cited sections 9 and 14 the *Code*, which deal with respect and discreditable conduct in the workplace. They state as follows:

Code of Conduct for Members of Council

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.

Mr. Zorbas also cited several sections of the *Workplace Policy*, primarily as relates to "workplace violence". The specific sections cited state as follows:

Policy on Workplace Discrimination, Harassment and Workplace Violence

THE WORKPLACE:

The workplace is not only confined to the various offices and work locations of the City. It also includes washrooms, lunchrooms, outside work sites, on-road vehicles and any other location where the business of the City is being conducted. ...

RESPONSIBILITIES UNDER THIS POLICY:²

...

Employees/Council Members/Volunteers/Others:

All City employees and those persons involved with or undertaking City business have the responsibility of maintaining a positive and business-like workplace and ensuring that the work environment is free from discrimination and harassment. Every employee is discouraged from and directed to not engage in any activity that may be perceived as constituting discrimination or harassment.

DEFINITIONS:

...

Workplace Violence under the *Occupational Health and Safety Act* is defined as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker

² The Complaint lists the “Employees/Council...” section twice, but that appears to be a mistake. Also, while not cited by Mr. Zorbas the following section places certain obligations on the City as follows:

The City is responsible for:

Ensuring that corporate policy, practices and conduct comply with the provisions of the Human Rights Code and the OHSA.

- Making sure that all those protected by the policy are fully aware of the policy, their rights and protections under this policy, the Code and the OHSA.
- Creating an environment that encourages prospective complainants to report all incidents of discrimination and harassment.
- Ensuring that all discrimination and harassment complaints can be and are resolved quickly, fairly and in a sensitive manner.
- Conducting an investigation that is appropriate in the circumstances.

- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker
- a statement or behavior that is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

It is defined broadly enough to include acts that may be considered criminal. Workplace violence includes:

- physically threatening behaviour such as shaking a fist at someone, finger pointing, destroying property, throwing objects
- verbal or written threats to physically attack a worker
- leaving threatening notes or sending threatening emails ...

Investigative Process and Procedure

The process of investigation for this matter included:

- a. a review and exchange of the written submissions of the Parties;
- b. an interview with Steve Zorbas, the Complainant;
- c. an interview with Councillor DiMarco, the Respondent;
- d. an interview with the Tara Stevens, 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 interview. 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 of the events, including an unofficial summary transcript of the key parts of the Council meeting during which the event occurred, supported by an audio recording. Based on my review, the summary transcript is a fairly accurate depiction of the audio recording.

The Complaint notes that the event occurred during a November 16, 2022 Welland City Council meeting. The meeting was held in-person and as an *in-camera* (private) session. Aside from a short recess, the meeting lasted approximately 2.5 hours, during which various routine council business was addressed. The key events occurred at 1:32 to 1:51 of the recording.³

After concluding prior business, Councillor Grimaldi raised a point of privilege, taking issues with comments another councillor had made earlier in the meeting. Councillor DiMarco then advised he would like to bring forward a point of privilege referring to comments made by Councillor Grimaldi four years earlier.

When the Mayor advised Councillor DiMarco that it was not a point of privilege, a disagreement ensued between the Mayor and Councillor DiMarco, which quickly became heated. Councillor DiMarco responded, "Yes it is" and then told the Mayor "shut your mic off and listen." The Mayor replied, "you listen to me." Councillor DiMarco stated he is "not going to put up with this bullshit again."

The Mayor then asked Councillor DiMarco to apologize for his comment or leave the meeting. Councillor DiMarco did neither and responded "what was the last comment from last term?". Councillor DiMarco and the Mayor then continued to argue. The Mayor variously asked Councillor DiMarco to apologize and stop talking, and also tried to call a recess to allow Councillor DiMarco to apologize for his comments and language.

Councillor DiMarco then stated "you are out of order", "you're to blame Mr. Mayor." The Mayor then advised the Councillor that he is "out", to which the

³ Although the audio may have started a few minutes or more after the actual start of the meeting, I will refer to the time frames captured in the audio is corresponding to the same points in the meeting.

Councillor responded “no you are out” and continued “it’s your fault you did this the last term...”

The Mayor then stated that he was going to call a recess and provide an opportunity for the Councillor to come back and apologize for his comments and language, and if not he’ll be excluded from the meeting. Councillor DiMarco asked “which comments”, and the Mayor responded his language.

The Mayor called the recess, but the Councillor continued to aggressively speak at the Mayor. The Mayor attempted to gain control, continuing to state that the meeting is recessing for five minutes, stating “I will not put up with that.” Councillor DiMarco responds “why don’t you do something about it?”

The Complaint alleges that when Councillor DiMarco left his seat “and was standing in front of the Mayor”, “he was pointing his finger in the Mayor’s face and using aggressive and intimidating body language”. I note the Complaint and audio make reference to Councillor DiMarco leaving his seat and standing near the Mayor, but they are both unclear when it happened. Interviews established that occurred at about this point.

There is additional dialogue between Councillor DiMarco and the Mayor. The Mayor continues to advise the meeting is recessed and that he will throw him out of the meeting. The Mayor continued to advise Councillor DiMarco to stop talking, Councillor DiMarco stated “it’s unfortunate”. Mr. Zorbas attempted to calm the situation and encourage Councillor DiMarco to take a few minutes and calm down. Councillor DiMarco continued to taunt the Mayor by stating, “do you want me to keep pinpointing”. The Mayor also asked the Councillor to take a break.

While the transcription summary ends at this point, the audio establishes that the break was taken, the general tone subsided, and the meeting was called back after about five minutes, at which point Councillor DiMarco ultimately apologized. The meeting then proceeded in its regular course and concluded approximately 40 minutes later.

Written Response of Councillor DiMarco

The Office of the Integrity Commissioner sent Councillor DiMarco a copy of the Complaint (without the audio recording) on November 29, 2022 and gave him until December 9, 2022 to provide a Response. He has not provided written

response. During my interview with him, he confirmed that he had received the Complaint and did not respond, and also advised that he is not interested in reviewing the audio recording.

Given that Councillor DiMarco did not provide a written response, a written reply was not requested or supplied from Mr. Zorbas.

Interview with Steve Zorbas

Mr. Zorbas described the incident and background consistent with the audio and Complaint, and so I will only list key additional information that he provided:

- The meeting was all of Council and the City's leadership team. The Councillors sit along a horseshoe table, with Councillor DiMarco at the end about 40 feet away from the Mayor, who sits at the center. Mr. Zorbas sits next to the Mayor.
- While the tape captured the verbal tone, Mr. Zorbas described that Councillor DiMarco got out of his chair and in a rapid walk, charged towards the Mayor stopping just 5 feet away or so. The Councillor's body language, finger-pointing and waiving, and aggressive language were "very unnerving" and frightening. He was concerned that the Councillor might take a swing at the Mayor.
- When the Councillor came to the Mayor, Mr. Zorbas stood to de-escalate the situation. The Mayor advised him to sit down, believing it's a better way to de-escalate.
- The Councillor is a large man about 6'2" and maybe 250 pounds, and thus he's intimidating. Mr. Zorbas also felt there is a lot of history, such as previous incidents and Complaints with Councillor DiMarco, which adds to both the tension and fear. In response to my observation that the audio reveals that Mayor seemed to be quick to raise his voice at the beginning of the incident, Mr. Zorbas mentioned that that's because Councillor DiMarco is hard of hearing and thus at times people raise their voice with the Councillor and he raises his voice.
- Besides the verbal and physical confrontation, and the inappropriate language (i.e. "this bullshit"), Mr. Zorbas felt that Councillor DiMarco did not respect the Mayor's role and his instructions.
- After the incident, the Councillor switched out of his aggressive state, seemed embarrassed, and the meeting continued in a regular fashion.

Interview with Councillor DiMarco

Councillor DiMarco was forthright that the incident happened similarly to the written summary. He acknowledged that he was agitated and while agitated, he left his seat and went up to the Mayor and was pointing his fingers, and that the Mayor called a recess. He noted that he “should not have approached the bench” and what he did was “not right” but the history and incident came to a point.

He felt that Mr. Zorbas helped calm everyone down. He also described that at the break, he went up to Councillor Grimaldi, sat with her and apologized. He also apologized after the recess and the meeting proceeded without incident from that point forward.

Councillor DiMarco viewed the surrounding circumstances differently. First, he noted that Councillor Grimaldi had directed inappropriate language at him 4 years prior, but that incident was never addressed, and thus he had no idea why her complaint against him was being taken up at this inaugural meeting of Council. He feels that there has been tension with the Mayor dating back to August 2016 and the Mayor has been on his case since then, and he has “had it” with the Mayor.

In terms of this incident, he was sitting at his desk for a while, before moving towards the Mayor. He felt that Mayor was pointing at him, and at times glaring, which is tantamount to taunting, and taunting is harassment.

He also feels that the Complaint process is being used on a one-sided basis. For instance, he’s been told that the audios are not available and/or not to be released, but then it was released to certain staff and turned over to the Integrity Commissioner. He did note that at this point, he doesn’t really need the audio.⁴ He noted that in a recent incident, the Integrity Commissioner recommended a 14-day suspension, yet Council voted to increase it to 3 months.

Interviews with City Clerk Tara Stephens

Ms. Stephens also described the incident as listed in the Complaint, and provided additional detail. She thought the incident started when Councillor

⁴ In response to my question, he mentioned other possible witnesses, but did not feel it was important to speak with them.

DiMarco reacted to Councillor Grimaldi's point of privilege, mistakenly believing Councillor Grimaldi was speaking about him.

She described the intensity of the event. Councillor DiMarco's approach to the Mayor was very quick, his face was red and angry, he was yelling, and his general body language was aggressive such as hand gestures and puffing his chest and shoulders. In fact, as she sits next to the Mayor (Mr. Zorbas sits on the Mayor's other side) she was 4 feet away, and instinctively pushed her chair back because she was worried that Councillor DiMarco might hit the Mayor. She interpreted Councillor DiMarco's statement, "Why don't you do something about it?" as aggressive, almost asking the Mayor to remove him. She described him as big and tall and felt he could hurt someone.

She corroborated that at the recess, Councillor DiMarco walked to Councillor Grimaldi's desk, then walked around and sat next to her, but Ms. Stephens could not hear the conversation. While a male member went close to make sure nothing happened, it appeared to be a regular conversation. After the recess, there was a brief back and forth with the Mayor during which Councillor DiMarco apologized, and then the meeting carried on as usual. She notes that Councillor DiMarco did not seem remorseful or angry, and seemed to act as if the incident never happened.

Ms. Stephens was very clear that Councillor DiMarco is a "very caring friendly person" outside of Council, but she feels that certain topics in Council seem to trigger him. She was open that there has been a history of events concerning Councillor DiMarco, including four recent Complaints and, in the past, he has actually tried to hit another member of Council. Thus, this incident is overlaid on those events and cannot be completely separated out. The history made this incident worse in that she did not know what would happen or when it would end.

Review of Council Meeting Audio Recording

I reviewed the audio. At about 53 - 55 minutes in to the meeting, which is about 40 minutes before the incident, Councillor DiMarco raised concerns about his belief staff was rushing developments. The Mayor disagreed, and Councillor DiMarco commented, "C'mon let's hear the warning". There was a very brief, heated exchange of words, and then the Mayor calmed things down. The meeting proceeded with Councillor DiMarco asking questions about the business

then at hand. From about 55 – 58 minutes, he raised a concern that the neighboring church was not yet notified about the potential development.

In terms of the start of this incident, the audio captures the heated exchange of words as described above, but does not fully capture that Councillor DiMarco approached the Mayor, although there are references to returning to his seat. Also, the Mayor's voice was a bit quivering.

Analysis of Evidence and Findings

The key issues raised in this matter are as follows:

1. Did Councillor DiMarco breach Section 9.0 of the *Code of Conduct*?
2. Did Councillor DiMarco breach section 14.0 of the *Code of Conduct*?
3. Did Councillor DiMarco breach the *Workplace Policy*? Did he engage in "workplace violence" as defined in the *Workplace Policy*?
4. If Councillor DiMarco breached the *Code* and/or *Workplace Policy*, what is the appropriate remedy?

Analysis of the Evidence and Findings

The following section lays out our analysis of the evidence and our findings. For all of the reasons set below, we find that Councillor DiMarco did act improperly; that is, his actions did breach the *Code of Conduct* and *Workplace Policy* as asserted by the Complainant.

Credibility and Analysis of Evidence

Regarding the statements of the Complainant and Councillor DiMarco, my interviews with them and Tara Stephens, 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.”

The incident

We find that the incident was as described in the Complaint with the exact dialogue as recorded in the audio, with minor details added by the parties and witnesses. In sum, Councillor DiMarco took issue with Councillor Grimaldi’s comments, which he mistakenly took as directed at him. He verbally responded by making a point of privilege and when it was not taken up by the Mayor to his satisfaction, he grew heated, causing a back and forth dialogue with the Mayor.

Not only did Councillor DiMarco not yield to the Mayor, but in a manner responsibly interpreted as in a state of anger, he left his designated seat and rapidly approached the Mayor stopping just feet from the Mayor. His gestures, facial expressions, body posture and hand movements, such as finger pointing and waving, displayed anger and were threatening and intimidating. His language, with words like “bullshit” and loud aggressive tone were inappropriate.

While at no time did he use or threaten physical force, he clearly lost his temper which left others in the room concerned violence could occur. He confronted the Mayor though physical and verbal posturing and the display was intimidating, frightening and unnerving to the witnesses and those in the room. He failed to yield to the Mayor who chaired the meeting, and his conduct disrupted the meeting to the point of requiring a recess for him – and those observing the event – to calm down. He did not comply with the Mayor’s instructions to back down, and even when the Mayor attempted to call a recess, he kept arguing. It was a significant lack of decorum and inappropriate behavior.

For context, while identifying the seriousness of the behavior, I do not want to overstate the behaviour. There was no actual violence, specific or actual verbal or

physical threat of violence. There is a lack of evidence that the Councillor intended such behavior; rather it appears to be an unintended spontaneous reaction. The incident was time limited and passed quickly. The Councillor promptly apologized to the other Councillor, then after a brief and much less spirited exchange with the Mayor, apologized to the Mayor and Council.

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

Yes. Section 9 deals with respect in the workplace. In particular, Section 9.2 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." Section 9.3 provides that members are responsible to support a workplace which is free of such issues.

Applying those provisions, there is little doubt or dispute that his behavior was not appropriate and a violation of Section 9.2. The display of anger and incident halted the Council meeting and left members intimidated, frightened and unnerved. The incident was the opposite of "supporting a workplace... which is free of...workplace violence," thus also violating Section 9.3.

Did the ~~Mayor~~ Councillor breach Section 14.0 of the Code?

Yes. Section 14 deals with Discreditable Conduct and contains three subparts. This section is somewhat similar to Section 9. Section 14.1 states that every council member has the duty to treat one another "appropriately and without abuse, bullying or intimidation." Sections 14.2 states a member shall not use "indecent, abusive, or insulting words or expressions" or speak in a manner that is "discriminatory to any individual based on that person race, ancestry [and other protected grounds]". Section 14.3 of the Code is much broader. It states that "Members shall conduct themselves with decorum."

There is no evidence that Councillor DiMarco's actions were discriminatory based on any protected class, as stated in the second sentence of Section 14.2.

However, Councillor DiMarco's actions violated many other provisions of Section 14. His loud voice, verbal altercation, leaving his seat in anger and charging towards the Major is a significant breach of decorum under Section 14.3. This should not be tolerated at Council meetings.

His actions also run afoul of the more specific provisions of Section 14.1 and 14.2. For instance, his actions constituted inappropriate behavior and served to be abusive, bullying and intimidation identified in Section 14.1. As for section 14.2, “bullshit” is indecent language, and telling the Mayor “you stop” is insulting language, while finger point and angry facial expressions and physical posturing in close proximity to the Mayor are abusive, bullying and/or intimidating.

Did Councillor DiMarco breach the Workplace Policy? Did he engage in “workplace violence” as defined in the Workplace Policy?

Yes, he breached the *Workplace Policy*. However, as discussed below, while the intent of the *Workplace Policy* is fairly clear, its provisions are not clear in setting out the full scope of what is a violation of the *Workplace Policy*. Thus we find that he violated the *Policy*, not the *Policy’s* provision for “workplace violence”.

As a starting point, we will address what it is clear he did breach. It is clear that under the *Policy’s* “Employee/Council Members/Volunteers/Others” section,⁵ the *Policy* places on Councillor DiMarco “the responsibility of maintaining a positive and business-like workplace and ensuring that the work environment is free from discrimination and harassment...” (emphasis added). His behaviour as described above was clearly inconsistent with “maintaining a positive and business-like workplace” and thus violates the *Policy*.⁶

It is important to note that his confrontational and intimidating physical actions undermine, rather than maintain, a positive and business-like workplace and thus violate the *Policy*, regardless of whether those actions meet the definition of “workplace violence”. Thus, whether he committed *workplace violence* under the *Policy* is a red-herring. Still, I will address the ambiguities in the *Policy*.

The Complaint cites the *Policy’s* broad definition of workplace violence. At first blush it appears the incident meets that definition. However, on closer review, due to the ambiguities in the definition and *Policy* itself, it’s not clear that (1) his actions are defined as workplace violence, or (2) or if they are, that the *Policy* places a specific obligation on *him* regarding *workplace violence*. We will address these points in order.

⁵ *Workplace Policy*, page 3 of 11.

⁶ The actions, however, are not defined as discriminatory or harassing as those definitions are based on behaviour that is because of a protected class.

As for the definition, it states workplace violence is defined as (1) actual physical force, (2) an attempt at physical force, or (3) “a statement or behavior that is reasonable for a worker to interpret as a threat to exercise physical force....”. The first two clauses are clearly not applicable, and while Councillor DiMarco’s statement about “why don’t you remove me” is confrontational, “chest beating” and intimidating, we can’t say it is a threat to exercise physical force. Thus, it appears his actions are not workplace violence.

The difficulty is after stating workplace violence “is defined as” and then listing those three bullet points, the *Policy* adds a second paragraph that can be read as either merely interpreting those three grounds or as listing additional definitions and examples. If it is interpretational, then under the basic definition as found in the three bullet points, his actions do not meet the basic definition. However, if the second paragraph is additional grounds, then his actions violate the additional language that “Workplace violence includes: physically threatening behaviour such as shaking a fist at someone, finger pointing, destroying property, throwing objects...”

As for the ambiguity in the *Policy* itself, in certain introductory parts of the policy, such as the *Policy’s* “Policy Statement” which is not cited in the Complaint, it provides “Discrimination, harassment, sexual harassment, and workplace violence are considered to be unacceptable and a form of employment misconduct. The City ... will make every reasonable effort to ensure that no one is subject to it.” Yet when the policy discusses actual employee obligations – cited by the Complainant – *workplace violence is omitted in lieu of the more general reference to “responsibility to maintaining a positive and business-like workplace”*⁷. Thus, the Workplace violence definition at the end of the *Policy* does not “tie” or “connect” to a specific obligation on an employee, just a general duty on the City.

Accordingly, we do not find that Councillor DiMarco actually engaged in “workplace violence” *as defined by and violating the policy*. However, that technical distinction should not negate that his actions were physically intimidating and breached the *Policy* as being antithetical to positive and business-like workplace.

Conclusion and Recommendation(s)

⁷ “All City employees and those persons involved with or undertaking City business have the responsibility of maintaining a positive and business-like workplace and ensuring that the work environment is free from discrimination and harassment. Every employee is discouraged from and directed to not engage in any activity that may be perceived as constituting discrimination or harassment.”

Conclusion

Based on the foregoing, we have concluded that Councillor DiMarco contravened Sections 9.0 and 14.0 of the *Code of Conduct* and the *Workplace Policy*.

In terms of an appropriate remedy, we consider the following factors. Overall, the incident was serious and significant, but not egregious. The behaviour was not intentional, but a spontaneous time-limited loss of temper that ended within minutes and did not spiral out of control. It did not involve actual violence and the Councillor promptly apologized for it, although it appears that the Councillor does not fully comprehend how others felt that witnessed the event. Still, it did involve intimidating behaviour and appears to have created a lasting fear, including the potential to create workplace atmosphere that is on edge.

We also find it unfortunate and so serious that it is not an incident that can be simply admonished without a consequence, yet a more severe punishment may simply cause further distrust between the parties.

Therefore, we make the following recommendation to Council of the City of Welland:

Councillor DiMarco shall be reprimanded for his actions during the November 16, 2022 Council Meeting. 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.

We also recommend that the parties give some consideration to addressing this incident via direct mediation, so that Councillor DiMarco can understand the effect of his actions on staff, and to try and air out their concerns to constructively create a positive working environment going forward, rather than increasing distrust through positional actions.

Response by Councillor DiMarco

Councillor DiMarco was provided a draft version of this report and an opportunity to respond. In response, he has had brief email correspondence with the Office of the Integrity Commissioner mostly about scheduling, but during which he commented that “There are a few statements in this report that

are absolutely not true and hurtful". He was specifically invited to explain what those statements were, but has not done so. Accordingly, the above report remains unchanged.

Respectfully submitted by,

Jeffrey Shapiro

Jeffrey Shapiro
Investigator, Office of the Integrity Commissioner
Endorsement and Issuance of Report

I, Deborah Anshell, Integrity Commissioner for the City of Welland, have reviewed the evidence, process, and results of Mr. Shapiro's Investigation. I agree with and endorse this Report, which we have jointly prepared, in respect of this Complaint, and hereby issue it to the Complainant and Respondent in conclusion of this matter.

Concluding Remarks

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

This matter is now concluded.

D. Anshell

Deborah Anshell
Integrity Commissioner, City of Welland