
CITY OF WELLAND INTEGRITY COMMISSIONER, H.G. ELSTON

Citation: Moote v. DiMarco
Date: May 1, 2020

**REPORT ON THE MATTER OF A COMPLAINT AGAINST COUNCILLOR DIMARCO
BY COUNCILLOR MOOTE**

Municipal Integrity Commissioners provide reports on the results of their inquiries to their respective municipal Councils. Where a finding is made that the Member was in breach of the Code of Conduct, the Commissioner will make a recommendation as to 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 at which the Commissioner's report was presented to obtain information about Council's consideration of and action on each report. When possible, a link to the relevant municipal council minutes is provided.

[Link to Council Decision]

TABLE OF CONTENTS

TABLE OF CONTENTS	2
BACKGROUND.....	3
FACTS AND DISCUSSION	3
THE CODE	6
FINDING AND RECOMMENDATION.....	6

BACKGROUND

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”). 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”).

2. This report presents my findings and recommendations to Council, following my inquiry into a complaint made to me on January 28, 2020 by Councillor Adam Moote (the “Complaint”), alleging that he was the target of bullying and intimidation by Councillor Tony DiMarco, during a break in a meeting of Council on December 17, 2019 (the “meeting”).

FACTS AND DISCUSSION

3. At the meeting, Council was debating the merits of passing an Interim Control By-law (“ICBL”). Under the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the passing of an ICBL does not require notice to the public or a public hearing. The purpose of allowing an ICBL to be passed in the absence of notice is so that Council can act quickly to hit pause on development in the City or parts of it, to allow time to study an identified planning problem and develop new planning rules to address the problem. ICBLs are often a response to proposed development projects, which have set off alarm bells in the community. As such, they can be divisive and inspire heated debate.

4. As it turns out, the public became aware that a motion to approve the ICBL was to be heard at the meeting, and the hall was full. For the most part, the debate in the Council Chambers was measured and respectful. The same cannot be said, however, as the debate carried over into Council’s ante room, during a break in the proceedings.

5. After a little more than an hour of discussion about the ICBL, Council voted to approve it. As I understand it, Councillor DiMarco voted in favour of the by-law and Councillor Moote voted against it, setting the stage for their encounter in the ante room. Mayor Champion then called for a two-minute recess. Most members left the Council table

and retired to the ante room for refreshments. It was during this break that the events leading to the Complaint took place.

6. Councillor Moote explains his encounter with Councillor DiMarco, as follows:

At approximately 9:25 pm on December 17th, 2019; just after the Mayor called a recess to the meeting, I adjourned to the ante room to get a refreshment. As I stood next to Councillor Chiochio I was backed against the wall by Councillor DiMarco who said to me that this "... needs to stop ... I asked what he meant again, and he responded by saying "the way you vote". I responded that I'm entitled to speak on issues just the same as he is. At this point Councillor DiMarco began to get agitated and aggressive repeating that my opinions weren't valid. I repeated that I was elected the same as he [was] and I am just as entitled to speak to any item at our Council table. I told Councillor DiMarco that I will not be bullied into submission and that he can't speak to me like that. At this point Councillor DiMarco's aggression grew and he attempted to physically grab me. Councillor DiMarco was restrained from this by [several persons].

7. I provided the details of the Complaint to Councillor DiMarco and received a written reply from him on April 4, 2020. Councillor DiMarco told me that he did not back Councillor Moote against the wall, but that he was attempting to reach into a crowd that had formed around the counter where the drinks were and, as he turned towards the wall to leave, Councillor Moote was standing face-to-face with him, inches apart, because of the crowd. He acknowledges that he "mentioned something about his voting, but truthfully cannot recall how the conversation went".

8. Councillor DiMarco maintains that he was not agitated, nor was he aggressive towards Councillor Moote. He claims he did not attempt to grab Councillor Moote. According to Councillor DiMarco, Councillor Moote became agitated, red-faced and in a louder-than-normal voice said, "go and sit down". At that point, a member of staff lightly pushed him towards the door.

9. I spoke with Councillor Moote on April 9, 2020, to present to him Councillor DiMarco's response and to hear directly from him. Councillor Moote denies that there was a crowd in the room and rejects this as an excuse for the close encounter with Councillor DiMarco.

10. Councillor Moote felt trapped, threatened and intimidated. He maintains his allegation that Councillor DiMarco was trying to grab him and felt that the other witnesses could confirm this fact. Councillor Moote admits that he was agitated and that he probably did tell Councillor DiMarco to "go on and sit down".

11. I next had a lengthy discussion with Councillor DiMarco. In his view, the incident has been built-up into something bigger than it really was. He was simply trying to reach around Councillor Moote to grab a pop. He acknowledges speaking to him, but says he just said, "you've got to watch how you vote out there". At the same time, he complains that Councillor Moote has glared at him during meetings and has spoken to him in a condescending tone of voice.

12. There were several witnesses in the ante room and, after speaking with them, I accept Councillor Moote's description of what happened. In particular, I do not accept Councillor DiMarco's recollection that he was simply reaching for a pop. According to one witness, he already had a pop in his hand as he moved towards Councillor Moote, evidenced by the fact that he spilled the pop on the witness, as he reached towards Councillor Moote.

13. Although the incident was over in only a few seconds, it is clear to me that Councillor DiMarco initiated contact with Councillor Moote and that he was very agitated, even enraged, by some accounts. More than one witness remarked to me that Councillor DiMarco is a large man and can be intimidating. During the exchange of words between Moote and DiMarco, one witness became sandwiched between the Councillors, with two others joining the fray to physically restrain Councillor DiMarco.

THE CODE

14. Councillor DiMarco's conduct is to be measured against the provisions of Article XI of the Code, which prescribes the prohibition against "Discreditable Conduct". It says:

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.

FINDING AND RECOMMENDATION

15. Having found that Councillor DiMarco was in an agitated state and behaved in a physically aggressive and threatening way towards Councillor Moote, it is plain to me that his conduct in the ante room on the night of December 17, 2020 falls well short of the standard expected of Members of Council. His conduct can only be described as bullying and an attempt to intimidate a fellow councillor. It is made all the more egregious because his motivation for his approach was his objection to how Councillor Moote had voted on the ICBL. I find that on December 17, 2019, Councillor DiMarco did, indeed, violate Article XI of the Code.

16. In accordance with section 223.4(5) of the Act, Article XVI of the Code authorizes Council to impose either of two penalties on a Member of Council, following a report by the Integrity Commissioner that, in my opinion, there has been a violation of the Code:

- i. A reprimand; or
 - ii. Suspension of the remuneration paid to the Member of Council in respect of his or her services as a Member of Council or local board, as the case may be, for a period of up to 90 days
17. Under the Code, I may also recommend that Council take the following actions:
- i. Removal from membership on a Committee or local board;
 - ii. Removal as Chair of a Committee or local board;
 - iii. Repayment or reimbursement of moneys received;
 - iv. Return of property or reimbursement of its value; and
 - v. A request for an apology to Council, the complainant or both.

18. My recommendation is that Councillor DiMarco be reprimanded, have his remuneration suspended for 30 days, and be asked to apologize to Councillor Moote and all of Council.

19. I recognize that I am recommending a penalty that is well along the range available to me, but do so not only because I believe Councillor DiMarco's actions were wrong and deserving of sanction, but also because it is important that Council send a clear message to Members that any attempt to intimidate a Member on the basis of how she or he votes, will not be condoned by the Council of the City of Welland.

All of which is respectfully submitted this 1st day of May 2020.



H. G. Elston
Integrity Commissioner for the
City of Welland