



John Mascarin
Direct: 416.865.7721
E-mail: jmascarin@airdberlis.com

Appendix I

February 12, 2025

Our File No.: 156417

Tara Stephens
City Clerk
The Corporation of the City of Welland
60 East Main Street
Welland, ON
L3B 3X4

Dear Ms. Stephens:

Re: Authority to Report Out from Closed Session

We have been asked to provide an opinion with respect to the authority of The Corporation of the City of Welland (the “City”) to report publicly on matters related to closed session discussions and deliberations as they relate to Councillor Tony DiMarco (the “Councillor”).

The following Notice of Motion was introduced by Mayor Campion at the meeting of Council on January 14, 2025:

WHEREAS, the public and press are asking for information as to why Councillor DiMarco has not been attending council meetings in person in council chambers; and

WHEREAS, there is inaccurate and speculative information circulating in the community; and

WHEREAS, the discussions on this matter have been held in camera.

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF WELLAND authorizes and directs staff to bring a report on this matter in open session to provide transparency and accurate information. Ref. No. 02-160.

Council determined to convene into a closed session to receive information and legal advice concerning the Councillor. Council was entitled to elect to do so pursuant to the exceptions to the open meeting rule in clauses 239(2)(b) and (f) of the *Municipal Act, 2001*.

The information and records considered, discussed and deliberated upon by Council at the closed meeting constitute “confidential information” pursuant to Section 5 of the Code of Conduct. As such, the confidential information belongs to Council as the decision-maker for the City.

Council has the authority to publicly disclose or release confidential closed meeting information, which it routinely does when it proceeds to arise and report in open session on matters from closed session.

This is expressly authorized pursuant to Section 11.6 of the City's Procedural By-law 2024-95:

Committee-of-the-Whole, In-Camera, Reporting Out

- 11.6 Upon concluding the portion of the meeting that is closed to the public, Committee-of-the-Whole In-camera may arise with or without a resolution to report out on the general nature of the matter considered in the portion of the meeting closed to the public. For greater clarity, the determination whether and to what extent to report out in accordance with this Article 11.6 shall be in the sole discretion of the Committee-of-the-Whole In-camera.

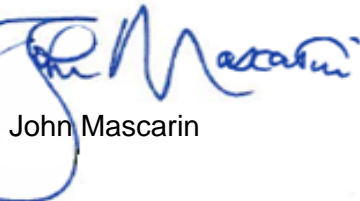
Given the public scrutiny and speculation related to the Councillor and his absence from in-person meetings of Council, the disclosure of the reasons why the Councillor has not been permitted to attend at City Hall and in-person at meetings, would serve the public interest by dispelling misinformation circulating in the community and further ensure accountability and transparency on the matter. The Councillor has already publicly disclosed that he was barred from attending at City Hall and has stated that he "would like it out in the open."

To the extent that the information may be alleged to be protected as personal information under the *Municipal Freedom of Information and Protection of Privacy Act*, Council retains the authority to disclose such information as it considers appropriate. We have considered the privacy protections under the statute and have determined that the disclosure of information would not constitute an unjustified invasion of personal privacy under clause 14(1)(f) or, alternatively, would be permitted by the public interest override in section 16.

Members of Council who vote to report out information on the matter are protected from personal liability pursuant to subsection 448(1) of the *Municipal Act, 2001* as they would be acting in furtherance of the public interest and, therefore, in good faith. Moreover, the City's insurance coverage and Indemnification By-law may provide further protections to members of Council for decisions they make in good faith in the performance of their duties under the statute if any lawsuits are commenced personally against them.

Yours truly,

AIRD & BERLIS LLP



John Mascarin

JM/JMB/eh