



Women's Legal
Education and
Action Fund | Fonds d'action et
d'éducation juridiques
pour les femmes

Charity Registration Number
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The Ontario Judicial Council
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Toronto, Ontario
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VIA FAX: 416-327-2339

November 14, 2016

Dear Sir/Madam:

Re: Complaint against Justice Bernd E. Zabel of the Ontario Court of Justice

We write to file a formal complaint regarding the conduct of Justice Bernd E. Zabel of the Ontario Court of Justice (Central West Region).

About LEAF

Since 1985, the Women's Legal Education and Action Fund ("LEAF") has existed to defend equality rights in Canada. LEAF is a national non-profit organization dedicated to promoting substantive equality for women and girls through litigation, law reform and public education. LEAF has intervened in dozens of court cases since its inception, and has established itself as a leading expert in the inequality and discrimination experienced by women and girls in Canada.

Background

This complaint pertains to Justice Zabel's reported conduct on Wednesday, November 9, 2016 at the John Sopinka Courthouse in Hamilton, Ontario. This incident was [reported](#) in *The Globe and Mail* on Friday, November 11, 2016.

Several legal counsel in the courtroom that morning reported that Justice Zabel entered wearing a red hat bearing the words "Make America Great Again". These hats were an emblem of Donald Trump's recent campaign for the American presidency.

Justice Zabel is reported to have addressed the courtroom, indicating that he was wearing the hat because the previous night (the evening of the American presidential election) was "an historic occasion". Justice Zabel then placed the hat on the bench, where it remained facing the courtroom during the morning's proceedings. Following the morning break, Justice Zabel again entered the courtroom wearing the same hat.

Breach of the Principles of Judicial Office

LEAF respectfully submits that Justice Zabel's conduct breached several provisions of the Ontario Judicial Council's *Principles of Judicial Office*. Specifically:

Principle 1.1: "Judges must be impartial and objective in the discharge of their judicial duties."

Commentary on Principle 1.1: "Judges should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest."

Principle 3.2: "Judges must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties."

Commentary on Principle 3.2: "Judges must not participate in any partisan political activity."

Principle 3.3: "Judges must not abuse the power of their judicial office or use it inappropriately."

Justice Zabel's words and actions constituted a demonstration of the type of political partisanship that is expressly prohibited by the principles enumerated above.

To make such a political statement within a courtroom – a space that must always be free from bias or the apprehension of same in order to maintain the public's trust in the judicial system – was particularly egregious. It was an abuse of the courtroom and its captive audience. An officer of the court is required to robe, symbolizing the shedding of his or her individual interests or biases. The addition of a slogan-emblazoned hat to Justice Zabel's judicial attire constitutes a serious breach of the impartiality and objectivity that are foundational expectations of a judge.

As an organization that advocates on behalf of women and girls, many of whom experience intersectional inequality as a result of their race, (dis)ability, sexual orientation and/or immigration status, we are deeply troubled by Justice Zabel's conduct. Donald Trump made global headlines over the course of his campaign for his graphic admission of having sexually assaulted several women, his persistent belittling and harassment of various other women, his mocking of individuals suffering from disabilities, his homophobic comments, and his threats towards persons of colour and immigrants, among others. Accordingly, Donald Trump has, for many Canadians, become inextricably linked with misogyny, violence, and discrimination.

LEAF submits that Justice Zabel's display in the courtroom may have and may continue to have a silencing effect on members of those marginalized groups that have been the subject of Donald Trump's conduct and comments. These individuals may have to appear before Justice Zabel as an accused, as a witness or as legal counsel.

Justice Zabel's expressed support for Donald Trump might reasonably be taken as condoning the incredibly well-publicized and offensive comments Donald Trump has made about marginalized groups and, perhaps, a reflection of Justice Zabel's own views. One need only imagine the difficulty and distrust a survivor of sexual assault would likely experience were it necessary for her to testify before an officer of the court who has so publicly celebrated the election of an admitted assailant. That discomfort will be increased exponentially for women who experience intersectional inequality by being members of two or more marginalized groups, and who historically already experience limited access to or a distrust of the judicial system.

It is essential that accused, witnesses, lawyers and spectators of Ontario's courts feel that the courtroom is a space where all are entitled to be equally heard and considered. It is not the place for political statements. Justice Zabel's conduct has had the unfortunate consequence of calling into question his ability, and/or the public's perception of his ability, to make sound, unbiased decisions.

LEAF submits that Justice Zabel's conduct cannot be condoned, and respectfully requests that the Ontario Judicial Council thoroughly investigate this matter with an eye to imposing the appropriate individual sanctions and broader judicial training that is necessary to restore the public's trust in our judicial system.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Stanton', written over a faint horizontal line.

Dr. Kim Stanton
LEAF Legal Director