



November 16th, 2016

Ontario Judicial Council
P.O. Box 914
Adelaide Street Post Office
31 Adelaide Street East
Toronto, Ontario
M5C 2K3

Dear Members of Council:

I write on behalf of the Ontario Bar Association to express our serious concerns about the recent conduct of Justice Bernd Zabel of the Ontario Court of Justice. I refer to his decision to wear into his courtroom a hat associated with the campaign of Donald Trump in the recent U.S. presidential election. As Justice Zabel has now confirmed, he wore the hat into court on the day after the election, and then placed the hat on the dais while hearing cases that came before him.

In the view of our association, this conduct gives rise to two separate but equally serious concerns.

Our first concern is with the open display of political apparel by a judge while carrying out judicial duties. Needless to say, it is completely inappropriate for any judicial officer to wear or display any political apparel while presiding in a court of law. This action violates the tradition of judicial independence and neutrality that is a cornerstone of our justice system. Our concern in this regard applies regardless of what political views are being displayed and regardless of what the motivations are for displaying them. Judicial officers must be and must be seen to be politically neutral in carrying out their duties.

Our second concern relates to the implication of displaying apparel linked to the Trump campaign and the controversial conduct that the campaign and Mr. Trump personally came to be associated with.

Regardless of whether one agrees or disagrees with Mr. Trump's policies, it is well known that certain aspects of his campaign, and certain statements made by Mr. Trump, were highly offensive in regard to women and to certain minority groups. Individuals appearing before Justice Zabel would reasonably be apprehensive about the bias communicated by the display of that particular political symbol given the views expressed by the Trump campaign. Whether or not Justice Zabel in fact intended to endorse those controversial views, the perception of bias that he created by his actions threatens to bring the justice system into disrepute.

We are aware that Justice Zabel has apologized for his conduct, and that he has said that his actions were a misguided attempt at humour. The apology and his actual intentions, however, are beside the point. The damage has been done. It is the integrity and reputation of the judicial system that

matter to our members and to the public, and not the intentions of an individual judge. The Ontario Bar Association believes that censure is required to underscore the importance of political neutrality to our justice system and to remedy the reasonable apprehension of bias engendered by Justice Zabel's inappropriate conduct.

We ask to be informed of the Council's eventual decision.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David L. Sterns", written in a cursive style.

David L. Sterns
President