

## ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF 81 complaints respecting  
The Honourable Justice Bernd Zabel  
A Judge of the Ontario Court of Justice in the Central West Region

### SUMMARY

#### **NOTE**

**This summary is provided as an aid to the Ontario Judicial Council's decision. It does not form part of the reasons for decision and the full decision is the only authoritative document.**

On November 9, 2016, the day after the United States presidential election, Justice Bernd Zabel went into court wearing a red "MAKE AMERICA GREAT AGAIN" baseball hat, the campaign signature of Donald Trump. The incident attracted media attention and public criticism of Justice Zabel. On November 15, 2016, Justice Zabel apologized and acknowledged that he should not have worn the hat in court.

Many legal groups, lawyers and members of the public filed complaints with the Ontario Judicial Council. This panel was established to deal with those complaints.

Justice Zabel admits that his conduct constitutes judicial misconduct that warrants the imposition of one or more of the sanctions contemplated by the *Courts of Justice Act*.

The panel found that Justice Zabel's conduct violated the fundamental principle that the judiciary must remain above and removed from politics. The separation of politics from the judiciary is a cornerstone of the rule of law and our democratic system of government. Judges must conduct themselves so as to avoid any perception that the administration of justice will be influenced by their political views.

Justice Zabel testified that he did not intend to indicate his personal support for Donald Trump or any of the views Trump expressed during the campaign. He says that he was trying to make a joke about a result few had expected. The panel was satisfied that a reasonable member of the public, seeing Justice Zabel enter the courtroom wearing the Trump hat, would think that Justice Zabel was making a political statement and endorsing Donald Trump's campaign. The panel concluded that Justice Zabel's actions amounted to a serious breach of the standards of judicial conduct, that it had an adverse impact upon public confidence in the judiciary and the administration of justice, and that it warranted the imposition of a sanction.

The panel found that despite the seriousness of the misconduct, there were also mitigating factors.

Justice Zabel has acknowledged that his conduct was unacceptable and inconsistent with the standard expected of a judge and he profoundly regrets his actions. The panel was satisfied that there is no risk that he will engage in similar conduct in the future.

The most significant mitigating factor is Justice Zabel's 27 year record of unblemished and exemplary service on the bench. The evidence before the panel demonstrated that he enjoys an enviable reputation as a highly professional, competent, courteous, fair minded, and compassionate judge. He is praised for his hard work, professionalism, integrity. The evidence demonstrates that he is open-minded and impartial and that he does not exhibit any of the polarized, misogynistic, racist or homophobic views many of the complainants attribute to Donald Trump. Members of vulnerable groups need have no fear about the treatment they would receive in Justice Zabel's court.

A judge with a lengthy and stellar record of service committed a single aberrant and inexplicable act of judicial misconduct. A reasonable and informed member of the public, considering Justice Zabel's conduct in the context of his entire career and the evidence of his record of impartiality would not think that it was necessary to remove him from office because of this single transgression in order to restore public confidence in the justice system. The panel added that absent the strong evidence of Justice Zabel's long record of impeccable service as a fair and impartial judge, the result may well have been different.

The panel imposed the most serious sanction permitted by law short of removal from office and suspended Justice Zabel without pay for thirty days. The panel also reprimanded Justice Zabel for his breach of the fundamental principle of judicial conduct that judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activity.