

IN DEPTH: THE CONDUCT OF CANADA'S JUDGES

Mariposa's Judge Pepperleigh has a particular "judicial temper of mind" (109). Sometimes, he is prone to fits of anger. Other times, he is gentle and caring. And he spends many of his leisure hours sitting on his verandah reading foreign news and pronouncing imaginary sentences upon world leaders. There is little that seems consistent about Judge Pepperleigh except for his steadfast support of the Conservative Party. This almost-maniac personality is Pepperleigh's "broad, all around way," and it is said in *Sunshine Sketches* that this is a trait that "lots of judges have" (109).

Judge Pepperleigh—like every Mariposan—is obviously a satirical stretch. All of us—including Canada's judges—have human traits that include human weaknesses, and it is the role of the satirist to magnify these traits. However, it should be noted that Canada's judges take their position in the community very seriously. Judges are not in the habit of making public spectacles of themselves. Nor are judges involved in party politics. In fact, federally-appointed judges in Canada have a complex set of ethical principles that help guide their behaviour both in their job and in their communities.

JUDGES AND THEIR ETHICAL PRINCIPLES

Judges hold their office and their role in the community in high esteem. To help prevent criticism of their office and guide their actions, the Canadian Judicial Council has created *Ethical Principles for Judges*. This document provides guidance for how federal judges should act in their professional role and in the community. The document's principles include that judges:

- should not engage in public debates about their decisions. There is an expectation that their decisions will speak for themselves;
- should not participate in public discussions or hold membership in groups that address major social issues (with the exception of issues that directly affect the operation of Canada's courts). This is to help preserve the judiciary's reputation as being as non-biased as possible; and
- should not participate in partisan political activities. This is to ensure they remain above the political fray.

It is believed that when judges hold themselves to ethical principles, their standing in the community will remain high. As well, holding themselves to ethical principles helps to maintain a common understanding that judges make impartial decisions based on what the law says and what the facts of the cases are.

Just because judges hold themselves to high standards, and just because judges often stay out of the day-to-day fray of community organisation and politics, it does not mean that judges have no opinions or sympathies. The very fact that they must come to conclusions on the cases before

them means they must have opinions and sympathies. However, as was spelled out in the case *R.D.S. v. The Queen*:

True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind”⁶⁸

This is why judges must treat everyone who appears in their court fairly and even-handedly. This is also why judges will not be pressured into making particular decisions by the government, the police, or private citizens.

The extremely high standards set out in the *Ethical Principles for Judges* help preserve the reputation and integrity of Canada’s judiciary and Canada’s legal system. Canadians in large believe that our judges are independent, impartial, and objective because they strive to act in such a way.

Mariposa’s Judge Pepperleigh, however, is a different story. He throws his canary cage into bushes because the canary won’t stop singing. He tells people that the country is going to the devil every time a Liberal gets into office. He gives favour to his own son in a court case. In real life not only would such behaviour be looked upon disapprovingly under the *Ethical Principles for Judges*, but he could be subjected to disciplinary action if a member of the public was to make a formal complaint about his actions.

DISCUSS

1. Sometimes judges act in ways that do not live up to their ethical principles. For example, in late 2016 a judge in Hamilton wore a “Make America Great Again” Donald Trump hat in court. The incident sparked 81 complaints to the Ontario Judicial Council. The Women’s Legal Education and Action Fund (LEAF)—one of the complainants—was concerned that the judge’s “partisan display raises the appearance of, or apprehension of, a lack of impartiality, contrary to the principles of judicial ethics”⁶⁹. The Judicial Council largely agreed with the complainants, ruling that the incident was a single aberrant and inexplicable act of judicial misconduct. He was suspended for 30 days.
 - a) Why would it be a concern if a judge wore a ball cap with a political slogan to court?
 - b) The 81 complaints lodged against the hat-wearing judge outnumbered all complaints the judicial council received against all judges in the previous three years. What does this tell us about political sensitivities and the notion that judges must remain outside of partisan politics?

68 qtd. in Canadian Judicial Council. *Ethical Principles for Judges*. https://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf, p. 38

69 qtd. in Fine, Sean. “Hamilton judge who wore Trump hat in court to face disciplinary hearing.” *The Globe and Mail*, 19 April 2017. www.theglobeandmail.com/news/national/ontario-judge-who-wore-trump-hat-in-court-to-face-disciplinary-hearing/article34756092/