



November 8, 2019

Via e-mail: [marc.noel@fca-caf.ca](mailto:marc.noel@fca-caf.ca)

The Honourable Marc Noël  
Chief Justice of the Federal Court of Appeal  
90 Sparks Street  
Ottawa, Ontario, K1A 0H9

Dear Chief Justice Noël:

**Re: Gowning Requirements for Counsel**

We write on behalf of the Canadian Bar Association's Women Lawyers Forum and the CBA members of the Federal Courts Bench and Bar Liaison Committee, to recommend changes to the Federal Court of Appeal's policy on gowning to clarify that counsel who need to modify their attire due to personal circumstances will not need to discuss this on the record or in open court.

The CBA is a national association of 36,000 lawyers, law students, notaries and law teachers. Among our primary objectives are improvements in the law and the administration of justice and promoting the rule of law. The Women Lawyers Forum promotes women's stature and influence in the legal profession in Canada. The Bench and Bar Liaison Committee is a forum for the Bar, the Federal Court and Federal Court of Appeal to discuss issues of concern relating to the operation of the Courts.

In 2016, the CBA adopted a resolution urging all Canadian courts to adopt practice directives permitting counsel to depart from traditional gowning requirements to the extent necessary when pregnant,<sup>1</sup> and outlining an appropriate process for counsel to inform the court that their attire has been modified. Since then, many courts across Canada have amended their gowning rules.

The Federal Court of Appeal's policy on gowning, outlined in a 2017 *Notice to the Profession*,<sup>2</sup> includes a section on accommodation during pregnancy:

Counsel who appear before the Federal Court of Appeal during the course of their pregnancy may dress as they see fit. Alternative attire should however be dark and in keeping with Court decorum.

Counsel are asked to advise the registrar before the opening of the Court in the event that they chose to wear modified attire in accordance with this Notice.

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<sup>1</sup> Canadian Bar Association, Resolution, [Accommodating Maternity in Court Gowning Directives](#), 2016.

<sup>2</sup> Federal Court of Appeal, [Notice to the Profession](#), April 24, 2017.

We commend the Court for including an explicit exemption for pregnancy in its gowning policy and outlining who counsel should inform of their modified attire. To promote further inclusiveness, we suggest adding greater flexibility for personal circumstances other than pregnancy, such as medical conditions or disabilities. To respect the privacy of counsel wearing modified attire, we also suggest that the policy explicitly state that counsel will not need to discuss their attire or personal circumstances in court.

Traditional gowning is meant to be a symbol of equality, but for lawyers in some circumstances it can be a barrier to appearing in court. Simple changes to allow for greater flexibility will respect tradition while communicating that all counsel are welcome and included in Canadian courts.

We have drafted a model gowning directive, appended to this letter. The model directive has four elements:

- There is an explicit exemption for personal circumstances such as pregnancy, a medical condition, or disability.
- Modified attire must be in keeping with court decorum.
- Counsel must advise the court of modified attire.
- Counsel need not discuss their personal circumstances or modified attire in open court or on the record.

We believe that gowning directives with these elements will be clear, inclusive and instructive. With this guidance, both courts and counsel will know how to proceed when counsel need to modify their attire due to personal circumstances.

Clearer guidance from the Federal Court of Appeal will help counsel meet their obligations to the court and their clients. The proposed changes will also enhance the accessibility of courts and send an important message that the profession and justice system can be pro-actively inclusive.

We ask that you consider our recommendation and would be pleased to discuss this issue further.

Yours truly,

*(original letter signed by Nadia Sayed for Sabrina A. Bandali and Kamleh J. Nicola)*

Sabrina A. Bandali  
Chair, CBA Women Lawyers Forum

Kamleh J. Nicola  
Chair, Federal Courts Bench and Bar Liaison Committee

Encl.

## **Appendix A**

### **Model Gowning Directive**

Counsel with personal circumstances, such as pregnancy, a medical condition or disability, are free to modify their traditional court attire in order to accommodate their personal circumstances as they see fit, including dispensing with a waistcoat and tabs. Modified attire must be dark in colour and in keeping with Court decorum. Counsel wearing altered attire are requested to advise designated court personnel in advance of the appearance to ensure that counsel do not need to discuss their personal circumstances or modified attire on the record or in open court.

### **Annexe A**

#### **Modèle de directive concernant la tenue vestimentaire**

Il est loisible pour les juristes de modifier leur tenue vestimentaire traditionnelle devant la Cour en raison d'une situation personnelle, par exemple, pour accommoder une grossesse, un problème de santé ou une incapacité, comme bon leur semble, y compris en retirant la veste ou les rabats. La tenue vestimentaire modifiée doit être de couleur foncée et doit respecter le décorum de la Cour. Le ou la juriste qui a modifié sa tenue en avisera le membre du personnel de la Cour désigné à cette fin avant sa comparution afin de ne pas avoir à discuter de sa situation personnelle ou de sa tenue modifiée devant la Cour ou dans les dossiers.