



November 15, 2019

Via e-mail: julie.lemay-lafleur@scc-csc.ca

The Right Honourable Richard Wagner, P.C.
Chief Justice of Canada
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Dear Chief Justice Wagner:

Re Gowning Requirements for Counsel

We write on behalf of the Canadian Bar Association's Women Lawyers Forum and the CBA members of the Supreme Court Liaison Committee to propose that the Supreme Court of Canada adopt a written policy on gowning that accommodates lawyers with personal circumstances, such as pregnancy, medical condition or disability. We recommend a policy that includes an exemption for personal circumstances and outlines a discreet and dignified process for counsel to advise the court of their modified attire.

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 CBA Women Lawyers Forum promotes women's stature and influence in the legal profession in Canada. The Supreme Court Liaison Subcommittee serves as a link between the Court and the Bar on issues of mutual concern.

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 and offering an appropriate process for counsel to inform the court that their attire has been modified.¹ Since then, many courts across Canada have amended their gowning rules.

The Supreme Court of Canada has no written directives on how counsel should appropriately gown for appearances. This excludes lawyers who do not have trusted mentors with relevant experience to ask about appropriate attire when pregnant, experiencing a medical condition, or living with a disability. Adopting a written policy sets out the court's expectations on gowning for the benefit of all counsel. A clear exemption for counsel who may need additional flexibility to appear sends a

¹ Canadian Bar Association, Resolution 16-02-M, [Accommodating Maternity in Court Gowning Directives](#), 2016.

clear message of inclusion. Counsel who need to depart from traditional gowning requirements would know that the court welcomes their appearance.

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.

Clear guidance from the Supreme Court of Canada would 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 proactively inclusive.

We ask that you consider our proposal and would be pleased to discuss this matter further.

Yours truly,

(original letter signed by Nadia Sayed for Sabrina A. Bandali and Rekha N. Malaviya)

Sabrina A. Bandali
Chair, CBA Women Lawyers Forum

Rekha N. Malaviya
Chair, Supreme Court of Canada Liaison
Subcommittee

Encl.

cc. Renée Thériault, Executive Legal Officer, Renee.Theriault@scc-csc.ca
Barbara Kincaid, General Counsel, Court Operations Sector, Barbara.Kincaid@scc-csc.ca

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.