



November 8, 2019

Via e-mail: eugene.rossiter@tcc-cci.gc.ca

The Honourable Eugene P. Rossiter
Chief Justice of the Tax Court of Canada
200 Kent Street
Ottawa, ON K1A 0M1

Dear Chief Justice Rossiter:

Re: Gowning Requirements for Counsel

We write on behalf of the Canadian Bar Association's Women Lawyers Forum and the CBA members of the Tax Court Bench and Bar Committee, to recommend changes to the Tax Court of Canada's policy on gowning to include an exemption for counsel who need to depart from traditional gowning requirements due to personal circumstances such as pregnancy, medical condition or disability. We recommend introducing an exemption for these lawyers and outlining a discreet and dignified process for them 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 Bench and Bar Committee liaises with the Tax Court of Canada to discuss 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,¹ and offering 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 Tax Court of Canada's gowning policy does not include any exemption for personal circumstances. 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. A clear exemption for counsel who may need additional flexibility to appear sends a clear message of inclusion. Counsel who need to depart from traditional gowning requirements would know that the court welcomes their appearance.

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

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 Tax 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 at the upcoming meeting of the Tax Court Bench and Bar Committee.

Yours truly,

(original letter signed by Nadia Sayed for Sabrina A. Bandali and Nathalie Goyette)

Sabrina A. Bandali
Chair, CBA Women Lawyers Forum

Nathalie Goyette
Chair, Tax Court Bench and Bar Committee

cc: The Honourable Lucie Lamarre, Associate Chief Justice Lucie.Lamarre@tcc-cci.ca

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.

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.