

## **Sexualized and gender-specific dress codes Frequently Asked Questions**

### **1. Why is the OHRC focusing on this issue?**

In November 2015, concerns started appearing in the media – raised initially by servers in a CBC Marketplace inquiry - about restaurants with dress codes that require female servers to wear short skirts, tight dresses, high heels and low-cut tops to work.

This media inquiry provided us an opportunity to restate our long-standing position on sexualized dress codes. The new statement, issued on International Women’s Day, is an opportunity to spread this message even further. We collaborated with the Human Rights Legal Support Centre (HRLSC) to inform employees about their rights.

Even though they may be commonplace and normalized across the restaurant industry, sexualized dress codes reinforce stereotypical and sexist notions about women. Human rights decisions dating back to the 1980s have found these to be a violation of human rights laws. Yet they continue in 2016.

Other forms of sex discrimination and sexual harassment are also very common in restaurants, and these dress codes may make women more vulnerable to sexual harassment by customers, management and other staff.

Our focus on this issue is a “call to action” to employers to review their dress codes and remove discriminatory requirements. Employers make themselves vulnerable to human rights complaints if they do not.

### **2. What are the impacts of these dress codes on employees?**

While focusing on dress codes may seem like a narrow issue, these are rooted in larger issues of sexism and discrimination in society where women are often sexually objectified. These dress codes can harm the dignity of women and reinforce sexist stereotypes. Gender-specific dress codes can also exclude trans and gender-diverse people, some racialized people and some people who practice a religion (creed).

The OHRC and HRLSC have heard many reports of women feeling ashamed and demeaned when they had to dress this way, and being afraid of sexual harassment. Employees may feel pressured to agree to these dress codes because they fear losing tips, shifts, or even their jobs.

Some people pointed out that the uniforms can be physically restraining and potentially damaging (in the case of being required to wear high heeled shoes on long shifts at work).



They can also lead to employees being sexually harassed. Research indicates that in the restaurant industry, sex discrimination and sexual harassment happen so often that they are often seen as just “part of the job.”<sup>1</sup> Managers, customers and even staff may normalize the behaviour and minimize its effects. In one U.S. study, researchers found that rates of sexual harassment were higher in restaurants that required men and women to wear different uniforms.<sup>2</sup>

Sexual harassment has severe and long-lasting effects. It can reduce employees’ morale, decrease productivity and contribute to physical and emotional effects such as anxiety, depression and posttraumatic stress disorder.

Many women experiencing these behaviours in the restaurant industry are young and working in their first jobs. So if their first job experience involves sexual harassment, they may think this is normal in other work environments. Research suggests that women may come to expect and tolerate other situations of sexual harassment based on a negative first experience in the restaurant industry.<sup>3</sup>

### **3. What are some human rights cases that deal with this issue?**

Human rights decisions dating back to the 1980s have found that dress code requirements that create adverse impacts based on sex violate human rights laws. Here are some cases that deal with the issue:

In *McKenna v. Local Heroes Stittsville*,<sup>4</sup> a server’s shifts were cut after she expressed concern about wearing a new form-fitting uniform due to her visible pregnancy. Previously, she had been allowed to wear t-shirts that were loose enough to not draw attention to her pregnancy, but management changed the uniform to form-fitting lycra shirts. The Human Rights Tribunal of Ontario (HRTO) found that the respondents wanted to re-brand the sports bar by emphasizing the sexual attractiveness of its staff, who were almost all women between the ages of 19 and 25, and they saw the applicant’s visible pregnancy as inconsistent with their re-branding efforts. The HRTO found this to be discrimination and ordered the respondents to pay the woman \$17,000 for injuring her dignity, and almost \$3,000 in lost wages.

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<sup>1</sup>The Restaurants Opportunities Centers United Forward Together, *The glass floor: Sexual harassment in the restaurant industry* (2014), online: ROC United <http://rocunited.org/pr-the-glass-floor-report/> (Retrieved: February 29, 2016 Kaitlyn Matulewicz, “Law and the Construction of Institutionalized Sexual Harassment in Restaurants”, *Canadian Journal of Law and Society* 2015, Vol.30 No.3, 401-419; Lisa C. Huebner, “It is Part of the Job: Waitresses and Nurses Define Sexual Harassment,” (Fall 2008), *Sociological Viewpoints*, 75.

<sup>2</sup> ROC United *ibid.*, at 25.

<sup>3</sup> In the ROC United study, women who had previously worked as tipped workers in the past were 1.6 times more likely to live with harassing behaviours in the workplace than women who were currently employed as tipped workers. ROC United *ibid.*, at 3.

<sup>4</sup> *McKenna v. Local Heroes Stittsville* 2013 HRTO 1117 (CanLII).



In *Mottu v. MacLeod*,<sup>5</sup> a female server at a nightclub was required to wear a bikini top at a special work event. Instead, she wore clothing on top of her bikini top and complained to her union and employer. As a result, she was disciplined, assigned to a less desirable position at the club, and her work hours were reduced. The B.C. Human Rights Tribunal found these actions to be discriminatory.

In *Noseworthy v. Canton Restaurant*,<sup>6</sup> a human rights tribunal found that a female restaurant employee was sexually harassed by the restaurant cook, who made unwanted sexual comments towards her and sexually assaulted her. These actions involved lifting up the woman's skirt – which she was required to wear to comply with the restaurant dress code – and touching her thigh. The tribunal also found that the employer's expectation for female staff to wear exclusively skirts, while male staff were allowed to wear pants, was discriminatory.

#### **4. Don't women who apply to be servers at these restaurants know what they are getting into? If they don't like it, why don't they work somewhere else?**

All workplaces have to respect human rights laws – no one should have to go out and find another job just because they don't want to be discriminated against. That is not a solution. And people also cannot be asked to give up their human rights to get or keep a job. The solution is for employers not to discriminate.

The reality is that in the current labour market, there are fewer options for these workers, who are often young women (36.8% of food and beverage servers in Ontario are women between the ages of 15 and 24<sup>7</sup>). Youth have a harder time finding work than the general population and this is reflected in the much higher unemployment rate.<sup>8</sup> Restaurants with these dress code requirements are common and may represent a large part of the restaurants in an area.

Food and beverage servers often work part-time and these policies can affect workers whose employment choices are limited.

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<sup>5</sup> *Mottu v. MacLeod* [2004] B.C.H.R.T.D. No. 68 50 C.H.R.R. D/223.

<sup>6</sup> *Noseworthy v. Canton Restaurant* (2009), 69 C.H.R.R. D/33 (N.L. Bd.Inq.)

<sup>7</sup> Statistics Canada, no date. *2011 National Household Survey: Data Tables*. Statistics Canada Catalogue no. 99-012-X2011033. Last modified January 7, 2016. Online: Statistics Canada [www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=105897&PRID=0&PTYPE=105277&S=0&SHOWALL=1&SUB=0&Temporal=2013&THEME=96&VID=0&VNAMEE=&VNAMEF](http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=105897&PRID=0&PTYPE=105277&S=0&SHOWALL=1&SUB=0&Temporal=2013&THEME=96&VID=0&VNAMEE=&VNAMEF) (Retrieved: February 25, 2016).

<sup>8</sup> In 2015, the Canadian unemployment rate for youth (men and women) aged 15-24 years was 13.2%, which was much higher than the unemployment rate of the general population (6.9%). See Statistics Canada, *Labour force characteristics by age and sex (rates)*, last updated January 8, 2016, online: Statistics Canada [www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor20b-eng.htm](http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor20b-eng.htm) (retrieved March 1, 2016).



## **5. Does the OHRC’s statement mean that women shouldn’t dress in a sexy way at work? What if they want to dress this way to get more tips?**

There is a difference between what women *choose* to wear to work and what employers directly or indirectly *tell women they must wear*.

We are not telling women what they should or should not wear to work. Some women may choose to wear more revealing clothing if this is what they are comfortable with. The employer can impose certain restrictions (e.g. wear the logo) as long as these restrictions are not discriminatory.

What we are concerned about is employers imposing requirements, either through a written dress code or more subtle means, that female employees wear sexualized or gender-specific clothing, such as high heels, low-cut tops, tight dresses and short skirts.

Female employees should not be expected to meet more difficult requirements than male employees, and they should not be expected to dress in a sexualized way to attract clients. These requirements could be a violation of the *Human Rights Code*.

## **6. Don’t businesses have the right to have employees dress to fit their business “look” or “corporate image”?**

They do – employers can have dress codes, but only if they don’t violate the Ontario *Human Rights Code*. The employer can impose certain restrictions based on their business needs as long as these are not discriminatory.

Any sex-based differences in the dress code must be legitimately linked to the requirements of the job. Where this cannot be shown, these dress codes will be discriminatory.

Where female employees are expected to meet more difficult requirements than male employees, or are expected to dress in a sexualized way to attract clients, this could be a violation of the *Human Rights Code*.

## **7. How can an employer make sure its dress code complies with the *Human Rights Code*?**

Many different outfits can be offered to employees to meet the corporate image and still be inclusive of employees based on sex, gender identity, gender expression and creed (religion).

For example, an employer may offer a range of uniform options – perhaps everyone is expected to wear a white top with the company logo with black bottoms. The uniform options offered are shorts or pants, shirts with either short or long sleeves and skirts at around knee or ankle length. The dress code states that employees, regardless of sex or gender identity, can wear whatever option they choose and religious head coverings of any type may be worn with the uniform.

Another option is for employers to let employees choose their work clothing within certain non-discriminatory guidelines they set out, without any pressure or coercion.

## **8. What can someone do if they feel their dress code is discriminatory?**

As an employee, you can:

1. Try to resolve the issue internally if you can. It may help to:
  - Talk to a trusted co-worker – is her experience the same?
  - Download the OHRC infographics and policy statement to show your co-workers.
  - Write down notes about what you're asked to wear or do. Make the link between your uniform and your sex, gender identity, gender expression or creed (religion).
  - Ask your co-workers to co-sign a letter to your employer. Enclose the OHRC policy statement.
  - Get free legal advice from the HRLSC if you think your job is at risk or your boss isn't listening.
2. You can also file a human rights complaint (called an application) with the Human Rights Tribunal of Ontario, but you have to do so within one year of the last event of discrimination.

Remember: the *Human Rights Code* protects you from reprisal, which means that it is illegal for your employer to punish you or threaten to punish you for objecting to the dress code. If they do, this can be added to any complaint at the Human Rights Tribunal of Ontario.

## **9. Aren't there more important women's issues that the OHRC should be working on?**

The OHRC is working on many issues affecting women, including sexual and gender-based harassment, discrimination based on pregnancy and breastfeeding, and violence against Indigenous women and girls, among other issues. Our press backgrounder offers more details.

Addressing sexualized dress codes is also important. Thousands of people work in restaurants and bars across Ontario. Most of them are women (75%)<sup>9</sup> and many of

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<sup>9</sup> Data from the 2011 National Household Survey indicates that almost 75% of food and beverage servers, restaurant hosts and bartenders in Ontario are women. Statistics Canada, no date. *2011 National Household Survey: Data Tables*. Statistics Canada Catalogue no. 99-012-X2011033. Last modified January 7, 2016. Online: Statistics Canada <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=105897&PRID=0&PTYPE=105277&S=0&SHOWALL=1&SUB=0&Temporal=2013&THEME=96&VID=0&VNAMEE=&VNAMEF> (Retrieved: February 25, 2016)

them are young and working in their first jobs. They are precariously employed in these jobs, and may be more vulnerable and less likely to know or be able to assert their rights.

While focussing on dress codes may seem like a narrow issue, these are rooted in larger issues of sexism and discrimination in society where women are often sexually objectified. This sexism is reflected in some industries where some employers use women's appearance to attract customers and hire people because of how they look.

Hiring people based on aesthetic criteria, such as who looks sexually attractive, can lead to discrimination based on sex, age, race, disability, gender identity and creed. Sexual harassment is also very common in some restaurants and bars.

These dress codes may also lead to women being sexually harassed.

All of these issues are serious concerns and can create harmful effects for women who are trying to find employment, or are already employed.

### **10. Businesses have to compete with each other – if one business is putting in place a dress code like this, won't all of them have to?**

All businesses operating under provincial law must comply with the Ontario *Human Rights Code*. Just because an employer thinks that using a sexualized dress code will increase profits and make the business competitive, this is no excuse for violating employees' human rights.

In fact, the impacts of discrimination on employees can be costly for employers. Sexual harassment, for example, can result in decreased employee productivity, low morale, increased insurance costs from dealing with health care impacts, increased employee absenteeism, and potential legal expenses from dealing with human rights cases.

If employers think that they can attract customers by making female employees wear sexualized outfits, they should also think about all the potential customers that may be alienated by these policies and choose to go elsewhere.

### **11. What if employers want to attract customers?**

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## 12. Why does the OHRC include trans people in an International Women’s Day statement?

Trans people and people of diverse genders are often judged by their physical appearance and for not fitting or conforming to stereotypical ideas about what it means to be a “man” or a “woman.” These are rooted in sexism. Many trans people and people of diverse genders experience stigmatization, prejudice, bias and fear on a daily basis. Women, trans people and people of diverse genders may be vulnerable to harassment on various grounds, including gender-based harassment and sexual harassment.

Gender-specific dress codes may create barriers for trans and people of diverse genders by preventing them from dressing in a way that reflects their lived gender identity. This could be discriminatory under the *Code*.

It is important to celebrate the contribution of trans people and people of diverse genders on International Women’s Day just as it is to recognize the inequalities and struggles that people continue to face.