Notice of the Final Oral Examination
for the Degree of Doctor of Philosophy

of

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LLM (Université Laval, 2009)
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“The Regulation of Physical Appearance in the Canadian Workplace as a Human Rights Issue”

Faculty of Law

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Conducted Remotely

Supervisory Committee:
Prof. Gillian Calder, Faculty of Law, University of Victoria (Supervisor)
Prof. Maneesha Deckha, Faculty of Law, UVic (Member)
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Abstract
This dissertation takes an employee-centred approach to explore the power that employers have to regulate the physical appearance of their employees in the Canadian workplace. Specifically, it analyzes the limitations and potential of existing human rights instruments for protecting the appearance interests of employees in Canada, with primary focus on British Columbia, Ontario, and Quebec. Appearance matters a great deal in the North American context. Scholars of sociology have established that as a social and identity marker, as well as a powerful means of expression, appearance should be considered as fundamental to an employee’s identity, sense of self, and personhood. In particular, these studies show that appearance choices (such as tattoos, piercings, grooming practices, and clothes) are important to an employee’s sense of self; they are therefore worthy of legal protections. Yet, under the current state of law in Canada, workplace appearance regulation is legal, with limits for the most part dependent on whether or not employees are unionized. This dissertation takes up the question of how to address employees’ appearance in the workplace as a human rights issue by offering two frameworks of analysis—the anti-discrimination approach and the fundamental rights at work approach. Physical appearance is not a protected ground of discrimination in Canada. As such, approaching the question of workplace appearance policies and practices through an anti-discrimination lens offers some considerable challenges for employees in a private employment relationship in most Canadian provinces. In Quebec, the Quebec Charter of human rights and freedoms protects a wide range of fundamental rights and freedoms applicable to private employment relationships, including the right to dignity, the right to privacy, and the right to freedom of expression. Quebec employees have successfully raised these rights in order to challenge workplace appearance regulation. Quebec employers are thus more limited regarding appearance policies than their counterparts in the rest of Canada, because of the fundamental rights at work framework, which offers a balanced approach to employers’ and employees’ competing interests. With a careful review of both frameworks, I argue that legislative changes could enable shifts in cultures of work, and I conclude with some modest proposals to achieve better protections for employees broadly, and more specifically with respect to the importance of appearance in the workplace.