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**WEARING MAKEUP AT WORK:
NEGOTIATING GROOMING STANDARDS IN THE WORKPLACE
(A ROUNDTABLE DISCUSSION FOR CURIOUS EMPLOYEES)**

Irena Djukic*

ABSTRACT

Wearing makeup is a common grooming practice both in one's personal and professional life. Yet, in the workplace, gender-specific grooming policies that enforce women to wear makeup present difficult questions as to what employees may expect from their employer and generally, their work environment. Imposing makeup as a grooming standard and requirement for women has various implications for both employees and employers in the workplace. This article aims to explore whether an employer can require their female employees to wear makeup at work. Several themes are discussed to analyze how makeup is a grooming standard and requirement in the workplace. First, a brief history of makeup demonstrates the long-standing gendered implications of cosmetics. Following this, formal, informal, and voluntary makeup practices are discussed to explain how makeup qualifies as a workplace grooming standard. Specific examples are examined to uncover how employers have implemented grooming policies mandating the use of makeup, followed by an analysis as to how makeup can be an act of resistance. Lastly, legal avenues for employees subject to gender-specific makeup grooming standards and requirements are considered. Through a dialogue format, this article argues that grooming policies requiring women to wear makeup in the workplace is a form of aesthetic labour which perpetuates gender normative behaviour, thereby finding such policies should qualify as a human rights discrimination claim based on the protected grounds of gender identity and expression.

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RESEARCH QUESTION

Grooming for work, whether done intentionally or not, is a method of bringing one's identity into being. Consequently, how a woman chooses to dress and groom themselves may highlight attributes and cultural expectations of what is considered to be feminine.¹ While there has been research about gender-specific dress codes and workplace discrimination, the grooming requirement of wearing makeup has not received adequate attention. The majority of research on makeup is from a psychological perspective, with a primary focus on the physical attractiveness and self-presentation of women.²

Currently, the beauty industry is valued at an estimated \$532 billion and continues to rise.³ Nearly seven in ten women apply lipstick every day, a contribution to the global makeup market which is expected to reach \$13.4 billion by the year of 2024.⁴ While women spend a considerable amount of time and money on makeup, the use of makeup in the workplace has not received much attention from researchers.⁵ This paper contributes to the limited scholarship on makeup-use in the workplace by exploring the following question: Can an employer require their female employees to wear makeup at work?⁶

¹ Devon Carbado, Catherine Fisk & Mitu Gulati, "Foreword: Making Makeup Matter" (2007) 14:1 *Duke J Gender L & Pol'y* 1 at 3.

² Maryann McCabe, Timothy de Waal Malefyt & Antonella Fabri, "Women, Makeup, and Authenticity: Negotiating Embodiment and Discourses of Beauty" (2017) 1:21 *J Consumer Culture* 1 at 3.

³ Business Insider, "Beauty Has Blown Up to be a \$532 Billion Industry" (07 July 2019), online: <www.businessinsider.com/beauty-multibillion-industry-trends-future-2019-7#2-targeted-pricing-helps-reach-new-demographics-2> [perma.cc/PC6K-V2HW].

⁴ Lauren Gurrieri & Jenna Drenten, "The Feminist Politics of Choice: Lipstick as a Marketplace Icon" (2019) *Consumption Markets & Culture* 1 at 1 (The impact of the COVID-19 pandemic on the makeup industry is outside the parameters of this article).

⁵ Kirsten Dellinger & Christine L. Williams, "Makeup at Work: Negotiating Appearance Rules in the Workplace" (1997) 11:1 *Gender & Society* 151 at 153 (Women's concerns about personal appearance are trivialized and largely ignored by sociologists and some feminist researchers).

⁶ American Psychological Association, "Guidelines for Psychological Practice With Transgender and Gender Nonconforming People" (2015) 70:9 *Am Psychologist* 832 at 833 (In order to remain transparent in relation to this research topic and the below

To address this question, six broad themes will be discussed. First, a brief history of makeup will illustrate the long-standing gendered connotations of cosmetics. Next, formal, informal, and voluntary makeup routines will be analyzed to illustrate how makeup qualifies as a workplace grooming standard. Specific examples will then be examined to reveal how employers have implemented policies mandating the use of makeup, followed by a discussion of how makeup can be an act of resistance. Finally, legal avenues for employees subject to makeup grooming standards and requirements will be considered. Ultimately this research paper will argue that grooming policies requiring women to wear makeup in the workplace is a form of aesthetic labour and perpetuates gender normative behaviour. Hence, gender-specific grooming requirements should qualify as a human rights discrimination claim based on the protected grounds of gender identity and expression under the *Ontario Human Rights Code*⁷ (“the Code”).

RESEARCH METHOD

This article does not take the form of a traditional legal paper. Instead, its research question is explored by way of a roundtable discussion between four fictitious women. A dialogue format was chosen for two reasons. Grooming standards, specifically mandatory requirements of makeup in the workplace, is a relatively novel and unexplored topic in discrimination law. As there are various preliminary and outstanding questions related to makeup in the workplace, a dialogue format provides the reader with a straightforward, yet comprehensive analysis. Moreover, given the array of stances related to grooming standards in the workplace, a dialogue format allows the reader to either associate or disassociate themselves with the various viewpoints presented.

The roundtable discussion comprises of Sara and Olivia, two employees working in Ontario. They are interested in how the law and overall legal system

roundtable discussion, the author recognizes the phrase “women” is often associated to be in relation to a cisgender identity).

⁷ *Ontario Human Rights Code*, RSO 1990, c H 19 [Code].

responds to workplace grooming policies requiring the use of makeup. The other two women are Jenn and Melissa, two experts on workplace grooming policies. Using their research findings, Jenn and Melissa answer Sara and Olivia's questions and concerns.

Given the limited scholarship on grooming policies and makeup, Jenn and Melissa have consulted various sources, including legislation, academic articles, case commentaries, policy opinions, news items, as well as Canadian and American case law. It is important to emphasize a large portion of the analysis draws upon American jurisprudence, primary and secondary literature in relation to gender discrimination issues, and grooming standards in the workplace. While the roundtable discussion will primarily examine the impacts of makeup related to women, it is important to acknowledge that people who identify as members of the LGBTQ2+ community and men may also be impacted by these policies.⁸ Beyond the purpose of modifying one's face, makeup has contributed to cultural understandings of what constitutes a female in the workplace.⁹ These four women will explore how employees and employers engage in gender normative behaviour through workplace grooming policies. The overall goal of this roundtable discussion will be to explore the complex relationship between gender, makeup, and the law.

ROUNDTABLE DISCUSSION

Defining Makeup

Sara (employee): Hello! We are excited to learn about makeup in the workplace.

⁸ OK 2 B ME, "What Does LGBTQ+? Mean?" (2020), online: <<https://ok2bme.ca/resources/kids-teens/what-does-lgbtq-mean/>> [perma.cc/5CCH-YXJ7] (LGBTQ+ refers to all of the communities included in "LGBTQQIAA": Lesbian, Gay, Bisexual, Transgender, Transsexual, 2/Two-Spirit, Queer, Questioning, Intersex, Asexual and Ally).

⁹ G. Mitu Gulati, Devon Carbado & Gowri Ramachandran, "Makeup and Women at Work" (2006) 96 Harv CR-CLL Rev 3 at 4.

Jenn (researcher): Thank you for having us. We're looking forward to our discussion today. Why don't we get started with your first question?

Sara (employee): How would you define makeup?

Melissa (researcher): Makeup is a substance commonly used by women to make their faces more attractive or by actors to change their appearance.¹⁰ Similarly, makeup is also defined as cosmetics such as lipstick, mascara, and eye shadow, which are used to colour and enhance the face.¹¹ It is interesting to note that both definitions incorporate the word "women" and the concept of beautification to describe the word makeup.

Jenn (researcher): Even from a young age, makeup can define and be closely linked to the gender identity of what is traditionally considered "female." When I was younger, wearing lipstick to school was prohibited, while activities that were traditionally considered feminine, such as pageants and dance performances, required the use of makeup. Perhaps this difference exemplifies the gendered connotation of makeup, as it reinforces the boundaries of femininity from a young age.¹²

Olivia (employee): I never thought about makeup that way. From what you're saying, it sounds like makeup is a relatively recent practice. Is this true?

Melissa (researcher): Actually, the practice of wearing makeup has been around for centuries. For as long as it has existed, makeup has been gendered. Some of the world's earliest societies used makeup, often for practical purposes.¹³ In ancient Egypt, cosmetics were created as a means to protect oneself from sun

¹⁰ Oxford Learner's Dictionaries, "Definition of makeup noun from the Oxford Advanced American Dictionary" (2020), online:

<www.oxfordlearnersdictionaries.com/definition/american_english/makeup> [perma.cc/5KWH-X4D5].

¹¹ Merriam-Webster, *Dictionary by Merriam-Webster* (2020), sub verbo "makeup", online: <www.merriam-webster.com/dictionary/makeup> [perma.cc/F5XW-W9JD].

¹² Gurrieri, *supra* note 4 at 9 (Traditional feminized activities requiring makeup often remain unquestioned).

¹³ Daniel C. Townsend, *Foundations of Stage Makeup* (New York: New York, 2019) at 2 (Upper-class men occasionally painted their faces as well but the practice was frowned upon by middle- and lower-class society).

damage.¹⁴ Makeup was developed from ground minerals and plants and then combined with animal fats, oils or water for application.¹⁵ Makeup also had aesthetic purposes. Kohl was applied by Egyptians as heavy eyeliner as protection from bad fortune and spirits.¹⁶ Cosmetics were used in ancient China by the nobility. Rouge, made from plant extracts, was often applied on the lips and cheeks, and the skin was made pale using a mixture of rice powder and white lead.¹⁷ Cosmetics were generally worn only by women.¹⁸

Jenn (researcher): Makeup was also prevalent in ancient Greece. The term “cosmetic” originates from the Greek word, “kosmetikos,” which translates to tranquility, harmony and order.¹⁹ Women would often apply white chalk and lead, mixed with water, on their shoulders, faces, and arms. Similar to practices in Ancient China, pale skin was considered to be elite and set upper-class women apart from working-class women.²⁰

Sara (employee): Wow, that is fascinating. I had no idea that use of makeup had such an interesting history. It sounds like it was primarily women who wore makeup throughout history. Is that right?

Melissa (researcher): Yes! It’s evident that the practice of makeup has a gendered history that continues to define societal understandings of what is considered to be “feminine.” The widespread use of makeup for everyday purposes became popular during the reign of the English Queen, Elizabeth I.²¹ After contracting smallpox, Queen Elizabeth I used white lead makeup to

¹⁴ Danielle Cohen, *Makeup: Transforming Identity* (MA Thesis, George Washington University, Corcoran College of Art and Design, 2011) at 16 [unpublished].

¹⁵ Townsend, *supra* note 13 at 1 (Approximately around 3500 BC).

¹⁶ *Ibid* (Kohl was often made from manganese oxide, ground burnt almonds, lead or malachite).

¹⁷ *Ibid* at 2.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ *Ibid* at 3.

²¹ Cohen, *supra* note 14 at 25.

cover up subsequent facial scars.²² In an attempt to imitate the Queen, women used makeup to portray her pale complexion and red lips.²³

By the eighteenth century, makeup was frequently used among both commoners and aristocrats. However, the rise of middle class, as well as anti-aristocratic morality in the United States of America, presented makeup as unclean, depraved and dishonest.²⁴ Makeup was perceived as antithetical to emerging feminine ideals of purity and domesticity.²⁵ During this time, women who used makeup were perceived negatively by society. For example, towards the end of the eighteenth century, the British Parliament enacted a law condemning the use of lipstick by associating its use with witchcraft.²⁶

Jenn (researcher): The beginning of the nineteenth century did little to improve the perception of makeup. During the American Civil War, women who adhered to a clean life, free from cosmetics, were considered “feminine.”²⁷ The pale complexion achieved through makeup was no longer desirable. Women were warned against altering their complexion with makeup and were ridiculed if their cosmetics caused pale complexions.²⁸

Melissa (researcher): However, during the late nineteenth century, makeup regained popularity. Actresses and female performers began to use makeup for stage roles. The rise of photography also resulted in wider use of makeup. Photography studios encouraged their subjects to apply makeup before sitting for their portraits.²⁹ By the twentieth century, makeup was once again popular, yet it

²² Ben Johnson, “Elizabeth I – A Life in Portraits”, online: <www.historic-uk.com/HistoryUK/HistoryofEngland/Elizabeth-I-Life-in-Portrait/>.

²³ *Ibid.*

²⁴ Townsend, *supra* note 13 at 4.

²⁵ Carbado, *supra* note 1 at 6.

²⁶ Gurrieri, *supra* note 4 at 9 (Women who utilized makeup and specifically lipstick were deemed to be guilty of seducing men into marriage).

²⁷ Gulati, *supra* note 9 at 6, 9 (During this time femininity was considered to be a result of women’s good moral virtue and habits).

²⁸ *Ibid* (Cautions and paranoia regarding makeup incorporated racial anxieties about the widespread practice of skin whitening and light-skinned African American persons passing into what was considered a to be a “white society”).

²⁹ *Ibid.*

continued to generate and reinforce social class and racial segregation. The cosmetics industry created distinct markets of “high class” and “low class” makeup.³⁰ Makeup continued to confine women not only to their femininity, but also to their class.³¹

Jenn (researcher): That said, the role of women in North America changed during the early twentieth century, with the emergence of beauty culture. While women were previously confined to the domestic sphere, a shift occurred, resulting in women taking on public roles in society, such as consumers.³² By the mid-twentieth century, makeup-wearing became an acceptable practice among women. In response, the corporate cosmetic industry quickly developed. Large cosmetic companies advertised on a national scale, convincing their clientele that makeup was no longer sinful, but rather a natural and necessary aspect of being a woman.³³ Makeup was advertised as a means to reveal inner feminine beauty.³⁴

Olivia (employee): How does the history of makeup intersect with the workplace?

Melissa (researcher): The use of makeup as a vehicle for gender conformity is well documented in the workplace. Surprisingly, the association between makeup and femininity, in part, helped women enter the workforce. Around the time of the Second World War, women began to occupy male dominated spheres.³⁵ Makeup was used to ease male workers’ anxieties about women’s entry into the workforce, particularly as a symbol to reinforce the established gender roles of men and women and, in turn, masculinity and femininity.³⁶

³⁰ Townsend, *supra* note 13 at 29 (Distinct markets for makeup were prevalent in the United States of America).

³¹ Gulati, *supra* note 9 at 5.

³² *Ibid* at 7 (Women began to enter the workforce, gained purchasing power and thus increasingly became consumers).

³³ Townsend, *supra* note 13 at 6 (Mass production of magazines and advertisers flourished as makeup trends became a global phenomenon). See also Gulati, *supra* note 9 at 8 (At one point, the same amount of financial resources was spent on advertising for cosmetics as for food, while food was an industry seventeen times larger).

³⁴ Gulati, *supra* note 9 at 7.

³⁵ *Ibid* at 8 (Most often women worked as waitresses, saleswomen or secretaries during this time).

³⁶ Carbado, *supra* note 1 at 6.

Correspondingly, the presence and use of makeup affirmed that the integration of women into the workforce would not disrupt the gender hierarchy. Makeup affirmed that women, although now in the workplace, were not resisting their place in the social order.³⁷ Ultimately, the history of makeup reveals that the use of cosmetics is gendered and complex.

Makeup as a Grooming Standard and Requirement in the Workplace

Olivia (employee): How does makeup qualify as a grooming standard and requirement within a workplace policy?

Melissa (researcher): First, it is essential to discuss workplace grooming policies more generally. An employer's grooming policies help to create the first visual impression a business or employer extends to its customers and the public.³⁸ The most common type of appearance-based policy is a dress code. Dress codes can be formal or informal and may include uniforms.³⁹ A dress code policy may require clothing to be clean and not ripped, unkept, or "inappropriate." The policy may also extend to specific grooming standards relating to facial hair, hair styles, makeup, and hand and nail care.⁴⁰ It is also important to mention that employers implement such standards in the workplace as a result of workplace cultural profiling.

Sara (employee): Cultural profiling? What is that?

Melissa (researcher): Workplace cultural profiling is defined as an employer's practice of actively monitoring employees' behaviour in order to

³⁷ Gulati, *supra* note 9 at 8 (Tangee Cosmetics utilized advertisements which encouraged the use of lipstick and congratulated women on keeping their femininity even though they were doing what was deemed as men's work).

³⁸ Laura Morgan Roberts & Darryl D Roberts, "Testing the Limits of Antidiscrimination Law: The Business, Legal, and Ethic Ramifications of Cultural Profiling at Work" (2007) 14:1 Duke J Gender L & Pol'y 369 at 371.

³⁹ Deborah Zalesne, "Lessons from Equal Opportunity Harasser Doctrine: Challenging Sex-Specific Appearance and Dress Code" (2007) 14:1 Duke J Gender L & Pol'y 535 at 535.

⁴⁰ Society for Human Resource Management, "Managing Employee Dress and Appearance" (2020), online: <www.shrm.org/resourcesandtools/tools-samples/toolkits/pages/employeedressandappearance.aspx> [perma.cc/8H6X-VAFE].

evaluate whether employees embody the values and culture of the workplace.⁴¹ Employers primarily achieve this through a “neutral” dress code or grooming policy applicable to all employees. Workplace grooming policies are often undisputed. Employers will argue for uniformity in the workplace to serve the interests customers, employees, and shareholders alike. For their customers, it produces cohesive brand, for the employees it creates consistency, and the shareholders benefit from the profits a cohesive brand generates.⁴²

Our research primarily focuses on the specific grooming standard and requirement of makeup in the workplace, which is generally unexplored. What is clear from our research is that dress code policies can disproportionately target marginalized groups in the labour market, women in particular.⁴³ When an employer’s “neutral” dress code policy requires female employees to wear makeup, it reinforces gender normative behaviour and maintains stereotypical ideals of femininity, resulting in the further marginalization of women.⁴⁴

Jenn (researcher): It is helpful to look at specific examples in the workplace to understand how makeup qualifies as a grooming standard. Formal grooming standards that require women to wear makeup in the workplace are commonly found in the service sector.⁴⁵ Women who work as bartenders and restaurant servers are often required to adopt a highly sexualized and feminized appearance at work through makeup use.⁴⁶ This is problematic in itself, as men are not held to similar standards. However, what is further troubling is the precarious nature of service work. Restaurant work in Ontario is comprised of predominantly women, with more than one-third who are under the age of 24 working in the

⁴¹ Morgan Roberts, *supra* note 38 at 372.

⁴² *Ibid.*

⁴³ *Ibid* at 400 (Rather than achieve cohesion, cultural profiling creates tensions between men and women thereby undermining profit goals through breaching trust among employees and suppressing creativity).

⁴⁴ *Ibid* (Courts will tend to acknowledge an employers’ ability and freedom to make business decisions).

⁴⁵ Gurrieri, *supra* note 4 at 9.

⁴⁶ Ontario Human Rights Commission, “*Report: Not on the Menu: Inquiry Report on Sexualized and Gender-based Dress Codes in Ontario’s Restaurants*” (2017) at 3, online (pdf): <www.ohrc.on.ca/en/not-menu-ohrc-inquiry-report-sexualized-and-gender-based-dress-codes-restaurants> [perma.cc/SW3Z-9N7M] [*Ontario Inquiry Report*].

sector, often relying on low wages, tips and part-time hours to sustain a living.⁴⁷ Makeup requirements directly impact women in precarious work sectors. An Ontario Human Rights Commission report found that where women failed to adhere to grooming requirements in the restaurant industry, this resulted in decreased shifts and consequently lower wages.⁴⁸ The use of makeup, then, can be directly tied to women's ability to earn a livelihood.

Melissa (researcher): Makeup requirements are not restricted to the service industry. Women employed as flight attendants are also impacted by grooming policies mandating the use of makeup. Emirates Airlines requires women to wear a specific shade of red lipstick to match the airline's red branding colour as a part of their work uniform.⁴⁹ Similar practices are prevalent among Canadian employers. Air Canada's Uniform and Grooming Standards Guide requires women to wear makeup, specifically stating that the makeup worn should be compatible with their skin tone, appropriate for day-time business wear, and should enhance a women's overall appearance.⁵⁰ The guide does not impose any makeup or cosmetic requirements for men working as flight attendants.

Employers are permitted to enforce dress codes and grooming policies in Ontario. However, sex-based dress code policies may be a violation of the Code. A violation may exist if a sex-based requirement within a dress or grooming policy is not legitimately linked to the job requirements and is found to create an adverse impact based on sex.⁵¹ However, while the *Code* offers some legal protection, it is a complaints-based system. In other words, it requires women to actively challenge gender-specific dress and grooming policies. Unfortunately, few

⁴⁷ *Ibid* at 3.

⁴⁸ *Ibid* at 4.

⁴⁹ Gurrieri, *supra* note 4 at 9 (According to Emirates Airlines' Imaging and Grooming Department training programme).

⁵⁰ Air Canada, "Uniform and Grooming Standards Guide" (2018), online: <www.avsoft.com/scrm/courses/SelfBuild/jazzuniforms> [perma.cc/ZW8F-96ZU] (The union on behalf of flight attendants filed a human rights complaint alleging they were lined up in a hallway during training and marked on their appearance including their bodies, uniform, their makeup and nails).

⁵¹ *Ontario Inquiry Report*, *supra* note 46 at 4.

challenges have been made under the *Code* to date, so discriminatory practices within the workplace regarding dress and appearance persist in Ontario.

Sara (employee): Why don't employees, specifically women, who are subjected to gender-specific grooming requirements, complain about these standards?

Jenn (researcher): That's a great question, Sara, and we will address potential complaint mechanisms later in our discussion. However, there are a few reasons why women do not address their employers about the pressure to conform and adopt gender-based and sexualized grooming standards. Women employed in the service sector, do not raise concerns for a variety of reasons, including lack of awareness of human rights laws, age, immigration status, low rates of unionization, unstable employment conditions, as well as prevalent sexual harassment and discrimination in the workplace.⁵² In short, they are often afraid to lose their jobs.

Melissa (researcher): Informal and self-imposed grooming practices also prevent women from raising concerns and, in turn, decrease the use of potentially available legal protections. Informal grooming practices are developed and maintained through daily observations and comments about an employees' appearance at work.⁵³ Subtle informal comments from managers and co-workers about the appropriateness of a woman's appearance include public observations, rhetorical questions, suggestions and sincere inquiries.⁵⁴ The existence of informal grooming requirements was illustrated in a study that explored women's use of makeup in several workplaces.⁵⁵ Participants, primarily women, who frequently wore makeup to work and then did not on a particular day, received comments and questions from colleagues expressing concern about their level of fatigue and overall health.⁵⁶ The frequent observations of women's appearance

⁵² *Ibid* at 3.

⁵³ Morgan Roberts, *supra* note 38 at 377.

⁵⁴ *Ibid*.

⁵⁵ Dellinger, *supra* note 5 at 154 (Occupations were both traditionally female and male jobs including workplaces such as professional office buildings, church day care facilities and at-home massage therapy office).

⁵⁶ *Ibid* at 157 (Participants reported men did not share these experiences).

regarding their use (or non-use) of makeup is an explicit situation that women commonly experience in the workplace. These situations, whether intentional or not, can be interpreted as informal grooming and cultural norms adhered to by fellow employees which work to further reinforce ideals of what constitutes “femininity” in the workplace.

Sara (employee): These appearance-related comments do not seem to be related to an employer’s formal grooming standards and requirements. Rather, they are a reflection of broader societal gender-based assumptions, interpretations, and understanding of how women should look and present themselves in the workplace.⁵⁷

Melissa (researcher): Exactly! It is for that very reason we considered this behaviour to be categorized as an informal grooming practice in the workplace. Self-imposed grooming practices are also important to consider. Unlike workplace dress codes that mandate uniforms, which may or may not be gender-specific, makeup is a unique requirement. Many women will voluntarily wear makeup as a grooming practice. Our research led us to conclude that the use of makeup can be contradictory. Makeup provides women with a facade of what is traditionally considered to be “the female identity” and instills self-confidence, while simultaneously fostering gender-based assumptions and judgment against that very same practice.⁵⁸

A study we read from 2011 asked a series of women-only focus groups questions about “the perfect woman.” Participants indicated feeling compelled to wear makeup to work as a result of a pressure they placed upon themselves.⁵⁹ Many women reported that applying makeup on a daily basis became a routine, habit, or unconscious practice, as they did not intentionally think about their makeup use.⁶⁰ While leaving home without makeup was optional, women

⁵⁷ Morgan Roberts, *supra* note 38 at 382.

⁵⁸ McCabe, *supra* note 2 at 2 (Participants stated makeup made them feel more awake and ready to take on the day).

⁵⁹ Avelie Stuart & Ngaire Donaghue, “Choosing to Conform: The Discursive Complexities of choice in Relation to Feminine Beauty Practices” (2011) 22:1 *Feminism & Psychology* 98 at 111.

⁶⁰ Dellinger, *supra* note 5 at 154.

acknowledged they were unable to express why it was difficult to opt out of their self-imposed makeup practices.⁶¹ As makeup use is commonly self-imposed practice, women may be unlikely to raise concerns with employers or legally challenge workplace requirements of wearing makeup.

Jenn (researcher): Even women's self-imposed use of makeup is not entirely free from external influences. From a young age, cosmetic advertising is constantly present in women's lives. As a result, women are conditioned to constantly change their appearance in the hopes of achieving a feminine ideal.⁶² The cosmetic industry also targets women who are disinclined to wear makeup by establishing standards for how women should look without makeup on. For example, the cosmetic industry has invented the "natural look," which is nonetheless achieved through the use of makeup.⁶³ Thus, formal, informal and self-imposed grooming policies are a reflection of the gendered nature of makeup whereby intentional or unintentional gender normative behaviour is perpetuated in the workplace.

The Impact of Imposing Makeup as a Grooming Standard and Requirement

Sara (employee): Why should I be concerned about a grooming standard and requirement that imposes women to wear makeup in the workplace?

Melissa (researcher): Great question! There are a number of reasons why employees, in particular women, should be concerned. While courts regularly consider employer-mandated grooming policies to be legally insignificant, the frequency with which employees challenge such policies through litigation indicates that these policies present issues of gender and racial inequality in the workplace.⁶⁴ Unfortunately, courts have regularly upheld grooming policies that have no meaningful connection to the performance of a job and, as a result, perpetuate inequality in the workplace. For example, courts regularly uphold

⁶¹ Stuart, *supra* note 59 at 118 (These women expressed a conflict between implying a sense of knowing they should be above their concerns regarding appearances but were unable to escape them completely).

⁶² McCabe, *supra* note 2 at 14 (One participant felt throughout her life the media had been telling her she needed to wear makeup).

⁶³ Gurrieri, *supra* note 4 at 5.

⁶⁴ Zalesne, *supra* note 39 at 546.

policies prohibiting braided hairstyles that are an expression of cultural identity. This supports employer's assertions that such hairstyles do not display a professional image.⁶⁵ In short, courts often deem policies neutral where they apply to all employees and do not consider the cultural stereotypes and assumptions of gender that underly these policies.⁶⁶

Jenn (researcher): Grooming policies generally restrict an employee's freedom of choice in the workplace. However, a broad grooming requirement of a neat appearance is not considered to be a significant intrusion on an employee's rights.⁶⁷ Grooming policies become problematic where employers adopt policies that are gender-specific, such as exclusively requiring women to wear makeup.⁶⁸ Some policies stipulate women must apply large amounts of makeup or use specific products and colours. Others require that women meet with image consultants to assess whether they have achieved the grooming policies' "appropriate appearance."⁶⁹

Melissa (researcher): Another reason makeup-based grooming standards raise concerns is the correlated grooming gap.

Sara (employee): I am aware of the gender wage gap in Canada, where women earn substantially less than their male counterparts. Most recently, the gender wage gap in Ontario is 26% for full-time employees. This means, for every

⁶⁵ Lucille M Ponte & Jennifer L Gillan, "Gender Performance Over Job Performance: Body Art Work Rules and the Continuing Subordination of the Feminine" (2007) 14:1 Duke J Gender L & Pol'y 319 at 332 (Courts have stated employers' efforts to ban employee's natural hairstyles such as an Afro, could amount to discrimination as these are a biological or immutable trait).

⁶⁶ *Ibid* at 334.

⁶⁷ Catherine L. Fisk, "Privacy, Power, and Humiliation at Work: Re-Examining Appearance Regulation as an Invasion of Privacy" (2006) 66:4 La L R 1111 at 1127.

⁶⁸ *Ibid*.

⁶⁹ The Harvard Law Review Association, "Title VII: Gender Discrimination: Ninth Circuit Holds That Women Can Be Fired for Refusing to Wear Makeup" (2006) 120:2 Harv L Rev 651 at 651 [*Title VII*]. See also Sophia Harris "Air Canada Flight Staff Graded on Appearance, Sexually Harassed by Management, Union Alleges", *CBC News* (29 March 2018), online: <www.cbc.ca/news/business/air-canada-sexual-harassment-flight-attendants-cope-1.4597640> [perma.cc/BRK9-UGFZ].

dollar earned by a male employee, a female earns seventy-four cents.⁷⁰ What is a grooming gap?

Jenn (researcher): Have you ever been told to “look the part” for a job? The grooming gap refers to the way women disproportionately bear the financial burden of meeting workplace grooming policies.⁷¹

The impact of the grooming gap for women is two-fold. First, women experience the financial burden associated with purchasing grooming products for everyday use, which men do not endure to the same extent. While it is difficult to obtain precise statistics, the typical woman will put approximately eight dollars’ worth of cosmetic products on her face each day⁷² and spend up to a quarter of a million dollars on skincare and makeup throughout her lifetime.⁷³ Second, the grooming gap represents a loss of free time. On average, women spend fifty-five minutes each day on grooming practices, which is equivalent to two full weeks per year.⁷⁴

Melissa (researcher): Implementing grooming requirements for women specifically further reinforces institutionalized norms in the workplace. Contemporary workplaces are structured around these standards. For example, employers often expect employees to be collegial and team-oriented in order to comfortably “fit in”.⁷⁵ How employees appear and present themselves in the

⁷⁰ Government of Ontario, Pay Equity Commission, *What is the Gender Wage Gap*, (Queen’s Printer for Ontario, 2020) online:

<www.payequity.gov.on.ca/en/GWG/Pages/what_is_GWG.aspx> [perma.cc/U7AA-DZQJ].

⁷¹ Mindy Isser, “The Grooming Gap: What “Looking the Part” Costs Women”, *In the Times* (02 January 2020), online: <www.inthesetimes.com/article/22197/grooming-gap-women-economics-wage-gender-sexism-make-up-styling-dress-code> [perma.cc/K92H-TRB9].

⁷² Sissi Johnson, “How Much is Your Face Worth? American Women Average at \$8 per Day”, *Huffpost* (09 March 2017), online: <www.huffpost/how-much-is-your-face-worth-american-women-average_b_58beb06660f479e594> [perma.cc/9DZ5-VM9J].

⁷³ SWNS New York, “Vanity Costs American Women Nearly a Quarter of a Million Dollars”, *New York Post* (06 July 2017), online: <www.nypost.com/2017/07/06/vanity-costs-american-women-nearly-a-quarter-of-a-million-dollars/> [perma.cc/U7W9-NL53].

⁷⁴ *Ibid.*

⁷⁵ Carbado, *supra* note 1 at 5.

workplace is associated with promoting a credible and corporate image to customers.⁷⁶ However, it is problematic when employers' determinations about women's "institutional fit" are centered on gendered stereotypes, such as femininity.⁷⁷ Women who wear makeup in the workplace are perceived as healthy and confident, which, in turns, implies credibility. This theory has been confirmed by multiple academic studies. Researchers Kirsten Dellinger and Christine L. Williams conducted multiple in-depth interviews on makeup use in the workplace. They found that women who did not regularly wear makeup to work received positive comments about their appearance and job performance when they did participate in makeup use.⁷⁸ Respondents indicated they were perceived more favorably and credibly at work when they used makeup to give them a "rested appearance", as well as that colleagues and managers frequently monitored and evaluated their appearance.⁷⁹

In another study, participants were presented with pictures of women's face with and without makeup.⁸⁰ Photographs of women who wore makeup were perceived as healthier, more confident, and more credible than those without makeup.⁸¹ By imposing mandatory makeup requirements, employers further reinforce the gender-based institutional norm that women are required to wear makeup in order to appear professional and credible.⁸²

⁷⁶ Kosum Omphornuwat, *In Pursuit of Looking Good: Thai Women Office Workers and Everyday Consumption Practices at Work* (PhD Dissertation, Loughborough University, 2019) at 144 [unpublished].

⁷⁷ Gulati, *supra* note 9 at 48 (Employers should not utilize institutional norms grounded in gender-based assumptions as it is those very assumptions that human rights law is attempting to modify).

⁷⁸ Dellinger, *supra* note 5 at 156 (A woman who was a lawyer stated makeup enhances her credibility in the courtroom as the use of makeup is a significant part of competing at the workplace).

⁷⁹ *Ibid* at 157 (Monitoring and evaluations were defined as comments, questions and concerns).

⁸⁰ Nash R, Fieldman G, Hussey T, et al., "Cosmetics: They Influence more than Caucasian Female Facial Attractiveness" (2006) 36:2 J App Soc Psychology 493 at 501.

⁸¹ *Ibid*. See also McCabe, *supra* note 2 at 10 (Respondents described feeling confident, beautiful, sexy and happy in their skin as a result of putting on makeup and these feelings carried into their workplace and other social contexts).

⁸² Dellinger, *supra* note 5 at 159.

Jenn (researcher): Maintaining a credible and professional image in the workplace through the use of makeup further affects women's financial earning potential. Implementing a grooming requirement of makeup is an employer's method of controlling appearances and, in turn, women's earning potential. As Melissa pointed out, appearance is connected to the perception of competence and credibility. Women who adhere to workplace grooming policies are likely to be considered more favourably by colleagues in the workplace.⁸³ Ratings of competence are often correlated with performance evaluation and promotions in the workplace and, thus, have the ability to impact women's overall earning potential.⁸⁴

The use of makeup impacts earning potential by increasing (or decreasing) employment opportunities. One study examined whether the use of makeup affected women's probabilities of gaining professional or non-professional employment. Participants received a package containing a description of the job position, resume with a photograph attached and a series of questions associated with the applicant's expected job performance.⁸⁵ Photographs had women wearing no makeup, a moderate amount of makeup, or heavy makeup.⁸⁶ Makeup use was positively correlated with attractiveness, femininity and expected job performance. For applicants seeking jobs traditionally held by women, such as a secretary position, moderate makeup use strengthened an applicant's expected job performance.⁸⁷ Yet, for applicants seeking professional jobs, such as an accountant position, makeup use did not have an effect on expected job performance.⁸⁸ Employers are entitled to make business choices, including hiring

⁸³ Ekaterina Netchaeva1 & McKenzie Rees, "Strategically Stunning: The Professional Motivations Behind the Lipstick Effect" (2016) 27:8 *Assoc Psychological Science* 1157 at 1158 (Excluding the fact that credibility and competence are also attributed to other factors such as job performance, knowledge and skill in the workplace).

⁸⁴ *Ibid.*

⁸⁵ Cathryn L. Cox & William H. Glick, "Resume Evaluations and Cosmetics Use: When More Is Not Better" (1986) 14:1 *Sex Roles J Research* 51 at 52-3 (Psychological research finds that people rated as "attractive" are predicted to be more successful both in their business and personal lives)

⁸⁶ *Ibid* (Applicants were of average attractiveness similar to most applicants excluding entertainment industries).

⁸⁷ *Ibid* at 57.

⁸⁸ *Ibid* at 56.

decisions. However, the law should not permit direct grooming policies or hiring decisions to reinforce norms which consider women less acceptable, professional, or attractive for refusing to wear makeup.⁸⁹

The Legality of Implementing and Enforcing Makeup in the Workplace

Olivia (employee): Your last comment brings me to my next question. Can my employer legally implement and enforce a grooming policy that requires women to wear makeup to work?

Melissa (researcher): Based on our research thus far, it seems that employers can. However, it is imperative to mention that our discussion focuses on the social and legal realities of makeup in American workplaces. Given this, a majority of our findings, particularly how the legal institutions and employers assess and respond to workplace grooming standards are grounded in the American context. Generally, courts have given employers broad latitude to implement grooming policies and, in turn, the power to regulate appearances in discretion of operating their business. This appears to be the case even if such standards do not have a meaningful connection to one's work performance.⁹⁰ A notable example is *Jespersen v Harrah's Operating Co* ("Jespersen"), an American employment sex discrimination case.⁹¹ For over twenty years, Darlene Jespersen was a bartender at Harrah's Casino in Reno, Nevada. In February of 2000, her employer implemented a mandatory dress and grooming policy ("the policy") which required all bartenders to wear uniforms and be well groomed. The policy contained gender-specific requirements, expressly requiring women to comply with a daily makeup regimen. Women were obligated to meet with image consultants and wear their makeup as directed, while men only had to maintain short haircuts, neatly trimmed fingernails, and refrain from wearing makeup.⁹² Jespersen argued these requirements were inconsistent with her gender identity,

⁸⁹ Gulati, *supra* note 9 at 48.

⁹⁰ Ponte, *supra* note 65 at 322.

⁹¹ *Jespersen v Harrah's Operating Co*, 444 F (3d) 1104 (9th Cir 2006).

⁹² Gulati, *supra* note 9 at 15 (Policy stated that makeup consisting of face powder, blush and mascara must be worn and applied and lipstick must be worn at all times, but men are not required to wear makeup).

refused to comply with the policy, and was terminated as a result of her non-compliance.⁹³

Olivia (employee): Wow! Jespersen was fired because she did not want to wear makeup?

Jenn (researcher): Yes, it is quite unbelievable but, unfortunately, true. While Jespersen was an American case, it demonstrates the court's difficulty in grappling with an employer's ability to enforce gender normative policies. After termination, Jespersen sued her employer. She alleged sex discrimination.⁹⁴ Jespersen argued the policy failed the unequal burdens test as the financial cost of makeup, coupled with daily application, imposed a heavier burden on women than on men. She stated the grooming policy required her to conform to sex stereotypes of femininity, which made her feel sick and degraded, interfered with her ability to effectively perform her job, and ultimately took away her credibility at work.⁹⁵

Sara (employee): What is the unequal burdens test?

Jenn (researcher): The unequal burdens test is used in employment discrimination cases to determine whether an employer's grooming standard places an unequal burden on men and women.⁹⁶ Unfortunately, the court ruled in favour of Harrah's Casino. The district Court held the policy did not impose an unequal burden, as men were also required to follow grooming policies. Consequently, the court ruled the policy did not have a discriminatory or sexually stereotypical intent.⁹⁷ The Court of Appeal affirmed this decision. The majority

⁹³ Zalesne, *supra* note 39 at 541.

⁹⁴ Jennifer C Pizer, "Facial Discrimination: Darlene Jespersen's Fight Against the Barbie-Fication of Bartenders" (2007) 14:1 Duke J Gender L. & Pol'y 285 at 288 (Jespersen sued in violation of Title VII of the 1964 *Civil Rights Act* which prohibits discrimination by employers on the basis of race, color, religion, sex or national origin).

⁹⁵ Zalesne, *supra* note 39 at 542 (Jespersen argued the policy robbed women from control of facial appearance but afforded men freedom to change their appearance as long as they went without long hair, makeup and nail polish).

⁹⁶ William M. Miller, "Lost in the Balance: A Critique of the Ninth Circuit's Unequal Burdens Approach to Evaluating Sex-Differentiated Grooming Standards Under Title VII" (2006) 84:4 NC L Rev 1357 at 1359.

⁹⁷ Zalesne, *supra* note 39 at 541.

found the policy did not discriminate against women based on sex.⁹⁸ Further, the court held there was a lack of evidence to support the claim that the imposed makeup requirement objectively interfered with women's ability to perform bartending work.⁹⁹

Jespersen highlights a number of issues with gendered workplace grooming policies. First, the unequal burdens test upholds discrimination caused by gender-based standards, providing the policies impose a burden on the other gender, even where the burdens are different. Second, the unequal burdens test fails to address the maintenance of gender-based assumptions and stereotypes in the workplace, which ultimately is the true harm perpetuated by grooming standards.¹⁰⁰ The very nature of gender-specific grooming policies that aim to enforce appearance standards, such as in Jespersen, are harmful and ultimately punish women who depart from their prescribed gender roles. Moreover, in Jespersen, the Court failed to consider a number of relevant factors. Considerations of time and costs are not the only significant factors when evaluating unequal burdens. Courts must also consider the intangible effects of policies, such as feelings of humiliation that arise in response to grooming policies.¹⁰¹ At Harrah's Casino, the makeup standard required more grooming habits from women than men, who were only required have trimmed haircuts and clean fingernails. Rather, the policy forced women to adopt an image of femininity that some, like Jespersen, consider to be offensive and heavily entrenched in gender-based stereotypes. Ultimately, our analysis of Jespersen

⁹⁸ Ann C McGinley, "Babes and Beefcake: Exclusive Hiring Arrangements and Sexy Dress Codes" (2007) 14:1 Duke J Gender L & Pol'y 257 at 279.

⁹⁹ *Ibid* (Court held Jespersen did not provide evidence such as receipts showing the cost of makeup and documentation of the additional time required to maintain an appearance mandated by the workplace policy).

¹⁰⁰ Miller, *supra* note 96 at 1360 (Strict adherence to unequal burdens test permits sex discrimination to go unchecked as long as the other gender is subjected to comparable time and financial burdens). See *Craft v Metromedia Inc*, 766 F (2d) 1205 (8th Cir 1985) (Woman news anchor left position from failing to conform to makeup requirement, no sex discrimination found, employer pointed to policies requiring men to maintain a professional image).

¹⁰¹ Morgan Kelly, Making-Up Conditions Of Employment: The Unequal Burdens Test as a Flawed Mode of Analysis in *Jespersen v Harrah's Operating Co*" (2006) 36:5 Golden Gate U L Rev 45 at 62.