

## Attachment: Codes of conduct vs. personal, cultural, group identities

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### CASE 1<sup>1</sup>

The U.S. Supreme Court has heard opening arguments in a workplace religious discrimination case. The justices are considering whether a clothing store can deny employment to someone for wearing a religious headcovering.

Seven years ago Samantha Elauf sought employment with the clothing store company Abercrombie and Fitch. At the same time, she was a 17-year-old with a love of fashion. She seemed the perfect candidate for the job.

Ms. Elauf went to her job interview wearing a religious head covering called a hijab. She says she was denied employment because of it.

Eric Baxter is a lawyer with The Becket Fund for Religious Liberty. He is leading the legal action in support of Ms. Elauf.

“She could not remove her headscarf for a job interview without remaining true to herself, and Abercrombie refused to hire her because she was true to her religious beliefs.”

Abercrombie and Fitch says it did not object to Samantha Elauf’s headscarf for religious reasons. It says the headscarf does not meet the company’s dress code for employees.

Zainab Choudry went to the Supreme Court to support Ms. Elauf. She says she understands the difficulties of wearing a headscarf.

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<sup>1</sup> <http://learningenglish.voanews.com/a/muslim-hijab-dress-code-or-discrimination/2662236.html>

“You never know if - you know - if the reason that you aren't hired for a job is because of the hijab versus something else. I have had prospective employers ask me questions about my faith, about my background.”

Yolanda Rondon is a lawyer with the American-Arab Anti-Discrimination Committee. She says if the court rules in favor of the company it could permit all employers to discriminate against people of any faith.

“They’ll be able to not hire persons they perceive of a religious faith they do not like or does not promote their brand image.”

## CASE 2: McKenna vs. Local Heroes<sup>2</sup>

In June 2013, an adjudicator for the Human Rights Tribunal of Ontario ruled that Local Heroes, a bar in Stittsville, Ont., discriminated against Ashley McKenna, a part-time waitress there, after she voiced her concerns about wearing form-fitting shirts introduced as part of a new dress code in 2011.

McKenna was pregnant and told the manager that the new uniform would highlight that. The manager agreed McKenna would not have to wear the shirt. But after two more shifts, the bar stopped giving McKenna work, according to the tribunal's case document.

The adjudicator ordered the bar to pay McKenna \$2,848 in lost income and \$17,000 "for injury to dignity, feelings and self-respect." He also ordered managerial staff to complete online training called "Human Rights 101" provided by the Ontario Human Rights Commission.

## CASE 3: Mottu vs. MacLeod and others<sup>3</sup>

The British Columbia Human Rights Tribunal ruled in favour of Andrea Mottu, who complained the nightclub she worked for discriminated against her when she refused to wear a bikini top.

According to the tribunal document, Mottu's job was to sell drinks from a "beer barrel" near the front door of the club, where the normal uniform was a black top and skirt or pants.

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<sup>2</sup> <http://www.cbc.ca/news/business/women-dress-codes-human-rights-1.3476964>

<sup>3</sup> <http://www.cbc.ca/news/business/women-dress-codes-human-rights-1.3476964>

In April 2001, the document said, employees were asked to come up with a consistent costume to wear for a beach-themed fundraiser. She wasn't present when a group of servers decided they would wear bikini tops.

The manager of the club, Cass MacLeod called to tell her about the decision, the document said, and she was told she could choose to wear the costume, including the bikini top, or choose not to work the shift and not be paid.

After consulting her union, Mottu showed up for her shift wearing a bikini top with a tank top and a sweater on top. "Her purpose was to make a point with Mr. MacLeod that the bikini top was not appropriate," the tribunal document said.

In future shifts, Mottu was no longer assigned to the beer barrel, but was placed in a dark corner at the back of the nightclub with a bucket containing "an unpopular, discontinued drink." She took her story to the media, and then faced tension at work. In May 2001, following her doctor's recommendation, she left her job.

In 2004, the tribunal adjudicator found the "the nightclub was trying to force Ms. Mottu to quit" and awarded her about \$6,000 in compensation for lost wages and tips, as well as injury to dignity, feelings and self-respect.

## CASE 4: Female bartender vs. a bar<sup>4</sup>

This complaint to the B.C. Human Rights Tribunal in 2010 was resolved before it went to a formal hearing, according to Durling of the B.C. Human Rights Clinic. Durling said that in general the tribunal tries mediation before escalating to a hearing.

In her complaint, the woman alleged discrimination regarding gender-based physical appearance. She said the nightclub had a strict dress code for female employees, including high-heeled shoes, miniskirts and shirts showing cleavage, as well as a stated preference for women to wear their hair down rather than up.

She alleged that one time when she wore her hair up, her manager asked her to take it down.

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<sup>4</sup> <http://www.cbc.ca/news/business/women-dress-codes-human-rights-1.3476964>

