



Law and the Construction of Institutionalized Sexual Harassment in Restaurants

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Abstract

This paper tells the story of how full-service restaurant work is organized in such a way that sexualized interactions between customers and women working as servers, bartenders, and hostesses become enmeshed in the labour process. Key to this organization is how law contributes to making restaurant work precarious. With the unique gendered wage-tip relation, a relation legitimized and reinforced through lower minimum wage regulations for alcohol servers, workers rely on customers for tips. This fuels a relationship of unequal power that leaves workers vulnerable to sexual harassment and sexualized interactions with customers as the price to be paid for a tip—a form of institutionalized quid pro quo. Moreover, power relations become intensified in a work environment where employee schedules, duration of shifts, the regulation of tips, and overall income are insecure and unpredictable—all of these characteristics are attributable, in large part, to shortcomings of employment standards legislation in British Columbia.

Keywords: sexual harassment, law, gender, restaurant work, precarious employment

Résumé

L'article explique comment le travail de restaurant est organisé de telle façon à sexualiser les relations entre les clients et les femmes travaillant comme serveuses, barmans et hôtesse. Cette sexualisation du travail serait le résultat de lois favorisant la précarité du travail de restaurant. À cause de la relation genrée salaire-pourboire, relation légitimisée et renforcée par des règles de minoration des salaires pour les serveurs d'alcool, les travailleuses dépendent des clients pour leurs pourboires. Il en résulte une relation de pouvoir asymétrique qui oblige les travailleuses à endurer le harcèlement sexuel et les interactions sexualisées de la part des clients en contrepartie d'un pourboire. De plus, ces relations de pouvoir asymétrique sont exacerbées par l'environnement de travail où les horaires,

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la durée des quarts de travail, la réglementation des pourboires et les revenus sont imprévisibles et mal assurés—ces caractéristiques étant attribuables à des vices dans les lois du travail de la Colombie-Britannique.

Mots clés: harcèlement sexuel, droit, genre, travail de restaurant, précarité de l'emploi

When you go into this industry you generally know that it is definitely going to be part of your job description, that you're gonna get hit on.

And when I say you go into the industry knowing what you're getting yourself into, you go into this industry knowing what you're getting into *if* you've already worked in this industry. And it doesn't necessarily mean that you're okay with it. I'm okay with it, to a degree. I allow it to happen because I—because of the money.

It'd be nice to make that much money without being treated like that. No one wants to be treated like that. (Amanda, server and bartender)

Restaurants have highly sexualized work environments. Sexual banter, “jokes,” touching, and flirtation are so embedded in restaurant culture (Spradley and Mann 1975; Cobble 1991; LaPointe 1992; Hall 1993a, 1993b; Giuffre and Williams 1994; Loe 1996; Lerum 2004; Erickson 2004; Jayaraman 2013) that employees may perceive sexual harassment as being “part of the job” or tied to “the territory of being a waitress” (Huebner 2008, 80). As Amanda reveals in the epigraph to this paper, getting hit on is thought to be part of her job description. The normalizing of conduct that might fit the legal definition of sexual harassment in a workplace means “individual workers may not define their experiences as sexual harassment, even if they feel sexually degraded by them” (Williams 1997, 26). The problem of “naming” poses a methodological challenge for exploring the topic of sexual harassment when conduct that may fit its legal definition is not identified as such by those who experience it. Exploring this phenomenon also requires problematizing the legal conception of sexual harassment itself.

In the landmark case *Janzen v Platy* (1989), which involved two women waitresses who complained of a sexually harassing cook, the Supreme Court of Canada declared sexual harassment to be a form of sex discrimination and a violation of human rights statutes. The Court defined sexual harassment as “unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment.”¹ With time, however, individualized dimensions of law’s conception of sexual harassment have prevailed over a more systemic understanding emphasized by early legal feminists who connected “sexually harassing behaviours to the broader phenomena of constructions of masculinity, socialization processes, and gendered hierarchies of material and social power” (Lessard 2007, 169, referring to Backhouse and Cohen 1978, 38–52). For instance, central to the legal concept of sexual harassment

¹ *Janzen v Platy Enterprises*, [1989] 1 SCR 1252 at 3.

is the requirement that the conduct in question be “unwelcome” (Aggarwal and Gupta 2000). Feminists have heavily criticized this requirement (e.g., Kadar 1983; Goundry 1985; Gallivan 1991; Faraday 1994; Fudge 1996), which is often articulated in terms of “whether or not the alleged harasser ‘knows or ought reasonably to have known’ that his sexual conduct was unwelcome” (Sheppard 2010, 82–83). Adjudicators rely on the unwelcome standard especially in cases in which the behaviour in question is “subtle,” and involves, for example, sexist remarks/innuendo and “jokes,” rather than physical behaviour. To decide whether a “reasonable person” would consider the substance of a complaint unwelcome, adjudicators consider the complainant’s behaviour. *Did she participate in the conduct in question? Was she a part of similar behaviour in the past?* The overall atmosphere of the work environment might also be considered. *Was this type of conduct normal to the workplace? Did other employees participate?* Notions of individual consent underlie this analysis. But in workplaces in which enduring sexually harassing behaviour is simply considered part of the work, the notion of consent is problematic (Williams, Giuffre, and Dellinger 1999, 76–77). Starting from the position that sexual harassment is a symptom of systemic inequality, Colleen Sheppard has called for an understanding of how “organizational structures, practices, and workplace norms institutionalize sexual harassment” (2010, 85–86).

I argue that restaurant work is organized in a way that constrains worker resistance to unwanted sexual attention and sexual harassment, shaping an environment in which, over time, sexual conduct can come to be thought of by women workers as a “normal” and sometimes an accepted feature of the work. This paper tells the story of how full-service restaurant work² is organized in such a way that sexualized interactions between customers and women working as servers, bartenders, and hostesses become enmeshed in the labour process. Key to this organization is how law contributes to making restaurant work precarious. A major feature of this precariousness is the unique gendered wage-tip relation that is legitimized and reinforced through lower minimum wage regulations for alcohol servers. The reliance workers have on customers for tips leaves workers vulnerable to sexual harassment and sexualized interactions with customers as the price to be paid for a tip—a form of institutionalized quid pro quo. The working relationship in restaurants is characterized by power relations between employers and workers, and between customers and workers. Moreover, asymmetrical power relations in restaurants become heightened in a work environment in which employee schedules, duration of shifts, the regulation of tips, and overall income are insecure and unpredictable—all of these characteristics are attributable, in large part, to shortcomings of employment standards legislation in the province of British Columbia (BC). Putting up with sexual interactions and harassment from customers becomes part of the gendered and sexual labour of women servers, bartenders, and hostesses in restaurants. In what follows, I discuss the notion of precarious work and describe how precariousness in restaurant work is organized. In the remainder of the paper, I draw on interviews with restaurant

² “Full-service restaurants” refers to establishments where customers order and are served while seated and pay after eating (it excludes fast-food places).

workers to illustrate how workers' sexuality and enduring sexual interactions and harassment from customers become perceived to be a part of restaurant work. First, however, I return to the methodological challenge I mentioned at the beginning of the paper.

Researching "sexual harassment" in restaurants is complex, because conduct that may fit the legal definition may be a "normal" part of restaurant culture (Giuffre and Williams 1994; Restaurant Opportunities Centers United and Forward Together 2014).³ Using institutional ethnography, a feminist method of inquiry developed by sociologist Dorothy E. Smith (1987, 2005, 2006) that seeks to learn how our world, including the mundane and taken for granted, is being put together by concrete human practices, I sought to learn from informants⁴ how unwanted or uncomfortable sexual experiences happen in the context of restaurant work. Instead of asking outright whether they experienced sexual harassment, I asked informants to talk about their work, describe their interactions with customers, co-workers, and managers, and asked if they ever felt "uncomfortable" at work. Some informants used the language of "sexual harassment," others did not. In the former instances, there was often a struggle in defining sexual harassment and thinking about their own experiences in relation to it. I chose to maintain this complexity by not naming a woman's experience as "sexual harassment" unless she did so herself. Informants shared stories of being hit on, stared at, or sometimes sexually touched by customers; having to listen to accounts of a customer's sex life, and remarks or inquiries about their own; being subjected to "compliments" about their bodies; and being faced with sexist "jokes" and sexual innuendos from customers, such as "If you only knew what was going on in my head right now," or "I like the way you bend over." The task of unpacking how these experiences are happening is complex and the answer involves many factors. As a former restaurant worker who I interviewed stated, "It's ingrained, the harassment is ingrained."

Precarious Work and Sexual Harassment

"[E]mployment relations are power relations" (Arthurs 1997, 29). Sexual harassment at work occurs in the context of an employment relationship that involves unequal power relations (Backhouse and Cohen 1978; MacKinnon 1979). My attention in

³ I also entered my doctoral research after working in restaurants for roughly seven years—I began at the age of fourteen—and thus I had an awareness of how sexualized interactions pervaded the work environment.

⁴ At the time of writing, I have interviewed twenty current and former restaurant workers, eighteen of whom are women. This paper focuses on the experiences informants had with unwanted sexual attention from customers, but it is important to note that unwanted interactions also occurred with managers and coworkers. I recruited participants in British Columbia by advertising the research using postsecondary school listservs and placing posters in coffee shops and around campuses of postsecondary schools. Interviews lasted between half an hour and two hours, and were recorded and transcribed. There are many different types of restaurants, and participants worked in a variety of workplaces, including: small family-owned diners; chain restaurants (corporate stores and franchises); restaurants serving breakfast, lunch, dinner, or all three; restaurants in hotels; unionized and nonunionized restaurants (the latter was more likely); restaurants with a large bar crowd at night; and, renowned fine-dining establishments. I interviewed people with a few months of experience, and people who were or are veterans of the industry.

this article is on restaurant work as a form of precarious employment. “Precarious employment” takes a variety of forms, and the use of the term varies internationally (Vosko, MacDonald, and Campbell 2009). I use the term here to describe “forms of work involving limited social benefits and statutory entitlements, job insecurity, low wages, and high risks of ill-health” (Vosko 2006, 3). It can be shaped by “employment status, form of employment, and dimensions such as income level and control over the labour process, as well as by social context and social location” (Vosko 2006, 458). Precarious employment is a useful concept for drawing our attention to how work—enmeshed in social relations of inequality such as gender and race—is constructed to be precarious, especially through law and policy (Vosko 2006; Vosko, MacDonald, and Campbell 2009). Precariousness in work, contributed to by the involvement of customers in employment relations, challenges labour law and the traditional form of employment on which it is based (Albin 2011). The standard employment relationship that materialized in the postwar “golden age” captured normative (male) employment relationships, often in unionized sectors. These relationships were characterized as continuous, full-time employment with a single employer that provided an adequate wage and occupational benefits such as sick pay, a pension, health insurance, etc. (Fudge and Vosko 2001). Labour law contributed to developing the standard employment relationship and continues to use this conception of work as a model for regulating employment. This is problematic, for “the greater the divergence between the standard employment relationship and the actual employment relationship the less likely that the worker will be able to benefit from labour-related law, legislation and policy” (Fudge and Vosko 2001, 271–72).

How does precariousness in work relate to workers’ unwanted sexual experiences? This area is underexplored. In an epidemiologic survey of workers in Australia, researchers linked precarious employment to unwanted sexual advances (LaMontagne et al. 2009). Compared to permanent full-time work, own account self-employed (self-employed and not employing others), casual full-time, and fixed-term contract employment arrangements were strongly associated with higher frequencies of unwanted sexual attention, and women were significantly more likely than men to report these experiences. The researchers specifically called for attention to the situation of younger, precariously employed women in the service sector. Jackie Krasas Rogers and Kevin D. Henson (1997) have also explored the topic of unwanted sexual attention and insecure work. They interviewed temporary clerical workers’ and argued that sexual harassment is an outgrowth of the organization of temporary clerical work arrangements—embedded in gendered (raced, classed, and heterosexualized) processes, including cultural images that sexualize temporary workers. Asymmetrical power relations in employment are exacerbated by temporary work. Unpredictable scheduling and the possibility of extended time off between assignments, the ability of an agency to terminate an assignment without notice, and the overall low status of temporary workers were all features of temporary clerical work that limited workers’ opportunities for resisting sexual harassment by reporting incidents. The common response of ignoring the harasser meant that sexual harassment became “a routine part of being a temporary worker” (1997, 232). Precariousness in work can limit a person’s right to work free of sexual harassment.

In what follows, I examine precarious elements of restaurant work: the wage-tip relation, insecure income, and unpredictable scheduling. These features are largely attributable to the failure of law to provide adequate protection for workers under employment standards legislation in BC—legislation that is supposed to establish a floor of minimum labour rights. Employment standards, and the low (and lowering) floor of rights they provide, are particularly important for restaurant workers, most of whom are not unionized. With 93 percent of workers in food and beverage service not being members of a union or covered by a collective agreement, collective representation of workers rights is weak (Labour Force Survey 2013).⁵

Law, the Wage-tip Relation, and the Organization of Precarious Restaurant Work

Paycheques don't mean anything to me. I honestly forget when I get paid.
(Emily, a server and bartender)

“Rarely does the law see consumer involvement as affecting employment relations” (Albin 2010, 980). Yet given the practice of tipping, the role of the customer in employment relations in restaurants is undeniable. Tipping challenges labour law because customers engage in an employing function of remunerating workers but are outside the employment relationship (Albin 2010, 970–71). Restaurant work differs from other forms of wage-labour relations in that customers significantly contribute to the earnings of workers. As Emily suggests, tips are a major part of her income. Law recognizes and reinforces tipping practices through minimum wage regulations that allow employers to pay alcohol servers below the minimum wage, thus entrenching the involvement of customers in a wage-tip relation. In British Columbia, as well as some other provinces in Canada,⁶ the level at which minimum wage regulations in restaurants are set is influenced by tipping practices. On May 1, 2011, when the government raised the minimum wage in BC from \$8.00 to \$8.75 per hour, a lower “liquor server minimum wage” of \$8.50 per hour was introduced. The gap between the regular minimum wage and the liquor servers minimum wage has since grown. Effective May 1, 2012, the general minimum wage is \$10.25 per hour, while the minimum wage for liquor servers is \$9.00 per hour.⁷ Although the category “liquor server” on its face is gender neutral, occupations are not abstract categories (Acker 1990). There is no such thing as the “sexless worker” (Fudge 1996). In British Columbia, 81 percent of food and beverage servers are women workers (Statistics Canada 2006a). The liquor servers minimum wage is gendered.

⁵ The Labour Force Survey data use NOC-S occupation at main job. “Food and beverage service” includes hosts/ maître d’s, bartenders, and food and beverage servers.

⁶ Alberta and Ontario also have subminimum wages for workers who serve alcohol, and Québec has a lower wage for tipped workers. In these provinces, the hourly general minimum wage vs. subminimum wage, respectively, are as follows: Alberta \$10.20 vs. \$9.20, effective September 1, 2014, *Employment Standards Regulation*, Atla Reg 14/1997, s 9 (a), s 9 (a.1); Ontario \$11.00 vs. \$9.55, effective June 1, 2014, *Exemptions, Special Rules and Establishment of Minimum Wage*, O 285/01, s 5 (1); Québec \$10.35 vs. \$8.90, effective May 1, 2014, *Regulation Respecting Labour Standards*, CQLR c N-1.1, r 3, s 3, s 4.

⁷ *Employment Standards Regulation*, BC Reg 396/95, s 15, s 18.1.

Tips are earned in a variety of ways. A restaurant worker may receive tips directly from a customer in an amount left at the customer's discretion. Alternatively, an auto-gratuity system may add an automatic service charge to a customer's bill. In addition to servers and bartenders earning tips, other employees may also receive tips through a tip pool. Tip pooling redistributes a portion of tips to other workers, such as cooks, dishwashers, hostesses, bussers, and (controversially) sometimes shift supervisors or managers. Tip pools are common, but the way tips are collected and redistributed varies. The amount a server pays to the pool may be based on a percentage of her sales or a percentage of the total tips she has earned for a given shift. Some restaurants may collect *all* tips and divide them among workers based, for example, on the number of hours worked. In BC, employees or employers can facilitate and manage tip pools. A common criticism of tip pools run by managers is their lack of transparency; workers worry that managers pocket a portion of tips. Although the law in BC allows employers to pay alcohol servers below the regular minimum wage, tip pools, including the amount of tip money an employer can collect, are largely unregulated. Worker advocacy groups raised this gap with the BC Ministry of Labour before the alcohol servers minimum wage was introduced (British Columbia 2011, 5).⁸ The fact that tip pools are unregulated adds to the precariousness of the wage-tip relation.

Tips are an insecure form of income. “[T]he tip is a very odd form of labor payment. It is one of the rare cases where no agreement about the work to be done nor the rate of pay is made before the work is finished and consumed” (Woods 1979, 86–87). The amount a server earns through tips depends on a number of factors. First, customers must be present in the restaurant. The volume of customers can depend on the day of the week, the time of the day, weather conditions, etc. Moreover, with the exception of automatic gratuity added to a customer's bill,⁹ tips are paid at the discretion of customers and therefore, as a server, Jill, described, they are “not very reliable.” In addition to the particular tipping practices of a customer, the amount a server earns can also depend on the section of a restaurant in which they work. Managers or shift supervisors usually divide tables among servers; because some sections in a restaurant can be better for making money than others, assigning sections to servers is political. As Emily discussed: “Some sections—it's interesting the dynamic of one section—you'll walk out with a guaranteed \$200 and in another section, it's the same time, you walk out with \$60. So sections are, I think in the restaurant industry, really important.” What makes a \$60 section different from a \$200 section? “People like to sit in booths, right. So if you have a section with tables and then seats, and a section with booths,

⁸ By comparison, in Québec, employers cannot impose a tip sharing arrangement on workers and cannot intervene in the establishment of a tip sharing arrangement. “Such an arrangement must result solely from the free and voluntary consent of the employees entitled to gratuities or tips.” *An Act Respecting Labour Standards*, CQLR, c N-1.1, s 50. The Ontario legislature is currently considering Bill 12 *An Act to amend the Employment Standards Act, 2000 with Respect to Tips and other Gratuities*, 1st Sess, 41st Legislature, Ontario, 2014.

⁹ Some restaurants add an automatic gratuity charge to a bill for large parties. An informant explained that because large parties usually stay longer and require a server's full attention (limiting the number of tables a server can serve in a shift), automatic gratuity ensures that the server earns a decent tip.

you'll have such high turnover with the booths." A good section is a full section. Increasing the number of customers served is crucial to how servers' increase their overall income. It is rare for a server to have their hourly wage raised by the employer. As a server commented, "We make less than minimum wage. And I don't care if you've worked in a place for one year versus working in a place for five years, the chances that you're going to be making higher than minimum wage, that you're going to make more than \$9.00 an hour, are very slim." Employer-paid wages in the restaurant industry are low,¹⁰ and workers rely on insecure tips to earn a living.

Another aspect of precariousness in restaurant work is the scheduling of shifts. Schedules can change from week to week, and employers frequently post schedules a day or two before the start of a workweek. Moreover, with the exception of workers who are scheduled to work until a restaurant closes, the total duration of a particular shift is usually not known in advance. Workers are informed only of their start time. The end of a shift depends on the busyness of the restaurant (a combination of the volume of customers and number of staff working). If a restaurant is "dead," managers send workers home or may phone a worker before they come to work and call them off. Eve recalled working at one restaurant where she was regularly sent home, or "cut," shortly into her shift and was never paid for the minimum hours of work. "I always got cut after forty-five minutes, and that's not legal at all. But I don't know, if you don't work, you don't work." On the other hand, if the restaurant is unexpectedly busy, an employer may call a worker and ask them to come in, using a "just-in-time" staffing practice.

The poor standards for working conditions under the BC *Employment Standards Act* (ESA) contributes to the precariousness described above. The ESA no longer requires employers to post hours-of-work notices notifying employees when their work starts and ends, nor are they obliged to give workers 24-hours notice of a change to their schedule.¹¹ Furthermore, when workers are sent home (or "cut") shortly after starting a shift, or before they start work, employers are only required to pay scheduled employees for a minimum of two hours—a change introduced in 2002,¹² when the minimum hours of pay was lowered from four hours to two.¹³ Moreover, although there is an additional protection requiring that workers scheduled for more than eight hours be paid for a minimum of four hours, whether or not they work,¹⁴ this would not apply to restaurant workers whose

¹⁰ The Living Wage for Families Campaign is challenging the legal minimum wages, arguing that employers should adopt a higher living wage. See: <http://www.livingwageforfamilies.ca/about/what-is-a-living-wage/>. And in the United States, where the federal tipped minimum wage is \$2.13, restaurant workers are campaigning for a living wage and arguing that living off tips leaves them vulnerable to enduring sexual harassment (#notonthemenu). See: <http://rocunited.org/living-off-tips/>.

¹¹ Bill 48, *Employment Standards Amendment Act*, 3rd Sess 37th Parl, British Columbia, 2002, 12.

¹² 2002 was a dreadful year for legal rights in British Columbia. In 2002, the provincial government also dismantled the Human Rights Commission, the consequence of which is a "gaping hole in the province's system of human rights protection, with no public body in BC mandated to prevent discrimination, educate the public, undertake inquiries on broad systemic issues, develop guidelines, or promote human rights compliance" (Brodsky and Day 2014, 5). British Columbia and Nunavut are the only jurisdictions in Canada without a human rights commission.

¹³ *Supra* note 11 at 14.

¹⁴ *Employment Standards Act*, RSBC 1996, c 113 s 34.

shifts are open-ended. Magnifying these inadequate benefits is the fact that in British Columbia, employers are no longer required to put up posters in workplaces educating workers of their basic legal rights.¹⁵ This change to the law—also brought in with the 2002 amendments—is especially relevant in the context of restaurant work where, as I will discuss shortly, there are many young workers. One of them, Roxy, had this to say about workers' rights and being cut and sent home without pay: “[W]hat would be good is if people were, I don’t know, told what their rights were before they started working at a place. Because yeah, nobody knows what the hell is okay and not okay. And if I were to try and challenge that and say legally you have to give me two hours pay...they’d probably fire me.” During the interview Roxy spoke about going home and researching her rights, but also added: “I feel like on the one hand there is a lot of resources for us to be able to know [our rights] but it’s just, it’s just words, you know. When it comes to it, your boss has a lot of power over you.” All of the problems explored in this section speak to major criticisms of employment standards laws generally: they are complaint based, inadequately enforced, and the floor of basic rights is too low (Fudge 1991; Fairey 2005). The next part of this article argues that tips are a form institutionalized quid pro quo in exchange for sexual labour and putting up with sexual interactions and harassment. To begin, I will analyze the maxim *the customer is always right* and the asymmetrical power relations between customers and workers.

The “Servants Industry”: Customers,¹⁶ Power, and Institutionalized Quid Pro Quo

A lot of people think of it as the servants industry. So they’re like, “Oh yeah, you don’t matter you’re just here to serve me.” (Jackie)

Although a number of people I interviewed found working in restaurants enjoyable and took pride in their work, they also spoke of the low level of respect and status associated with restaurant work. The hierarchical relationship between restaurant workers and the public is described in Jackie’s words above: in the “servants industry,” there is an assumption that workers should serve and be subservient to customers. In her ethnography on waitresses in New Jersey, Greta Paules (1991) distinguishes between different types of service work. Paules points out that direct services, involving occupations where workers interact with customers, differ from services in fields such as law and medicine, in which workers interact with “clients” and “patients.” The relationship between clients and lawyers, for example, is one in which the client, in relying on the knowledge of the lawyer, is subordinate to the person providing the service. On the other hand, “the subordinate position of direct-service providers to customers [in restaurants] is implied in labels such as server, the contemporary term for waiters and waitresses” (Paules 1991, 18).

¹⁵ Restaurant workers looking for an overview of their basic rights under the BC ESA can check out the “Restaurant Employees” factsheet published by the Employment Standards Branch. See: http://www.labour.gov.bc.ca/esb/facshts/pdfs/restaurant_employees.pdf.

¹⁶ Even as I write the word “customers” here, I am reminded of my days working in restaurants and how managers would correct my language, and that of my coworkers, if the word “customers” was used instead of “guests.” The shift in terminology implies an elevated status.

The “power” of customers in direct services, such as restaurants, is evidenced in the popular saying *the customer is always right*. This maxim is entrenched, although not always followed,¹⁷ in interactions between customers and workers. “That’s the only thing we ever heard,” a former restaurant worker told me. “The customer is *always* right, no matter what. And that’s the culture. You have to suck it up, you have to accept it, it’s part of the job. And I’ve often wondered, I thought okay I’m too sensitive, I can’t work in the industry it’s too stressful.” Similarly, Jenna, a server, described customers as “the priority.” She explained:

You want to make sure that they’re happy; you want them to come in and be happy, you want them to leave happy. Even if there’s a little thing wrong you want to fix it. Even if your customer sends something back [to the kitchen], and they refuse to take something else and they want to leave—you have to make sure you’re doing something so that they know that you’re appreciating them... Just making sure the customers are happy because if a customer is not happy they’re not coming back. And if I didn’t do my job to try to make them happy I wouldn’t have that job.

Customers do not have the authority to fire workers, but the “power” of customers materializes in the remuneration of servers with tips. Customers shape working conditions in restaurants by tipping. Einat Albin eloquently makes this point: “As soon as customers contribute to the worker’s earnings, they become involved in the management of the employment relationship. Workers adopt specific behaviours to please customers and fulfill their wishes, not only for the benefit of the establishment owner but also in the hope that, by responding to customer wishes, their earnings will rise, a good word will be said to the employer, etc.” (2011, 184). The perceived connection between providing customers with “good service” and receiving a better tip functions as an incentive to cater to the needs and wants of customers.

The “power” customers derive from the practice of tipping is integrally connected to how women workers are experiencing sexual interactions with customers as part of their job. Tips are a form institutionalized quid pro quo built into the doing of work in restaurants that encourage workers to engage in sexual labour and put up with sexual interactions from customers. I will provide three examples of how this is so: (1) the emphasis on physical attractiveness in hiring practices, (2) employer and employee use of sexy dress codes, and, (3) tolerating sexualized interactions with customers for tips. Emphasizing one’s sexuality and putting up with sexual behaviour from customers can come to be viewed by workers as a regular feature of the job. As Carole, a former restaurant worker explained: “There’s almost—there’s an expectation. Not even *almost*, there’s an expectation that when people work in an environment that’s either a bar, or a lounge, or a restaurant, that there’s a certain amount of you know, attractiveness, or being pleasant, or putting up with any types of comments, that’s expected, it’s just expected.”

¹⁷ See Paules (1991) for an ethnography on how waitresses exercise power in their daily interactions with customers and managers.

"I don't think he would have hired anybody who he didn't see as being profitable because of how they look."

Hiring practices reflect ideas about appropriate gendered and racialized bodies for certain jobs (Acker 2006, 115–17). Research highlights the common practice of hiring “attractive” women, for the gaze of mainly heterosexual male customers, as food service workers in the hospitality industry (Adkins 1995), blackjack dealers in casinos (McGinley 2007), airline stewardesses (Hochschild 1983), secretaries (Pringle 1988), temporary clerical workers (Rogers and Henson 1997), and waitresses (Woods 1979; Hall 1993a; Erickson 2004). For workers in service organizations who frequently interact with customers, gender, race, and age become a part of what is sold (Urry 1990 cited in Adkins 1995, 8).

Occupations within the restaurant industry are organized in a distinctive manner. When we eat out in restaurants, the people greeting us with friendly smiles at the door, taking our food orders and accommodating our special requests, mixing our drinks, preparing, cooking and delivering our meals, cleaning our spills, and scrubbing our dishes are largely youth workers. Across Canada, 43 percent of full-service restaurant workers are between the ages of fifteen and twenty-four (Statistics Canada 2006b). This proportion of young workers engaged in restaurant work is worthy of attention, as persons in this age category make up just 16 percent of the overall labour force (Statistics Canada 2006c). It is important to note, however, that the data are limited in describing the number of young workers in the restaurant industry because Statistics Canada has only accounted for workers who are fifteen years of age or older. In BC, for instance, the legal minimum work age is twelve with the written consent of a parent, or under twelve with the added permission of the Director of Employment Standards.¹⁸ The low work age, along with inadequate restrictions on where children can work and the time of day they can work, have led to BC's child labour laws being called the least protective compared to other jurisdictions in Canada (First Call 2013) and even the “most neglectful in the world” (Bakan 2011).

In addition to an abundance of young workers, occupations within the restaurant industry are horizontally and vertically segregated by sex. The “back of the house” (BOH), restaurant lingo for the area of a restaurant generally concealed from its customers—including the kitchen and food preparation areas—is filled primarily by men: 67 percent of cooks and chefs are men. Moreover, with 58 percent of management and 75 percent of senior management positions being held by men, there is a clear gendered occupational hierarchy (Statistics Canada 2006b). Meanwhile, the workers with whom we interact in the space we occupy as customers—in the “front of the house” (FOH)—are likely to be women: 80 percent of hosts/hostesses, bartenders, and food and beverage servers in Canada are women (Statistics Canada 2006b).

Assumptions about whose bodies are appropriate for what jobs are reflected in employer hiring practices. As a restaurant worker shared, “They didn't hire male servers. If you were a man and you applied to work there they would laugh at you.

¹⁸ Some of my informants began working in restaurants at the age of fourteen, and also noted working alongside twelve-year-old girls.

No male servers.” Moreover, the employers of some of the workers I interviewed were also known to exploit women (and sometimes men) workers’ sexuality by hiring people perceived to be physically attractive to take jobs in the FOH where workers interact with customers. Informants described the FOH staff at restaurants they have worked in:

The entire staff of that dining room was all what you would consider attractive people. And that was part of—there were conversations that I overheard, you know. “We should hire her. She’s really gorgeous. She’s really hot. She’s beautiful.” So that was part of their hiring protocol, was based on looks. And the guys too, all the guys were really good looking. Everybody had to be good looking. (Carole)

They were all women between 17 and 25 with the exception of two women who worked there and were in their 40s and single mums. And all Caucasian and very thin...Knowing the manager I don’t think he would have hired anybody who he didn’t see as being profitable because of how they look, if that makes sense. (Karen)

Carole and Karen describe gendered and racialized hiring practices where one’s sexuality becomes included in, as Carole explains, the “hiring protocol” of a workplace. By overhearing managers’ conversations about hiring, workers may become aware of practices of intentionally hiring “attractive” people. Workers learn that managers view their bodies “as being profitable,” and thus ascertain that their sexual attractiveness is connected to their employment. Racist and sexist hiring practices in the restaurant industry are not new. Susan Woods, writing about waitressing in the United States in 1979, discussed this issue: “The ideal of blue-eyed blond is the standard against which all American women are measured, and waitresses are no exception” (1979, 84). Recent research on restaurant work in the United States draws attention to the racial segregation of workers in the industry: “Restaurant managers reserve their highest-paying, most visible positions for white people, and workers of color are relegated to lower-paying, invisible positions in the back” (Jayaraman 2013, 117).

“You’re part of the décor.”

Workers’ bodies also become an integral part of restaurant work with sexualized dress codes and uniforms. Employers might directly ask workers to present themselves in a particular “sexy” or “provocative” way that involves wearing short skirts and high-heeled shoes, showing cleavage, and wearing make-up to work. In so doing, some restaurant employers might be attempting to establish a certain “public image” premised on exploiting its workers female sexuality (LaPointe 1992, 383). At other times, this type of sexual labour might be implied, or workers might take it upon themselves (Loe 1996). In responding to a question about what she found challenging about her work as a server, Karen talked about feeling pressured to dress in a specific way:

[T]here is definitely that pressure to like, wear shorter skirts lower tops and like be flirtatious—although that’s not really my personality type—and all the time, by customers, or employers and other employees. [*I asked for an example of how she felt pressured*]...The manager would comment or like

make flirtatious comments towards some of the employees that did dress a little more risqué, I guess. He would be like, “Oh, you’ll make lots of money da, da, da, da, da.” Or even just being in an environment where you are the only one who is trying to dress modestly is like, a little uncomfortable.

As Karen highlights, there is an assumed connection between dressing in a provocative way and increasing the amount of tips one can earn from customers. Managers advocate for this connection.

In some restaurants, waitresses are explicitly required to adhere to a sexy dress code on the job, and the degree of sexiness may even depend on where in the restaurant she works. For example, as Emily explained: “The dress code for the lounge is basically more provocative clothing. You have to wear skirts. You’re not allowed to wear tights in the summer time ... so you have to have bare legs ... every season the dress code changes a bit and they have samples of what you should look like.” The restaurant also required her to wear high-heeled shoes, a painful requirement given that some days Emily worked without a break for shifts that lasted up to nine hours. “Sometimes I would be like, ‘No, I actually can’t walk anymore,’ and they’d [the managers] be like, ‘Oh, that’s too bad,’ and I would just continue working. They would not let you change into flats.”

Sexy dress codes can also be required of women bussers, who clear and set tables, and hostesses who greet and seat customers. Eve, a hostess, described instructions given to her by a former employer on how to dress at work. “At seventeen, I was asked to have plunging necklines and short hems... And I was repeatedly asked to show off my boobs, which made me feel very uncomfortable.” During the interview she referred to these instructions as an example of sexual harassment she faced from management. Eve quit working at this particular restaurant because, in her words, she had enough of being “sexualized.” She now works as a hostess in another restaurant and spoke to me about how she dresses for work. Although in her current job she is not explicitly instructed to dress in a certain manner, sexuality is still an integral part of her work. “I do try to keep things sexy, but not too sexy, you know.” Eve continued, “[c]ause you do get better tips if you do look good and that’s just how it works. I wear red lipstick a lot because there’s a study that if you wear red lipstick, like the colour red symbolizes sexuality and people will tip more.” For women restaurant workers, their body and sexuality can become an integral element of their work, connected to earning tips.

“I think I allow inappropriate things to happen when I know I’m going to make a lot of money.”

Keeping a customer going, or playing along with his sexual behaviour, including listening to comments about his sex life, sexual innuendoes, and sexist jokes, is part of the sexual labour performed by FOH restaurant workers in exchange for tips. Importantly, this labour can constrain workers’ reactions to the sexual harassment and uncomfortable sexual interactions they experience. In a story from Emily, reproduced below, she describes a scenario where the hope that she would earn a high tip from a large party of men influenced how she reacted to their behaviour:

It’s sad to say that a lot of times, like for example this weekend, there was a huge hockey tournament in town. [*She described where the teams were from.*]

They're all men, they're all like in their 40s. And I think that they're away from their partners and wives and stuff and they're there to drink and play hockey with their friends. And so this weekend—it's interesting, they come in, and this is awful but this is how I make money. I served a large party of men and they were being really inappropriate, but their bill was \$1000. And, I almost allowed things to be said where I feel if it was another situation where that guy's bill's \$25 I would probably be like, "You are being really inappropriate." So it's—I think I allow inappropriate things to happen when I know I'm going to make a lot of money. It's pretty awful but that's the truth, right. I know that these are all professional men who are going to tip well and they're making jokes and I'm like "Oh that's funny" [*she raised the tone of her voice*]. Where I think if there was a single guy sitting by himself and making those jokes I would be like "That's not okay."

With the hope of earning a large tip, the practice of tipping, and a server's dependency on tips, can lead a server to put up with behaviour from customers that she would not otherwise tolerate. Tipping practices of customers may also impact the work of hostesses. Even though hostesses might not be tipped directly by customers, there can still be a connection between tips, hostesses, and sexual labour. Eve explained what could happen when she would stop going along with flirtation from customers: "When you would stop responding to it and then they would go sour and they wouldn't tip well. Then the server would come up and be like 'Why didn't you keep him going? Why did he—he didn't leave a good tip.' And it would almost leave a blame because you wouldn't continue the flirting."

Moreover, the practice of tipping can shape the restaurant workplace in such a way that sexual behaviour from customers becomes a "wanted" exchange. I asked Amanda, a woman who has been working in restaurants for about four years, if she has ever had experiences with customers that made her feel uncomfortable. She answered, "I would get a lot of [*she paused*], if this makes sense, wanted flirtation." She continued:

I knew that if I acted in a certain way or did certain things that I was probably going to make more money. And so, you know, when you go into this industry, and I'm not saying that sexual behaviour is a wanted thing, necessarily at all. But when you go into this industry, you generally know that it is definitely going to be part of your job description, that you're gonna get hit on. People say all the time, "Oh you're a bartender. You're female. You probably make a lot of money." And it's like, yeah actually I do, and for those exact reasons. Got it! Bang on! Not necessarily every sexual advance though from a customer or whoever is wanted. (Amanda)

Amanda perceives her income as a bartender as closely connected to being a woman and being "hit on" by men customers. She describes "wanted" flirtation from customers as a way of making more money. This sexualized aspect of Amanda's work as a bartender becomes thought of as part of the "job description," something intimately connected to her ability to earn an income. Amanda provided a specific example: while bartending, men customers would come in and play a drinking game. The customers would throw coasters at bottles of alcohol sitting on shelves behind the bar. Customers would have to take a shot and pay for

whatever alcohol the coaster would hit. To reach the bottles Amanda would have to climb on to the counter or a ladder while wearing a short skirt:

I'd be climbing on the counter and I'd have to grab these bottles from the top shelves. And that's obviously why the guys were throwing these coasters. They weren't looking forward to drinking Chartreuse and soda. They were looking forward to me or the other bartender or whoever female—they weren't going to do it to a male bartender that's for sure. They were going to do it with one of us so we would climb on the counter, basically to get a better look at us. I was never bothered by that, because I knew by doing it I was gonna make more money.

Although Amanda spoke about this example as something she was “fine with,” speaking later about the relationship between sexual behaviour from customers and tips generally, Amanda shared: “It'd be nice to make that much money without being treated like that. No one wants to be treated like that.”

Amanda's words speak to how putting up with sexual behaviour from customers becomes institutionalized in the organization of the work; it is how she believes she makes more money. The example also speaks to a challenge of exploring the topic of sexual harassment in a workplace where one's sexuality is tangled up with the labour process. Not only might workers be unlikely to name their experiences “sexual harassment” but describing these exchanges as “uncomfortable” or “unwanted” sexual behaviour is tricky because sexual behaviour may be, as Amanda explained, in some respects “wanted.” As Christine Williams has argued in discussing sexual harassment and work organizations in the United States, the term “unwanted” can be paradoxical for workers who agree to work in a specific job or industry in which they “understand that they will be subjected to sexual innuendo, bantering, ogling, and other sexual behaviors as part of their jobs” (1997, 23). This speaks to the extent to which sexual labour and sexual harassment can become embedded in the labour process of work organization. And, as I have argued in the context of restaurant work, law's construction of the work to be precarious is key to how this happens.

Conclusion

This paper has highlighted an important tension. Although the naming of sexual harassment as a form of sex discrimination in law has provided an avenue for workers to challenge unwanted sexual experiences at work, at the same time, law constructs precariousness in restaurant work and contributes to the pervasiveness of sexualized interactions and sexual harassment as integral features of the work of women servers, bartenders, and hostesses. The emphasis on individual consent in the legal conception of sexual harassment displaces context. The wage-tip relation, intensified by law, constructs and maintains a gendered and sexualized service style. Inadequate employment standards laws, “labour law's little sister” (Fudge 1991), do not inhibit the organization of restaurant work, in such a way that workers' schedules are unpredictable and can vary from day to day. Restaurant workers go to work not always knowing how long their shifts will be or whether they will even start work at all. In this environment of uncertainty the asymmetrical power relationship between workers and customers, and workers and employers,

is intensified. The practice of customers tipping restaurant workers, and the legal construction of the wage-tip relation, is shaping workers' responses to sexual behaviour from customers in a manner that encourages and pressures workers to engage in sexual labour and go along with sexist comments, "jokes," and behaviour as part of their work, or risk not receiving a good tip when they resist.

However, the problem of institutionalized sexual relations in restaurants is larger than inadequate employment standards and lower minimum wage regulations that intensify the wage-tip relation. For one thing, it is a problem of the broader tension between "labour law and a service world" (Albin 2010). The shift in Western countries from manufacturing to service economies challenges the capacity of labour law to deal with problems that are specific to service work, since labour law was structured on, and is still rooted in, the Fordist model of employment (Albin 2010). The disjuncture between labour law and service work is visible when considering how customers impact work relations, for example when customers engage in employing functions by remunerating workers (Albin 2010, 970–74). But the problem of institutionalized sexual relations in restaurants is also larger than state law. Harry Arthurs has used the metaphor of "memory" to draw attention to "informal, sometimes invisible, norms, institutions and processes" that both constitute and give meaning to social relations in a workplace or elsewhere (1997, 21, 31). Altering power relations in employment using state labour law has been limited: "Only to the extent that memory intervened, to the extent that the workplace norms and institutions which reproduced and reinforced power relations were gradually modified by informal and embedded practice consonant with the expectations of state law, was it possible to say that state law had taken hold" (Arthurs 1997, 31). It would be wrong to assume that changes to law alone would address other factors at play in restaurants (and beyond) that contribute to a workplace culture in which workers learn to tolerate uncomfortable sexual experiences.

With restaurants providing entry-level jobs to many young workers, it is important to ask, how durable are the acquired memories that contribute to making unwanted sexual behaviour at work normal? When restaurant workers move into subsequent workplaces, or even other spheres of life, are these memories used to interpret uncomfortable or unwanted sexual experiences as ordinary? Even further, when uncomfortable sexual experiences at work come to be accepted as routine, what implications does this have for how sexual harassment comes to be legally conceptualized? "Sexual harassment lives as a legal harm only through its voicing... Like so many gendered and sexually related harms, if you don't talk about it, it hasn't happened" (Quinn 2000, 1155).

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