Gender, Restaurant Work, and Customer Sexual Harassment

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The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender-based activity, such as coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender-based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment.

... The prohibition of such conduct is not without its dangers. One must be cautious that the law not inhibit normal social conduct between management and employees or normal discussion between management and employees. (Adjudicator Shime)

These quotations come from Bell v. Ladas (1980), the first case in Canada to define sexual harassment as sex discrimination and a violation of human rights legislation. The first quotation illustrates the strength of the decision; sexual harassment was found to be sex discrimination and was broadly defined. The second quotation, however, contains a principle that continues to restrict the legal approach to sexual harassment to this day. The law must not limit ‘normal’ social conduct in a workplace.

This paper will argue that the standard of reasonableness, a legal test used to decide when conduct crosses the line and becomes “sexual harassment,” limits legal analysis of the problem of workplace sexual harassment. When sexual remarks, ‘jokes,’ banter, etc., in a workplace are the norm, an obligation is placed on the complainant to clearly object to this type of behavior and show that it was unwelcome. But when sexual conduct in a workplace is ubiquitous, the preoccupation with proving that sexual conduct was known or should have been known to be ‘unwelcome’ may miss the mark. In some workplaces, the work may be assembled in a way that constrains worker resistance to sexual harassment, shaping an environment where sexual conduct becomes a ‘normal’ and sometimes accepted feature of the work. I will argue that such is the case for restaurant workers when it comes to sexual interactions with customers.

The goal of this paper is to illuminate the tensions and gap between the legal approach to sexual harassment and the organization of restaurant work, which constrains worker resistance to sexual harassment. Although women working in restaurants can and have used law to resist sexualized uniforms that make them feel degraded, and tribunals have found that an employer “has an obligation to protect its employees from sexual...

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harassment by its customers,” restaurant work is organized in a manner that is conducive to tolerating sexual harassment from customers. The wage-tip relation combined with the focus in restaurants on customer satisfaction means that workers are pressured to refrain from resisting or objecting to sexual interactions from customers.

This paper has three parts. Part one will problematize the legal definition of sexual harassment and argue that law does not challenge work environments where a sexualized atmosphere is the norm. Part two of this paper will describe key elements of restaurant work: the focus on customer satisfaction and the unique wage-tip relation. Part three will draw on interviews I have conducted with restaurant workers to show how sexual labour and tolerating sexual interactions with customers becomes a part of restaurant work, and restricts worker resistance to sexual interactions with customers.

Part I. The Standard of Reasonableness: A Limitation to the Legal Definition of Sexual Harassment

In the landmark case Janzen v. Platy (1989), the Supreme Court of Canada declared sexual harassment to be a form of sex discrimination and 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.” In a passage that is frequently cited, the Court elaborated on its understanding of sexual harassment:

When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

The main point in allegations of sexual harassment is that unwelcome sexual conduct has invaded the workplace, irrespective of whether the consequences of the harassment included a denial of concrete employment rewards for refusing to participate in sexual activity.

The Court confirmed that “sex discrimination” provisions of human rights statutes must be expanded to include sexual harassment. However, the more challenging question for human rights tribunals and courts came after this decision in deciding whether whatever was being complained about constituted sexual harassment (Fudge 1996, Aggarwal and Gupta 2000).

What questions, considerations, or tests are applied when deciding whether or not something comes to be known in law as sexual harassment? The central element of a sexual harassment complaint requires that the conduct in question be “unwelcome” if it is to be considered sexual harassment. But what exactly does unwelcome mean?

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5 I am using the term sexual interactions to cover a range of behavior (mostly verbal conduct) described to me by my informants, including: being “hit on,” stared at; 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 (breast size or other aspects of their physical appearance); and, being faced with sexual innuendos and remarks such as “If you only knew what was going on in my head right now,” or “I like the way you bend over.”

Unwelcome from whose point of view and how is this assessment made? Human rights tribunals have developed a test to analyze whether conduct is unwelcome or “unsolicited.” A question phrased like this is often asked, “taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant?” This question is an ‘objective’ test and has been referred to using different terminology, including “the reasonably objective standard,” “the unwelcome standard,” or the “standard of reasonableness.” I will refer to it as the latter.

The standard of reasonableness is especially relied on by adjudicators in cases where the conduct being questioned is more “subtle,” and involves, for example, sexual remarks/innuendo and ‘jokes’ rather than explicitly sexual physical contact. In determining whether or not a reasonable person would consider the substance of the complaint unwelcome, adjudicators consider the complainant’s behavior. Did she participate in (or consent to) the conduct in question? Was she a part of similar behavior in the past? Adjudicators also consider the overall atmosphere of the work environment. Was this type of conduct ‘normal’ to the workplace? Did other employees participate? As the analysis of such questioning goes, the more common the conduct in question, the more it resembles normal social interaction of a workplace, the less likely it is that a ‘reasonable person’ would know his behavior was unwelcome.

In Aragona v. Elegant Lamp Co., for example, even though the complainant was not okay with her boss’s sexual comments—e.g. “Nice looking, sexy legs”—the adjudicator did not understand the complainant’s “unique reaction.”

There is no doubt that considerable ‘banter’ and ‘teasing’ occurred. There is also no doubt that there were many comments with sexual connotations. However, the evidence indicates that the employees were willing participants who enjoyed the atmosphere and who ‘gave’ as much as they ‘took.’

Given that other workers were engaged in and enjoyed similar sexual banter, the adjudicator suggested that the complainant might be a “particularly private and sensitive individual.” However, this does not mean that someone who works in an environment where sexual talk and behavior are the norm cannot complain that she was sexually harassed. Rather, if sexual banter in a workplace is regular and accepted by other employees, it is the complainant’s responsibility to make it known that the conduct is not acceptable. The adjudicator in Aragona made this clear when he stated:

a comment about one’s legs might be returned with gratitude for a perceived compliment, with repartee or with a clear statement that such comments are not acceptable to the individual involved. Subsequent comments in the face of the last response could well cross the line of harassment. Of course, much will depend on the circumstances. A businessman who wears shorts to work or a secretary who wears a short mini-skirt might well invite such comments.

The principle that the complainant has an obligation to clearly object to a sexual comment—in an environment where sexual talk is the norm—before it can be

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9 Ibid.
10 Ibid.
considered sexual harassment is also found in the decision of *Diagle v. Hunter.*

In *Diagle*, a Receptionist/ Clerk-Typist working for the City of Fredericton Fire Department complained that the Platoon Chief used graphic language, asked her personal sexual questions, and showed her a centerfold of a Playgirl Magazine at work in front of other firefighters. Her complaint was dismissed. The adjudicator’s decision read:

> I do not deny that there are some who find off-colour humour offensive and they have every right to do so. They have the fundamental right to dignity in the workplace. However, if the norm in their workplace is offensive to them, they have an obligation to overtly, by words or actions, bring it to the attention of the offenders or management or both. If the offenders persist and particularly if they accelerate the offensive action and deliberately direct it at the individual, the ‘fine’ is crossed and that individual is being harassed.

In supporting this reasoning, the adjudicator cited *Makara v. Osama Enterprises Ltd.*

Even if the nature of the harassment is not physical, it can still be considered to be sexual harassment if it creates a poisoned environment and even if there is no economic consequence such as loss of one’s job or loss of seniority or economic consequences of a similar nature. It is also clear that even if it might be considered that what has occurred is sexual banter common to the workplace, if a person found it objectionable and makes it known in clear and precise terms that such actions are not acceptable to such person then in my view that is the standard of behaviour that is established vis-a-vis that person.

Thus, what these cases suggest is that in work organizations where sexual talk/banter, sexual behavior, or pornography are considered ‘normal’ social interactions, it is up to the complainant to clearly object to such conduct. Otherwise the complainant may not satisfy the standard of reasonableness test, that a ‘reasonable person’ would have known that their conduct was “unwelcome.” But as a recent case suggests, however, even if a complainant does object to sexual conduct, it may not be enough if, in the past, she has participated in sexual banter in the workplace.

In *Kafer v. Sleep Country,* Adele Kafer, who worked as a sales associate at a Sleep Country store, complained that her co-worker Arif Arjania had: (1) yelled across the room to her, “See you later bitch.” (2) Made comments to her about the date rape drug “roofies” along the lines of “the only way he would be able to get Ms. Kafer to sleep with him was to ‘roofie’ her.” (3) And, had sent her an email, from her own email account, which read: “I'M GAY AND GAY AND GAY AND STUPID AND WEIRD AND HORNY AND A LOSER HAHAHAHAHAHA...I WISH I COULD HAVE ARIF HE IS THE ALL MIGHTY AND HAS THE BIGGEST PENIS!!”

Mr. Arjania admitted all these incidents occurred and that Ms. Kafer told him directly that she did not appreciate incidents (1) and (3). Ms. Kafer and Mr. Arjunia disagreed on whether she objected to incident (2), the roofie comment. Nevertheless, according to Mr. Arjania and Sleep Country Canada, all of the sleep country stores Ms. Kafer had worked in, including her current location, had a workplace culture “whereby sexually explicit banter, jokes and innuendo were considered reasonable social

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14 *Kafer v. Sleep Country* and another 2013 B.C.H.R.T. 289
interaction between employees and between employees and managers.”\textsuperscript{15} Ms. Kafer admitted participating in such a culture, “There was talk about sexual subjects in the workplace and crude and sexual language was used. Many people participated. I participated to fit in and be liked. I did not want to create waves by not participating.”\textsuperscript{16}

Ms. Kafer’s complaint was dismissed. According to the adjudicator, even though on its face the incidents amounted to sexual harassment, because Ms. Kafer previously participated in sexual banter, she would not be able to prove that the incidents were “unwelcome.” A crucial element of the adjudicator’s decision is repeated below:

On its face, Ms. Kafer’s allegations, as admitted by the Respondents, of Mr. Arjania saying “See you later bitch” or something to that effect, at a staff meeting, making “roofie” comments, and sending the crude E-mail would, in my view, amount to sexual harassment based on sex and, in the case of the E-mail, sexual orientation. It is not a defence for the Respondents to say that the workplace had a culture of sexualized joking and conduct. The employer has a duty to provide a workplace free of sexual harassment. This complaint is dismissed because I have concluded that there is no reasonable prospect that Ms. Kafer will succeed in proving that the matters she complains of were “unwelcome.”

Thus, even though the incidents appear to be sexual harassment, and the employer has a legal obligation to provide a workplace free of sexual harassment, and an existing culture of sexualized joking and conduct is not a defence to a sexual harassment complaint, still Ms. Kafer’s complaint was dismissed. Because Ms. Kafer previously participated in comments that were determined to be similar to the ones she complained about, the adjudicator found she would not be able to prove that her complaints would have “reasonably be perceived” as unwelcome. The adjudicator closed by writing, “When Ms. Kafer returns to work, she can communicate directly, and through her conduct, that she does not welcome sexual banter in the workplace.”\textsuperscript{17}

The standard of reasonableness places a spotlight on whether the ‘joke,’ comment, proposition, look, etc., was welcome or unwelcome according to “socially acceptable behavior.” Feminists, who have asked, whose perspective constitutes the reasonable one, have heavily criticized the test (see for example Gallivan 1991, Faraday 1994, Fudge 1996, Sheppard 2010). Evaluating whether or not something constitutes sexual harassment using the socially accepted norms of a workplace as the threshold assumes that the “existing conditions in the workplace are sex-neutral” (Fudge 1996: 247). This assumption ignores gender hierarchies in workplaces and the fact that men are more likely to be found in the upper rungs of occupational ladders; “what is conventionally understood as acceptable behavior on the part of bosses is in fact masculine behavior” (Fudge 1996: 246). Moreover, when the conduct being disputed fits with the social norms of a workplace, deeper questions about how such experiences are organized to be normal are left unexamined. A broader, systemic approach to sexual harassment, by contrast, would seek to discover, as Colleen Sheppard has argued, “how vulnerability to harassment is embedded in organizational structures, practices, and institutional cultures” (2010: 80).

The remainder of this paper will illuminate how restaurant work is constructed so

\textsuperscript{15} Ibid, at para. 8.
\textsuperscript{16} Ibid, at para 28.
\textsuperscript{17} Ibid, at para 40.
that sexual interactions between restaurant workers and customers become ‘normal.’ I will use interviews\textsuperscript{18} I conducted with women restaurant workers as part of my institutional ethnographic work to show how workers’ sexuality and putting up with sexual behavior from customers becomes a regular feature of the job. To begin this analysis I will describe key elements in the organization of restaurant work: the focus on customer satisfaction, the wage-tip relation, and precariousness in restaurant work.

\textbf{Part II. Customer Service, Law, and Wage-tip Relation}

Context is key to understanding how it is that workers’ sexual experiences are happening in restaurants. Providing good customer service is a central feature of full-service restaurant work. The customer-oriented focus of the work is evidenced in the popular saying \textit{the customer is always right}. This maxim is entrenched, even though not always followed,\textsuperscript{19} in relations between customers and workers. The practice of customers tipping restaurant workers reinforces the customer satisfaction ethos of restaurant work. Moreover, it is important to understand restaurant work as a form of precarious employment, because in such an environment the asymmetrical power relations between employees and customers, and employees and employers, is intensified. Consequently, workers can be made more vulnerable to enduring sexual harassment.

Michael Hurst, a former professor of restaurant management and previous chairman of the National Restaurant Association in the US, discussed the idea that restaurants sell more than food. They sell a “dining experience,” Hurst argued. Key to this dining experience is the atmosphere of a restaurant, including the exterior of the building, interior décor, lighting, music, the uniforms of employees, and most importantly, Hurst proposed, “people-to-people warmth and friendliness of service.”

“Customer satisfaction is the name of the game for the good restaurant” (Hurst 1970: 103).

The emphasis placed on pleasing customers is visible in how servers talk about their work. “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.” As another waitress expressed, customers are “the priority.” She explained what this involved:

\begin{quote}
You want to make sure that they’re happy; you want them 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...
\end{quote}

\textsuperscript{18} As part of my doctoral research I conducted 20 interviews with current and former restaurant workers (18 of whom were women). My participants worked in a range of restaurants both in BC and across Canada. My research is restricted to full-service restaurants. The full-service restaurant industry is distinguishable from the fast-food restaurant industry in that the former typically has customers sit-down, order, and be served their meal before paying for it. (Rather than order at a fast food counter from a cashier).

\textsuperscript{19} See Paules (1991) for an ethnography on how waitresses exercise power in their daily interactions with customers and managers (e.g. ignoring or giving poor service to customers who are known for “stiffing,” not tipping, a waitresses).
coming back. And if I didn’t do my job to try to make them happy I wouldn’t have that job. 
(Jenna)

The last line from Jenna’s quotation illustrates the connection she has made between making the customer “happy” and her employment, for Jenna believes that if she did not do her “job” to try to make customers happy, she would lose her job. In addition, the unique wage-tip relation in restaurants reinforces the customer is always right mantra.

Restaurant work differs from other forms of wage-labour relations in that customers significantly contribute to the earnings of workers through tipping practices. As Emily, a server and bartender stated, “Paycheques don’t mean anything to me. I honestly forget when I get paid.” It is not uncommon for workers to make more in tips from customers than from wages paid by an employer. Importantly, the law legitimizes and reinforces the involvement of customers remunerating workers through minimum wage regulations that account for tips. In British Columbia, as well as some other provinces in Canada, tipping practices influence the level at which minimum wages in restaurants are set. In 2011, when the minimum wage in British Columbia was raised from $8.00 to $8.75 per hour, the government introduced the “liquor server minimum wage,” a lower wage set at $8.50 per hour. However since this time, the gap between the regular minimum wage and the liquor servers minimum wage has grown. The regular minimum wage is currently $10.25 per hour, while the liquor servers minimum wage is $9.00 per hour. Although the category “liquor server” is seemingly gender neutral, occupations are not abstract categories (Acker 1990). There is no such thing as the “sexless worker” (Fudge 1996). In British Columbia 81 per cent of food and beverage servers are women workers (Statistics Canada 2006a). Thus the tip-wage relation is gendered. I will elaborate on the gendered division of labour in the next section, but first I will briefly describe restaurant work as a form of precarious work.

Restaurant work is precarious. The notion of precarious work describes “forms of work involving limited social benefits and statutory entitlements, job insecurity, low wages, and high risks of ill-health” (Vosko 2006: 3). Elements of precariousness in restaurant work specifically include: low employer-paid wages; the involvement of customers in the wage-tip relation; unreliable income from tipping; unpredictable work schedules; and, a low level of worker representation. In this environment of uncertainty, the asymmetrical power relationship between workers and customers, and workers and employers, is intensified.

Precariousness in work can limit workers’ right to be free of sexual harassment. Carole worked as a hostess in a fine dining restaurant, located in a hotel. She was required to wear a formfitting dress as her uniform. While at work her supervisor and coworkers would regularly comment about her body. Her reaction to these comments was constrained by the lack of job security she felt, as she explained, “I didn’t feel I ever had a right to say anything because many people wanted to have my job.” She continued:

I felt like if I say anything like ‘You know what guys, I feel pretty uncomfortable with you talking about my hourglass figure and how hot I look,’ I sort of had a sense like you know what, there’s

20 Alberta, Ontario, and Quebec also have lower minimum wages for workers who serve alcohol.
21 Ninety-three per cent of food and beverage servers are not members of a union or covered by a collective agreement, collective representation for workers rights is weak (Labour Force Survey 2013).
fifty other young women working in housekeeping who would love this job. So it was almost like feeling expendable. Just keep your mouth shut.

Feeling expendable, Carole endured the remarks she faced by her supervisor and coworker. Huebner, who studied sexual harassment of waitresses in the United States, has proposed that the lack of job security experienced by waitresses may mean workers are reluctant to report incidents of sexual harassment out of fear of being fired. “There will always be another waitress to hire because there will always be women who need immediate income” (Huebner 2008: 81). In the next section I argue that the wage-tip relation and the emphasis in restaurants on pleasing the customer, pressures workers to engage in sexual labour and to put up with sexual interactions with customers.

**Part III. Sexual Interactions and Restaurant Work**

Restaurants have been described as having highly sexualized work environments. Sexual talk and ‘jokes,’ touching, and flirtation are a common part of restaurant cultures (Spradley and Mann 1975, Cobble 1991, LaPointe 1992, Giuffree and Williams 1994, Hall 1993a, 1993b, Loe 1996, Lerum 2004, Erickson 2004). Waitresses are often sexualized. They face sexual suggestions from customers on a regular basis and their bodies are often sexualized with ‘provocative,’ or ‘sexy’ dress requirements. Sexual interactions in restaurant work can become so routine that workers may not label their experiences “sexual harassment” (Giuffree and Williams 1994). Moreover, even when sexual interactions are considered offensive, the exchanges are characterized as natural, unavoidable occurrences that come with the restaurant culture (Giuffree and Williams 1994: 380), or are tied to “the territory of being a waitress” (Huebner 2008: 80). As a waitress from one study expressed, “I’ve become more tolerant to sexual harassment being in this job. I’ve come to expect that sexual stuff is part of the job” (Erickson 2004: 81).

This section argues that restaurant work is organized in a way that workers’ sexuality and putting up with sexual behavior from customers becomes a regular feature of the job. I will provide three examples of how: (1) employer hiring practices that emphasize physical attractiveness, (2) employer and employee use of ‘sexy’ dress codes, and (3) tolerating and going along with sexualized behavior from customers so as not to disrupt the customer service ethos of restaurant work or risk earning a tip. All of these elements of restaurant work amount to workers’ accepting or tolerating a sexualized work environment as part of their job.

“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). Research has highlighted the common practice of hiring ‘attractive’ women, for the gaze of mainly heterosexual men customers for food service workers in the hospitality industry (Adkins 1995), blackjack dealers in casinos (McGineley 2007), airline stewardesses (Hochschild 1983), secretaries (Pringle 1988) and temporary clerical workers (Rogers and Henson 1997), and waitresses (Hall 1993). For workers in service organizations who frequently interact with customers, gender, race, and age become a part of what is sold (Adkins 1995: 8, referencing Urry 1990).
Although restaurants provide the greatest proportion of entry-level jobs in the country—twenty-two per cent of Canadians find their first job in a restaurant (Canadian Restaurants and Foodservices Association 2010: 1-2)—these new entrants take up and do work in a particular way, as occupations within the restaurant industry are organized in a distinctive manner. When we eat out in full-service 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 per cent of restaurant workers are between the ages of fifteen and twenty-four years old (Statistics Canada 2006b). The concentration of young workers in restaurant work is significant because persons in this age category make up just 16 per cent of the overall labour force (Statistics Canada 2006).

In addition to an abundance of young workers, occupations within the restaurant industry are horizontally and vertically segregated by gender. 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 per cent of cooks and chefs are men. Moreover, with 58 per cent of management and 75 per cent of senior management positions being held by men, there is a clear gendered occupational hierarchy (Statistics Canada 2006b). Meanwhile, the workers we interact with in the space we occupy as customers, in the “front of the house” (FOH), are likely to be women: 80 per cent of hosts/hostesses, bartenders, and food and beverage servers in Canada are women (Statistics Canada 2006b).

Importantly, research on restaurant work in the United States draws attention to the racial segregation of workers in the industry where white workers typically work as servers and bartenders interacting with customers and workers of colour work “behind the kitchen door” (ROC 2005). As Saru Jayaraman the Co-Founder and Co-Director of the Restaurant Opportunities Centers United (ROC-United), observed: “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. Interviews with restaurant workers and employers reveal that this is commonly accepted industry practice, thinly veiled by legalese and managers’ self-righteous notions of ‘skills,’ ‘table manners,’ ‘language ability,’ and ‘professional appearance’” (Jayaraman 2013: 116).

Employer assumptions about whose bodies are appropriate for what jobs were reflected in the interviews I conducted. As a woman server/bartender described one place where she worked, “they didn’t hire male servers. If you were a man and you applied to work there they would laugh at you.” Moreover, some employers were known for exploiting women (and sometimes men) workers’ sexuality by hiring people perceived to be physically attractive to take up jobs in the FOH where workers interact with customers. Below informants described the FOH staff at restaurants they have worked in:

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22 The data refer to workers in “full-service restaurants.” Full-service restaurants are defined by Statistics Canada as “establishments primarily engaged in providing food services to patrons who order and are served while seated and pay after eating. These establishments may sell alcoholic beverages, provide take-out services, operate a bar or present live entertainment, in addition to serving food and beverages.” While the statistics describe who tends to work in full-service restaurants, they are limited in doing so. For instance, Statistics Canada only collects data on persons who are fifteen years of age and older; and in British Columbia, for example, the legal age limit to work is twelve-years old.
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 the “hiring protocol.” Workers become aware of managers practices of intentionally hiring attractive people, for instance by over hearing conversations. As Karen shows, workers may learn that managers view their bodies “as being profitable,” and thus they learn that their sexual attractiveness and sexuality is tied to their employment.

“It’s like as a hostess you’re part of the décor. Like feeling like part of the decoration of the place.”

On top of hiring FOH workers who are perceived to be attractive, workers’ bodies and sexuality 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’ manner that involves wearing short skirts and high-heeled shoes, showing cleavage, and wearing make-up to work. In doing so, 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 up themselves (Loe 1996). In responding to a question about what she found challenging about her work as a server, Karen, a former restaurant worker, 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.’ 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’s quotation highlights, there is an assumed connection between dressing in a sexual way and increasing the amount of tips a woman restaurant worker can earn from customers. Managers advocate for this connection.

Sexy dress requirements can also be imposed on women bussers, who clear and set tables, and hostesses who greet and seat customers. Carole described instructions given to her from her boss at a restaurant she worked at as a busser when she was 15 years old. “The owner told me we had to wear black pants. He said make sure to wear your pants like, tight, was what he was getting at.” She recalled the owner explaining, “Because you want to make good tips and everything.” Similarly, Eve, a hostess, described instructions given to her by a former employer on how to dress at work. “At 17
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.” 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 at work. Interestingly, although in her current job Eve is not explicitly instructed to dress in a certain sexy way, sexuality is still an integral part of her work and ability to earn better tips. “I do try to keep things sexy, but not too sexy, you know.” Eve continued, “Cause 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 some restaurant workers, their body and sexuality become an integral element of their work, a part of their ability to earn tips.

“I think I allow inappropriate things to happen when I know I’m going to make a lot of money.”
The perceived connection between providing customers with ‘good service’ and receiving a better tip, functions as an incentive for workers to cater to the needs and wants of customers. Even though customers do not have the authority to fire workers, the ‘power’ of customers materializes with the remuneration of servers in tips. In tipping, customers shape working conditions in restaurants. 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). Thus, the wage-tip relation transfers some (unpaid) supervisory oversight onto customers.

The need to provide customer service can blur the boundary between what is considered appropriate or inappropriate behavior from customers. Workers struggle to draw the line and may find it difficult to navigate between being “nice” and responding to customer behavior that they do not like:

There’s sort of tables that I’ve had come in and I’m just like, really? You’re actually saying that to me right now. And I can’t even remember exactly what it was, but it was a big group of guys... and they’re like, ‘So, what are you doing afterwards?’ ‘Nothing you’re going to be involved in.’ So there is that interaction as well, which is encouraged by some restaurants and discouraged by others, or ignored by others, rather I think. So yeah, that’s sort of—that’s something I’m kind of like grappling with when I’m serving, cause like, I have to be nice with you, but it doesn’t mean I’m going to sit on your lap. (Erin)

In addition to blurring boundaries, the customer service aspect of a server’s job can prevent workers from explicitly objecting to sexual comments from customers. Karen said that she tries to “politely” shrug off customers who are inappropriate (for instance customers who make comments about her physical appearance.) When asked why she reacts in a polite manner, Karen answered:

I don’t know. I have a—just my own personality. I’m not very standoffish, so I try to be polite in most situations and I feel that because it’s customer service that you want to make their evening/day enjoyable. So if you like, punish them, I feel like that would look poorly as a
waitress...and everybody else just kind of deals with it, so it’s like, laugh it off and keep going.

Karen’s answer also illuminates how workers learn from their co-workers that a common response to customers’ sexual remarks is to “laugh it off and keep going,” evidence of how these types of scenarios become normal.

In addition to the need to provide customer service, tipping is another reason why workers go along with sexual behavior from customers, including tolerating comments about their sex life, sexual innuendoes, and sexist jokes. In a story from Emily, reproduced below, she described a scenario where the hope that she would earn a high tip from a large party of men influenced how she reacted to their inappropriate behavior:

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 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.

Importantly, Emily attests to how workers’ reactions to customers’ comments that they find inappropriate can be shaped by the tipping system. The hope of earning a large tip, 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. For instance, Eve explained what could happen when she would stop responding to 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.”

Even further, 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 behavior 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, is 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 perceives the money she makes working as a bartender as being closely connected to being a woman and being “hit on” from male customers. She described “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 of “wanted flirtation.” 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.

However, later in the interview while talking in general about the relationship between
sexual behavior from customers and tips Amanda revealed, “It’d be nice to make that
much money without being treated like that. No one wants to be treated like that.”

The insight provided by Amanda speaks to how putting up with sexual behavior
from customers can become institutionalized in the organization of the work, it is how
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 into the labour process.
Not only are workers unlikely to name their experiences “sexual harassment,” but using
the phrase “uncomfortable” or “unwanted” sexual behaviour is tricky as well because
sexual behaviour may be, as Amanda explained, sometimes “wanted.” As Williams
(1997) describes, “By agreeing to work in a specific job or industry, many people
understand that they will be subjected to sexual innuendo, bantering, ogling, and other
sexual behaviors as part of their jobs... ‘Consenting’ to this treatment does not necessarily
make the specific behavior any less hostile or degrading to the individual, but it does
make the process of identifying sexual harassment more complex because they are
endorsed or at least tolerated by organizations” (Williams 1997: 23).

**Conclusion**

In this paper I have argued that there is a tension between sexual harassment law and the
structure of restaurant work. Central to the legal definition of sexual harassment is the
requirement that the conduct being disputed be “unwelcome.” Adjudicators have argued
that in an environment where sexual talk, ‘jokes,’ and comments are the norm, the
complainant must object. The tension that I have outlined in this paper is that in
restaurants, the structure of the work can actually inhibit a worker from resisting or
objecting to sexually harassing comments made by a customer. The wage-tip relation
combined with the customer service orientation of restaurant work not only shape
workers reactions to sexual comments made by customers, but ingrain sexual work,
including putting up with sexual behaviour by customers, as part of the job. The
emphasis placed in sexual harassment law on the whether conduct is
welcome/unwelcome, solicited/unsolicited, comes at the expense of taking a more
systemic approach to the problem of sexual harassment by examining the structure and
organization of workplaces.
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