Law, Sexual Harassment, and Restaurants: Exploring the Experiences of Women Working in the British Columbia Restaurant Sector

By

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Abstract

Sexual harassment in the workplace is both illegal discrimination under human rights law and a part of the everyday experiences of women working in the full-service restaurant industry in British Columbia (BC). This dissertation is a feminist, institutional ethnographic inquiry into how women's unwanted or uncomfortable sexual experiences with managers, co-workers, and customers within the context of full-service restaurant work in BC are still happening more than three decades after sexual harassment was first named sex discrimination in Canada. I argue that restaurant work is organized in such a way that uncomfortable or unwanted sexual experiences at work are made normal. My dissertation tells the story of how law is implicated in the construction of such restaurant workplaces within which sexual harassment and unwanted sexual experiences are normalized.

The complicated interaction between the social context of restaurant work, workplace practices in restaurants, and inadequate employment standards legislation constructs precarious work environments wherein workers have little economic or job security and rely on customers for tips. Tipping, a practice legally legitimized and reinforced with lower minimum wages for alcohol servers, means workers endure sexualized and discriminatory behaviour at work in exchange for tips. Moreover, gendered social relations, reflected in managerial hiring practices and restaurant dress codes, lead women workers to associate femininity and a sexualized presentation of their self with their employment. Sexual harassment law is implicated in the problem as well. Sexual harassment law in BC (re)produces the gendered social relations of work through an individualized human rights framework and a jurisprudential notion of

"unwelcomness" that both place the burden for addressing discrimination on the shoulders of workers.

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Dedication

For those who shared their stories for this research and for all who work in restaurants, thank you.

Chapter 1

Introduction

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.[1] (Janzen, Supreme Court of Canada)

In a restaurant, particularly when I'm bartending, there's a lot of bending over. Just like bending down like this picking up something. And that's honestly probably the most common —'Oh I like it when you bend over.' …when I was talking about people not being original, I have heard that, *so much*... I could just imagine myself working in like a coffee shop. If a man was in line at, you know, at Starbucks, and the person working there bent over and he said, 'Oh, I like when you bend over.' That's completely different. People would be appalled. Where we just are like 'Oh yeah' [*she laughs in a high pitched mocking voice*] and just continue on. That doesn't even—that's nothing to me. (Emily, server/bartender)

1. Introduction

The first quotation presented above comes from the landmark Supreme Court of Canada case, *Janzen v. Platy* (1989), which defined sexual harassment as a form of sex discrimination in paid work contrary to human rights legislation. The *Janzen* case came from the complaints of two women who worked in a restaurant. The second quotation is from a woman named Emily, who works as a server and bartender. Together the quotations call attention to the interface between law and society. They also highlight the puzzle around which the research for this dissertation is based: the disjuncture between the legal treatment of sexual harassment and the everyday experiences of women working in the restaurant industry who face being subjected to sexist comments, sexual remarks, or 'jokes;' being asked out or even outright propositioned; and general sexualized

[1] *Janzen v Platy Enterprises*, [1989] 1 SCR 1252 at 1284.

expectations of how they are to dress, look, and be at work. As Emily puts it, sexualized innuendoes are an ordinary part of her work—"that's nothing to me."

This dissertation is an ethnography that explicates the tension between the legal protections against sexual harassment provided to women under human rights law and how women restaurant workers actually experience their work. At the core of my inquiry is the aim of understanding how women's unwanted or uncomfortable sexual experiences with managers, co-workers, and customers within the context of full-service restaurant work in British Columbia are still happening nearly three decades after the famous *Janzen* decision. My central argument is that restaurant work is organized in such a way that uncomfortable or unwanted sexual experiences at work are made normal. Workers learn to accept these experiences as part of the job and they become understood or accepted as just another element of working in restaurants—although, I will add, not always without challenge. My dissertation is not simply an ethnography describing women's experiences of unwanted or uncomfortable sexual attention working in restaurants, rather it tells the story of how law is implicated in the construction of workplaces within which sexual harassment and unwanted sexual experiences are normalized.

This introductory chapter introduces the topic of my dissertation. It briefly reviews research on sexual harassment and restaurant work, presents the aims and argument of my research, and finally, provides an overview of the chapters that make up this work and how they unpack the puzzle this dissertation is devoted to. But first, I will discuss how I became interested in studying law and women's experiences of sexual harassment in the restaurant industry.

The topic of this research project was inspired by the time I spent working in full-service restaurants as a youth and young adult. As Chapter 3 will explain, my personal experience in the restaurant industry—working as a hostess, server, and bartender—motivated me to pursue a doctorate in order to undertake research on how women experience sexual harassment in restaurant work. During my time spent in restaurants I learned a great deal, made many dear friends, and enjoyed the work. However, I also had negative experiences including for instance unwanted sexual comments and propositions from co-workers, managers and customers. Experiences such as these were not unusual, as my friends and family who also worked in restaurants all had similar stories of their own—these things just seemed to happen to women who worked in restaurants. In two restaurants I worked in, employers asked me to dress for work in a "sexy business casual" or "classy provocative" manner. It was with these instructions that the association between my gender, sexuality, and employment was made the most explicit. There was no denying the connection my employers were trying to create between my body and my work. I knew that my co-workers and I were expected to sell more than just food.

My entry into restaurant work began at the age of fourteen. I was attending high school and university in Ontario at the time, and as many students do, was working to put myself through school. Like many people in Canada, restaurant work was my first experience of paid employment. The restaurant industry is an important source of work. Restaurants provide many entry-level jobs in the country. Twenty-two percent of Canadians find their first job in the restaurant industry which employs one of every five young workers under the age of twenty-five (Canadian Restaurants and Foodservices Association 2010: 1-2). As a gateway to the labour market the restaurant industry

employs a large proportion of young workers. Young workers are especially vulnerable to exploitation in the workplace because of their lack of working experience and job skills compared to their older counterparts, lack of awareness of rights, and likelihood to work in jobs without unions and the associated absence of influence to negotiate working conditions (First Call BC 2013). Restaurants as work organizations are important to study because as a major provider of first jobs, social relations and practices in restaurants introduce many to the world of paid work. Given the significance of restaurants as a source of work, it is surprising how little scholarly attention restaurants have received. This dissertation is the first study in Canada devoted to women's experiences of sexual harassment working in the full-service restaurant industry.

2. Brief overview of existing research on sexual harassment and full-service restaurants

Restaurants have been studied in a variety of fields, such as human relations (Whyte 1948), history (Cobble 1991a, 1991b; Appelbaum 2011), labour studies (Jayaraman 2013, 2016), sociology (Paules 1991; Reiter 1991; Hall 1993b, 1993a; Leidner 1993; Giuffre and Williams 1994; Sosteric 1996; Fine 2008), anthropology (Beriss and Sutton 2007), and cultural studies (Erickson 2004, 2009). With respect to literature that speaks to restaurants and sexual harassment the research that exists is predominantly from the US and mostly comes from the discipline of sociology. The strength of the research is in drawing attention to the connection between restaurant work and the prevalence of what has been called sexualized work environments in which sexual banter, joking, touching, and flirtation is common (Spradley and Mann 1975;

Cobble 1991; LaPointe 1992; Hall 1993a, 1993b; Giuffre and Williams 1994; Loe 1996; Lerum 2004; Erickson 2004; Jayaraman 2013). A great proportion of the research cited above was conducted in the late 1980s and early 1990s—although in some instances was published years later—and reflects the trend of studies on sexual harassment at the time when "sexual harassment" was a fairly recently named social phenomenon and legal wrong, and the goal was documenting its existence. In much of the research, however, women's experiences of sexual harassment working in restaurants are only briefly touched upon and are not thoroughly investigated. There are two studies, however, in which the researchers did take a closer look at women's experiences of sexual harassment in the restaurant industry, both from sociology and both conducted in the US in the early 1990s.

One study that more thoroughly engaged with the topic of sexual harassment in restaurants is the work of Giuffre and Williams (1994). In their research, both male and female restaurant workers were interviewed to learn how they draw the line between acceptable sexual interactions and sexual harassment. The researchers interviewed eighteen currently employed restaurant workers (eight male and ten female) in 1991 in Austin Texas. Giuffre and Williams concluded that hegemonic heterosexual norms led to double standards when workers named experiences sexual harassment. Workers were more likely to label their experiences sexual harassment when the harasser: was a person who held a position of power; was of a different sexual orientation than them; or was of a different race or ethnicity than them. Giuffre and Williams also argued that when employees' described their work experiences, sexual harassment was embedded in restaurants beyond the point of recognition. For example, servers did not identify the

requirement of wearing a sexualized uniform as sexual harassment in and of itself; instead, dress was tied to sexual harassment only when a person in a position of power personally commented on the appearance of a uniform worn by an employee (1994: 385). The authors argued, "[t]his way of defining sexual harassment may obscure and legitimize more institutionalized-and hence more insidious-forms of sexual exploitation at work" (1994: 387). Giuffre and Williams believed that the ways in which their research participants labelled their experiences "sexual harassment," or did not, concealed forms of heterosexual domination and exploitation that become embedded in the work.

Another researcher who has examined restaurant work and sexual harassment is Lisa C. Huebner (2008). Huebner compared how women nurses experience sexual harassment from patients with how waitresses experience sexual harassment from customers. Huebner analyzed differences in labeling experiences "sexual harassment." The emphasis throughout Huebner's paper, however, was on nurses' experiences and waitresses were their comparator. Huebner interviewed ten female servers from three different restaurants in Ohio (in 1994) and compared their responses to interviews conducted with eight nurses from one hospital (in 2003). [2] She argued that nurses and waitresses "labeled and described similar sexual interactions at work differently depending on the work norms of each job" (2008: 78). Waitresses approached sexual harassment as "something they endured to receive tips" and nurses excused sexual harassment "as part of the patient's illness or as part of their caring work" (2008: 80). Huebner hypothesized that when it comes to waitresses' experiences of sexual harassment

[2] Although Huebner's research was published in a paper in 2008, she interviewed the waitresses in 1994, and interviewed the nurses nearly ten years later in 2003. Thus when Huebner was comparing waitresses' experiences with nurses' experiences, arguably, sexual harassment as a social phenomenon in 1994 would be different politically and legally, compared to sexual harassment in 2003.

from customers "worker expendability," influenced by the fact that waitressing, unlike nursing, does not require formal education or a lot of training made waitresses feel more expendable than nurses. While importantly recognizing the reliance waitresses have on tips, the discussion did not go any further to explore the economic relations structuring restaurant work, or other distinctive elements of the work. The strength of the research, as I mentioned earlier, was in identifying that women working as waitresses face sexual harassment from customers.

Researchers who have taken up the topic of sexual harassment and restaurants suggest that much more work needs to be done. Three underexplored research areas include: an analysis of gender relations in restaurants and how gender may be constructed through restaurant work (Hall 1993a); an understanding of the unique context of restaurant work (its sexual norms, culture, worker demographics) and its organizational features (Lerum, 2008; Giuffre and Williams 1994); and, an exploration of the blurred boundaries between what workers do, and do not, consider to be sexual harassment in the context of restaurant work (Giuffre and Williams 1994; Erickson, 2004; Huebner 2008). The research of both Huebner, and Giuffre and Williams was concerned with analyzing when restaurant workers did and did not label their experiences "sexual harassment." The most important insight coming out of this research is the suggestion that in not naming "sexual harassment" institutionalized forms of behaviour that constitute sexual harassment remain hidden. However, the research focuses on when restaurant workers do and do not identify with the term "sexual harassment" and does not explain *how* women workers' experiences of unwanted or uncomfortable sexual behaviour at work come to happen in the first place. How do these experiences *become* institutionalized? Huebner

concluded her research with the recognition that the next questions to be asked, "are not if sexual harassment is 'everyday' or part of the job but how, when, and under what conditions it becomes that way" (Huebner 2008: 88).

Reflective of the fact that sociologists have produced much of the literature on the topic of sexual harassment and restaurants, there is a large void in the literature on sexual harassment and restaurants with respect to law. Importantly, neither Huebner (2008) nor Giuffre and Williams (1994) engage in questioning or analyzing of legal frameworks or norms or legal definitions of sexual harassment. Therefore, while existing research touches upon the topic of sexual harassment and how women label their experiences, the research does not speak to the disjuncture between the legal treatment of sexual harassment and the everyday experiences of women working in the restaurant industry. In chapter 2 I will discuss existing socio-legal research studying sexual harassment in different workplaces to explore how socio-legal scholars have tried to make sense of this disjuncture. Taking a feminist socio-legal approach to the researching the topic of sexual harassment in restaurants is significant because as Rosemary Hunter (2013) has articulated, "For feminist legal scholars, socio-legal studies has had an appeal precisely because it eschews a conception of law as autonomous or decontextualized, and thus provides scope for attention to the ways in which law both reflects (or fails to reflect) and constructs women's experiences of gendered lives."

3. Research aims and approach

This section explains the main objective of my research, briefly introduces my institutional ethnographic research approach, presents the main questions this dissertation

takes up, introduces how I read the literature on sexual harassment law and sexual harassment caselaw, and finally, provides the argument I develop over the next seven chapters. The objective of this study is to understand how women working in full-service restaurants experience unwanted or uncomfortable sexualized interactions or behaviour at work. In conducting the research I have analyzed the tension between the prevalence of unwanted or uncomfortable sexualized behaviour in the restaurant industry—faced by women working as hosts, bussers, bartenders, servers, and chefs, coming from customers, co-workers, and managers—and the legal definition of sexual harassment as an illegal form of sex discrimination under human rights law.

This research is situated within the province of British Columbia (BC), a jurisdiction with a unique legal landscape. BC is the only province in Canada without a human rights commission and scant attention has been paid to sexual harassment law in BC. While BC is one of three jurisdictions with a lower minimum wage rate that applies to alcohol servers—alongside Ontario and Québec—there is no legislation in BC regulating tips. Moreover, since the "liquor server minimum wage" was introduced in 2011, the gap between it and the regular minimum wage has grown from 25 cents to $1.25. Exploring the distinctive, and under researched, legal landscape in BC is one of the contributions this research makes. Another unique contribution of this dissertation is associated with the research approach I have used and the insights that have come as a result of it.

I have used a feminist, institutional ethnographic approach developed by sociologist Dorothy Smith (1987, 2005). The details of institutional ethnography, a feminist research practice, and how it informed my research process will be explained in

chapter 3. For now, it is important to understand that institutional ethnography is an emergent approach to doing research that begins in the everyday experiences of the material world we live in. As an emergent research practice the research questions and turns of my dissertation were established at different points of the research, coming out of what I had learned in earlier stages. For example, the ways in which I probed sexual harassment law and queried the legal definition of sexual harassment was informed by what I learned from informants. Institutional ethnography has enabled me to keep women and their experiences at the centre of the research. Given this starting point, the following research questions I take up in this dissertation were the outcome of my efforts to explicate the disjuncture between what is happening for women restaurant workers who are subjected to sexualized interactions they are uncomfortable with and the law of sexual harassment that defines sexual harassment as a prohibited form of sex discrimination.

(1) How do women restaurant workers experience their work? Do women restaurant workers have uncomfortable or unwanted interactions at work with customers, co-workers, or managers? If so, how do they react to and handle such situations? Do women restaurant workers complain about unwanted sexualized experiences at work to their employer or to the BC Human Rights Tribunal? How do workers subsequently speak about their experiences?

(2) Why is it that women restaurant workers do not complain of sexual behaviour at work from customers, co-workers, or managers? How is full-service restaurant work organized such that women workers endure sexualized interactions at work rather

than formally complain? How is labour law and policy implicated in constructing restaurant work such that women workers endure sexualized interactions at work as part of the job?

(3) How does anti-discrimination law in British Columbia define and address sexual harassment in the workplace? How does the way in which the law defines sexual harassment relate to my informants' unwanted or uncomfortable sexualized experiences at work?

Just as my research questions were guided by my intention to understand how sexual harassment is illegal at the same time as it is still a prevalent part of women's experiences, so to was my review of the literature on sexual harassment law in Canada. I read the literature critically with the intention of analyzing how feminist legal scholars and lawyers have understood law and law's ability or inability to address unwanted or uncomfortable sexual experiences of women in paid work as "sexual harassment." I began with a broad reading of the literature that is well known as ground-breaking publications. The work of Constance Backhouse and Leah Cohen (1978) who wrote the first book in Canada on sexual harassment provided a rich historical account of women's experiences of sexual harassment before the problem of sexual harassment was named sex discrimination and had a legal definition. Backhouse and Cohen's work, along with the seminal works of Catharine MacKinnon (1979; 1987), and Lin Farley (1978), who were both writing in the US, allowed me to recount "sexual harassment" at a time when the phenomenon had strong ties to the women's movement. Moreover, early on in my

research the three volumes of Arjun Aggarwal's treatises on sexual harassment law (1987; 1992; and 2000 with Madhu Gupta) provided a helpful historical analysis and overview of how sexual harassment law in Canada has evolved. However, I read these treatises with caution and an understanding that these texts are only one interpretation of the case law, albeit an interpretation that many human rights tribunals rely on.

I narrowed the scope of my literature review to focus on the discussions had by feminist legal scholars and lawyers writing on sexual harassment law in Canada, since the legal landscape and the treatment of sexual harassment as a legal wrong in Canada is vastly different from the US. The purpose of the review of this literature was to learn how feminist lawyers and legal scholars make sense of the disjuncture between the legal treatment of sexual harassment as an illegal form of sex discrimination and women's ongoing experiences of sexual harassment in paid work. In 2012 Constance Backhouse published an article in the *Canadian Journal of Women and the Law* reflecting on the experience of writing a book on sexual harassment in the late 1970s. Her article also briefly reviewed how the law has since evolved. Backhouse's historical legal account included a footnote with an extensive bibliography of publications on sexual harassment law in Canada from 1978 to 2012, including research from labour relations, feminist legal scholars, and business management perspectives (2012: 288-300).

In addition to the extensive bibliography provided by Backhouse, I conducted a systematic search of the "Index to Canadian legal literature" using the search terms: "sexual harassment" and "employment"/ "work"/ "labour," which directed me to 83 publications. I read these works with the intention of analyzing how scholars and lawyers have understood law and law's ability and inability to address the unwanted or

uncomfortable sexual experiences of women in paid work as "sexual harassment." Since there are many issues within this literature, I focused on exploring an aspect of sexual harassment law relevant to the questions about law that emerged from my interviews with restaurant workers: the extent to which legal definitions of sexual harassment resembled women's actual experiences and the notion of "unwelcomeness." What I learned through interviews with restaurant workers was that not all sexual experiences at work were clearly identified as being "unwelcome," often times they just *were*.

When it came to reading and analyzing sexual harassment cases, my approach was similar to my approach to the legal literature in that I started broadly to get a sense of the law and later narrowed my review using what I was learning from interviews with restaurant workers. I read the cases as critical feminist legal scholars do, that is, with a concern with "the connection-or lack therefore- between law and women's lives" (Hunter 2013: 206). I started with the milestone legal decisions, and their corresponding commentaries by legal academics (case comments). By the term "milestone cases" I am referring to cases that marked a turning point in sexual harassment law jurisprudence. The topic of the legal treatment of sexual harassment is extensive. The way in which I sorted through and navigated the sexual harassment case law was deliberate and informed by my institutional ethnographic approach. My interviews with restaurant workers were crucial in deciding what questions and directions to explore and focus on. Given how important the context of the restaurant work environment is to understanding the experiences of my informants, as I was reading the early milestone sexual harassment cases I questioned how the workplace environment was or was not reflected in law's understanding of sexual harassment, especially environments rampant with sexualized

behaviour. The two milestone cases when it comes to defining sexual harassment, *Bell*[3] and *Janzen*, both occurred in restaurants. After reading the Supreme Court of Canada's definition of sexual harassment provided in the *Janzen* decision, as I mentioned above I became curious about the requirement that conduct be "unwelcome" to be legally defined as sexual harassment. This curiosity was linked to what I was learning from the restaurant workers I interviewed. Given the extent to which my informants seemed to tolerate the uncomfortable sexual interactions they experienced, and how some even learned to *expect* this behaviour as part of their job, I found it important to interrogate the notion of unwelcomeness and the requirement that for behaviour to constitute sexual harassment in law it must be "unwelcome."

This dissertation explores those types of restaurants brought into focus by the respondents in my ethnographic research, which are restaurants in which issues of sexual harassment appear as a normal "hazard" of the work situation for women. My dissertation argues that work in full-service restaurants is organized in a manner that normalizes women's unwanted or uncomfortable sexual interactions at work with managers, customers, and co-workers. "Dealing" and "putting up" with sexualized behaviour at work becomes a part of the labour process for women restaurant workers. In this way, what comes to be seen as "acquiescence" is socially constructed. First, there is a complex interaction between the social context of restaurant work, workplace practices in restaurants, and inadequate employment standards laws that constructs precarious working conditions wherein workers have little economic or job security and rely on customers for tips. The involvement of customers remunerating workers with tips, a practice legally legitimized and reinforced with lower minimum wages for alcohol

[3] *Bell v the Flaming Steer Steak House Tavern Inc*. (Ont. 1980), 1 CHRR D/155 (Shime).

servers, means workers endure sexualized and discriminatory behaviour at work in exchange for tips. Second, restaurant work is highly feminized. Gendered social relations are reflected in managerial hiring practices and restaurant dress codes. Through these practices women learn that femininity and a sexualized presentation of their self is associated with their employment. And third, sexual harassment law in British Columbia embodies and (re) creates the gendered subtext of the workplace. The individualized human rights complaint process and framework in BC and the requirement on complainants to satisfy the reasonably objective test contribute to the normalizing of women's uncomfortable or unwanted sexual experiences. Workers carry the burden for addressing sexual harassment in the workplace.

4. Thesis structure and chapter outline

I develop my argument over seven chapters. Chapter 2 turns to the puzzle posed at the beginning of this introductory chapter, that is, sexual harassment as both a pervasive feature of restaurant work and illegal sex discrimination in employment. In line with the socio-legal analysis of my research, chapter 2 combines feminist legal literature and socio-legal research on sexual harassment in work organizations to read the legal treatment of sexual harassment in broader context. It provides important background for my third research question. Drawing on the ground-breaking work of feminist researchers Constance Backhouse and Leah Cohen (1978) the chapter begins by discussing the origins of naming "sexual harassment" in Canada through consciousness raising—women speaking to other women about their experiences in paid work. The chapter examines how sexual harassment went from a publically named phenomenon to a

prohibited form of sex discrimination contrary to human rights legislation. I also review the milestone cases in sexual harassment law in Canada, the cases that established sexual harassment to be a prohibited form of sex discrimination for which employers can be held legally liable for the sexually harassing actions of supervisors, employees, and customers or clients. The chapter also queries how feminist lawyers and legal scholars have understood the limitations of sexual harassment law and also how law and society researchers have explored women's experiences of sexual harassment within the context of specific workplaces. Feminist lawyers and legal academics have importantly argued the ways in which law defines and constructs "sexual harassment," reflects pervasive gendered stereotypes. As I argue in chapter 2, however, legal reforms based on this criticism have placed too much emphasis on fixing legal doctrine to better encapsulate women's experiences of sexual harassment at work, rather than examining workplaces for answers as to why sexual harassment law may not be working. The chapter also looks at the work of researchers Quinn (2000) and Marshall (2003, 2005) who have taken a socio-legal approach to investigating women's experiences of sexual harassment in the workplace in the context of the US. Both Quinn and Marshall interviewed women about their experiences with sexual harassment; however, the two projects are still driven by the law. Moreover, their analyses are limited by an uncritical approach to the law and a failure to question legal definitions of sexual harassment and the process through which something comes to be known in law as sexual harassment.

Chapter 3 describes how my socio-legal dissertation has been informed by a feminist mode of inquiry called institutional ethnography. It explains how I came to my research questions and how I answered them. Developed by sociologist Dorothy E. Smith

(1987, 2005, 2006), institutional ethnography is an alternative form of sociology crafted with the intention to map out how our world is put together so we experience it as we do. As I mentioned earlier, institutional ethnography is an emergent research practice that begins with people's lived experiences and explicates the social relations that organize daily life. In addition to providing an introduction to institutional ethnography, chapter 3 describes my empirical research process, including how I carried out the research and analyzed the data. As the chapter explains, what I learned from interviewing both former and current restaurant workers was subsequently used to focus my legal analysis of both employment law and policy, and the treatment of sexual harassment under BC's human rights system.

Chapters 4, 5, and 6 build upon each other and answer research questions one and two. Drawing on interviews with restaurant workers, chapter 4 describes working conditions typical for my informants. The chapter provides a statistical portrait of the people who work in the full-service restaurant industry in BC (and Canada more broadly) and details how jobs within restaurants are vertically and horizontally segregated based on sex. Drawing on interviews with restaurant workers, the chapter presents workers' accounts of the "mind work" and physical labour that restaurant work entails. The main purpose of the chapter is to explicate the precarious working conditions that come along with being in the industry. Throughout the chapter I argue that working conditions in restaurants create an environment in which workers have little employment security, a product I propose, of a complex interaction between the social context of restaurant work, low and inadequate employment standards legislation, and customary employment practices or employment norms in the restaurant industry. Understanding how labour law

and workplace practices organize restaurant work to be precarious matters because this is the context within which women's experiences of unwanted or uncomfortable sexual experiences at work are happening. I develop this argument through the dissertation. A key part of how restaurant work is made economically insecure for women working as bartenders, hosts, and servers is the wage-tip relation, a mode of worker remuneration that incorporates customers and is condoned and legitimized by law.

Women I interviewed spoke about feeling pressured to look, and act in a certain manner when at work. Chapter 5 investigates gendered "expectations" women encounter at work. I examine the relationship between gendered social relations and the hiring practices of those restaurant managers who emphasize physical and "attractive" appearance, employer mandated dress codes and the dressing practices of workers, the "nature" of customer service work, and the wage-tip relation. I argue that the involvement of customers in paying workers through tips—an insecure form of income in the context of insecure work—is a practice that contributes to and reproduces the gendering of restaurant work. Tips are often a form of institutionalized *quid pro quo*: going along with a customer's sexual behaviour is exchanged for a tip.

Chapter 6 is concerned with how women restaurant workers experience unwanted or uncomfortable sexual attention or sexual harassment from managers, co-workers, and customers. The chapter asks, how do women respond to and subsequently think about sexual interactions in the workplace? Workers learn to *put up, take, and deal with* these experiences as a part of their work, or quit. Chapter 6 also explicates the challenges women face when questioning unwanted or uncomfortable sexual experiences, or when naming them "sexual harassment." In protesting against experiences at work they are

uncomfortable with, women working as hosts, servers, bartenders, or in restaurant kitchens confront discourses that frame the interactions as "jokes" or "guys being guys." The chapter shows how the way that women restaurant workers take up, handle, and make sense of their experiences is shaped by the social practices, material conditions, and discourses that construct restaurant work As the chapter explains, the women I spoke with did not turn to law to file complaints of sexual harassment. It was also rare for women to complain to their managers. The most visible way women would protest against the sexually harassing practices they were uncomfortable with was to quit. Worker "acceptance" of sexualized interactions that make them uncomfortable is rooted in structural and institutional constraints.

Chapter 7 turns to explore the legal treatment of sexual harassment under anti-discrimination law in BC. The chapter answers my third research question. It analyzes the unique legal landscape for administering human rights in BC—the tribunal only model, or "direct-access model," which is complaints driven. The chapter also builds on chapter 2 and unpacks the doctrinal definition of sexual harassment in BC, which defines sexual harassment as "unwanted" or "unwelcome" sexual conduct, a requirement I argue is problematic for restaurant workers. The chapter argues that the administration of sexual harassment law via a complaint driven process and the requirement on complainants to satisfy the reasonably objective test (re)create the gendered subtext of restaurant work and contribute to the normalizing of sexual harassment in the restaurant industry.[4]

[4] I am using the notion of a "gender subtext" as Dorothy E. Smith has to bring attention to the "gender organization of the apparently neutral and impersonal rationality of the ruling apparatus" or "relations of ruling." (1987: 2-4).

Chapter 8 concludes this dissertation. In the chapter I review my main arguments and briefly discuss recent resistance to sexual discrimination in the restaurant industry and directions for future research.

Chapter 2

Examining sexual harassment: from the women's movement to law, from law to everyday experience

It's a very sexual job, and that's how you make most of your tips. That means you have to smile through abusive remarks made by the customer. You have to take a lot of hassles, everything from comments to being propositioned outright. (Rosalie, waitress. Cited by Backhouse and Cohen. 1978.)

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, is that you're gonna get hit on. (Amanda, waitress and bartender. 2013)

1. Introduction

Both Rosalie and Amanda speak to how facing sexual behaviour from customers is an integral part of their job working in a full-service restaurant. Rosalie's statement appeared thirty-eight years ago in the first book written in Canada on the topic of sexual harassment, *The Secret Oppression: Sexual Harassment of Working Women* (1978), by Constance Backhouse and Leah Cohen. The book starts by presenting seven interviews with women working in different occupations, including the interview with Rosalie Adams, a waitress.[1] Rosalie explains that as a waitress she had to take a lot of "hassles." She went on to describe the hassles, which included pinching, grabbing, and leering, crude remarks, and being propositioned. When asked why she put up with all of it, she answered, "Surviving depends on your tips" (1978: 9). The second statement quoted above is from Amanda, a waitress and bartender I interviewed in 2013. Close to four-decades separate the work experiences of the two women. During this time, the legal

[1] The other case studies included: the office worker, the construction worker, the graduate student, the professional, the stripper, and the government employee.

treatment of sexual harassment at work has drastically changed. Backhouse and Cohen were writing their ground-breaking book at a time when human rights commissions were refusing to accept complaints about sexual harassment, arguing that such instances did not constitute a form of discrimination (Backhouse and Cohen 1978: 118-119). Sexual harassment is now unlawful. Landmark legal cases from the 1980s interpreted sexual harassment to be a form of sex discrimination for which an employer can be held legally liable. In light of these developments, the resemblance between how Rosalie and Amanda speak about their work—how they discuss the role of sexual behaviour and abuse in earning an income—is unsettling. What is also unsettling is the fact that with the exception of the excerpt from Rosalie presented in Backhouse and Cohen's book, and this dissertation, there is no other research in Canada dedicated to understanding the experiences of women full-service restaurant workers who face sexual harassment.

Sexual harassment is both a pervasive feature of restaurant work and illegal. What accounts for this discrepancy? This chapter wrestles with this broad question by examining how feminist lawyers and legal scholars have reflected on the limitations of sexual harassment law and how law and society researchers have explored women's experiences of sexual harassment within the context of specific workplaces. The naming of sexual harassment emerged from consciousness raising practices during the second wave feminist movement and this chapter begins here. Next I review the milestone cases impacting sexual harassment law in British Columbia. With this background, I discuss the feminist literature on sexual harassment law in Canada, asking, how have feminists understood the limits of the law? I provide a selective overview of the key conversations feminist legal scholars had (and continue to have) when evaluating sexual harassment

law. As I explained in chapter 1, the purpose of this literature review is to explore how feminist lawyers and legal scholars make sense of the disjuncture between the legal treatment of sexual harassment as an illegal form of sex discrimination and the on-going prevalence of sexual harassment for women in paid work.[2] Next, I review research from law and society scholarship that works towards understanding the relationship between the law and women's on going experiences of sexual harassment at work. Although the understanding of sexual harassment as a legal harm emerged from consciousness raising practices connected to women's experiences, sexual harassment law has not yet systemically changed the experiences of sexual harassment women face at work. What is needed to understand this disjuncture is a close examination of women's uncomfortable or unwanted sexual experiences within the specific context of a given workplace.

2. Sexual harassment: voicing experience and fighting for legal recognition

> Sexual harassment as defined by women recognizes outright the legitimacy of the claim that sexual harassment is a woman's experience and, in whatever form, is injurious to women as a class. (Goundry 1985: 8)

Before the phrase "sexual harassment" entered our legal lexicon it emerged from consciousness raising practices of the women's movement—women speaking to other women about their experiences of paid work. The first use of the phrase sexual harassment has been traced to feminist activists in Ithaca, New York in 1975. Women were struggling for language to capture the behaviour of men at work that they found

[2] As I explained in the introduction to this dissertation, I began reading the literature broadly, starting with the classics (Backhouse and Cohen, and MacKinnon). I then conducted a systematic search of the "Index to Canadian legal literature" using the search terms: "sexual harassment" and "employment"/ "work"/ "labour," which directed me to 83 publications. I read these works with the intention of analyzing how scholars and lawyers have understood law and law's ability and inability to address the unwanted or uncomfortable sexual experiences of women in paid work as "sexual harassment."

uncomfortable (Farley 1978, Brownmiller 1999, Backhouse 2012: 278). As one activist recalled, "We were referring to it as 'sexual intimidation,' 'sexual coercion,' 'sexual exploitation on the job.' None of those names seemed quite right. We wanted something that embraced a whole range of subtle and unsubtle persistent behaviors. Somebody came up with 'harassment.' *Sexual harassment!*" (Karen Sauvigne, as cited by Brownmiller 1999: 281). The term began to spread. The American feminist magazine *Ms.* is credited for making sexual harassment a household phrase after devoting their 1977 November issue to the topic (Backhouse 2012: 279). Shortly thereafter, came pioneering work published on sexual harassment (Farley 1978 and MacKinnon 1979 in the US and Backhouse and Cohen 1978 in Canada).

In 1978, Constance Backhouse and Leah Cohen published their seminal book devoted to the topic of sexual harassment. In writing *The Secret Oppression*, Backhouse and Cohen were inspired by their own experiences of sexual harassment (Backhouse 2012: 278). The authors used consciousness raising methods to gather and learn from the stories of other women. Backhouse (2012: 278) recently reflected on the process of researching and writing the book:

> We began to talk with female friends and colleagues and learned to our surprise that most of them had similar stories to tell. In fact, although none seemed to have a name to identify the problem, it took very little probing before every single woman described at least one experience of unwelcome male sexual aggression at work.

The Secret Oppression pulled together ground-breaking research on women's accounts of unwanted sexual attention from men at work. From exotic dancers to government workers, a strong theme of the book was highlighting the omnipresent problem: any woman could be subjected to sexually harassing practices from managers, co-workers,

and even customers or clients.[3] Connecting women's personal stories was pivotal to how the problem of sexual harassment came to be conceptualized as a broader systemic phenomenon.

Central to the concept of sexual harassment developed in *The Secret Oppression*, was an understanding of sexual harassment as a societal level problem symptomatic of gender and economic relations of power.

> Sexual harassment is not an expression of sexual desire. Men who sexually harass are not behaving as lovers, but as bullies. It is a demonstration of power politics, an assertion of power that happens to be expressed in a physical manner. It is the ultimate reminder to women that their fundamental status in society is that of a sex object, and that they hold their positions in the workforce on male sufferance. (Backhouse and Cohen 1978: 42)

This conceptual framing of sexual harassment challenged discourses that excused sexual harassment as courtship or as men's inevitable sexual desire, exemplified in the following quotations: "men are in a constant state of sexual anxiety" ruled by their hormones to "quest, pursue, court, or seize" the female sex (Paglia 1992, as cited by Tangri and Hayes 1997: 114). As I will later discuss, this biological/natural approach to explaining sexual harassment was even favoured by a court of appeal during the early developments of sexual harassment law in Canada. In stark contrast to theories that dismiss sexual harassment as natural, an apparent biological justification for the idiom "boys will be boys," the analysis put forward by Backhouse and Cohen argued that sexual harassment was a phenomenon constructed by patriarchal and capitalist power relations (Backhouse and Cohen 1978). The material context within which women's experiences happen, in both paid work and society broadly, was seen as crucial to understanding sexual harassment as a systemic problem. The authors employed language such as "coercive

[3] While recognizing the possible wide range of experiences, the examples from the book tended to follow the pattern of a male boss or supervisor harassing a female subordinate.

sexuality" to capture the connection between sexual harassment and economic dependency inherent in an employee relationship (Backhouse and Cohen 1978).

In conceptualizing sexual harassment in a systemic manner, the work of Backhouse and Cohen was similar to the work of American feminist legal scholar Catharine MacKinnon (1979). Catharine MacKinnon also argued that sexual harassment was an abuse of both economic and sexual inequality in a patriarchal society marked by a gendered hierarchy where men are superior to women. Sexual harassment, MacKinnon proposed, was "the unwanted imposition of sexual requirements in the context of a relationship of unequal power" (MacKinnon 1979: 1). According to MacKinnon, vertical occupational segregation that had women working in positions in which men were responsible for hiring, promoting, and firing, and horizontal occupational segregation that had women "working as women" in low-wage service and clerical work, rendered women structurally vulnerable to the sexually harassing practices of men. At the same time, these sexually harassing practices *kept* women in inferior positions in the workplace (MacKinnon 1979: Chapter 2). MacKinnon's work outlined two forms of sexual harassment: *quid pro quo* and condition of work. *Quid pro quo* sexual harassment was used to capture actions that made the connection between complying with sexual advances and employment benefits explicit. "[S]exual compliance is exchanged, or proposed to be exchanged, for an employment opportunity" (MacKinnon 1979: 32). In contrast, "condition of work" sexual harassment, was used to describe experiences whereby behaviour such as pinching, being felt up, starred at, or undressed visually would be a persistent element of the work, but not explicitly connected to job benefits or reprisals. When sexual harassment is a condition of work, women may never know if the

harassment will stop or worsen: "a woman can put up with it or leave" (MacKinnon 1979: 40). The ground-breaking work of MacKinnon, and Backhouse and Cohen, was not only a form of consciousness-raising but also a project for change and law was their instrument.

Beyond publically naming women's uncomfortable experiences with men in employment, feminist legal activists pushed for the recognition of sexual harassment in law. As the legal landscape for addressing sexual harassment in the US and Canada are different in important respects, I will focus my analysis on law and sexual harassment in the context of Canada.[4] Backhouse and Cohen used their writing to "demystify the law" (1978: 108) for their audience. In doing so, however, they were cognizant that it would be incorrect to assume that education alone could solve the problem of sexual harassment for women "in desperate financial straits" facing a "sexually coercive employer" (1978: 65). Moreover, while there was hope that law could be a "powerful tool" for changing women's experiences of sexual harassment at work, they also recognized that the "male perspective" permeated law. As Backhouse and Cohen explained, "the courts are imbued with discriminatory attitudes which beset society at large. Sexist justice is by no means a relic of the past" (Backhouse and Cohen 1987: 106). With these caveats, the book provided an introductory guide for women interested in pursuing legal action and surveyed and evaluated the limited legal options for women (e.g. unions, criminal law, and anti-discrimination law).

[4] I am focusing on Canada, and BC specifically, to explore the legal landscape within which the restaurant workers who participated in this study are located. As I will explain in detail in chapter 7, BC has a unique legal approach to addressing sexual harassment that is often overlooked.

For example, in the late 1970s, sexual harassment was not a concern for unions focused on "hard money issues" such as wages, overtime pay, and vacation pay.[5] The position of unions was that, as democratic institutions, they would respond to issues relevant to the majority of their members and sexual harassment, it was argued, did not constitute such an issue (Backhouse and Cohen 1979: 91); unions were reluctant to take up something that was deemed to be a separate "women's issue" (Kadar 1983).[6] Given the challenges of using unions, Backhouse and Cohen discussed the use of anti-discrimination law as a tool with which to frame sexual harassment and challenge sexually harassing practices as a form of sex discrimination.[7]

Using human rights legislation with existing prohibitions against sex discrimination was an appealing option for addressing sexual harassment.[8] Every province and federal jurisdiction at the time had human rights legislation prohibiting sex discrimination in employment. Provincial and federal human rights legislation was

[5] Although unions at the time may not have identified them, there are economic losses associated with sexual harassment. These include, economic loss from looking for a new job when a woman is fired for not complying with sexual advances, or quits; the loss of non-transferable job benefits, including job seniority or a favourable letter of reference from an employer; and, overall higher unemployment rates and lower levels of continuous employment (Farley 1978).

[6] There were additional reasons why unions were not considered a promising option for taking up sexual harassment. With so few women unionized, 25 percent at the time, most women were not union members (Backhouse and Cohen 1979: 90-91). Moreover, women who *were* unionized faced challenges. First, a woman could only seek redress through a grievance when there had been a breach of a collective agreement and few contracts at the time dealt with "sexual harassment." Second, although adjudicators (theoretically) are to be unbiased, because so many were men, Backhouse and Cohen suspected they would likely hold male biases reflected in wider society. This suspicion indicates that early on, when strategizing about how to use law to combat sexual harassment, feminists were cautious of law's supposed gender neutrality and leery of the male bias in law (this concern was also expressed by MacKinnon 1979, 1987).

[7] This approach, of engaging with anti-discrimination law, was in harmony with the energy feminist labour law scholars were devoting to figuring out how to use this area of law to address issues of wage discrimination, pregnancy, and maternity leave (see Fudge 2013: 323).

[8] Despite some persistent and absurd positions human rights commissions took toward sexual harassment at the time, Backhouse and Cohen observed human rights commissions were beginning to entertain the idea that sexual harassment *could* be a form of sex discrimination. Alberta, however, was one such jurisdiction refusing to accept complaints of sexual harassment. The chairman of the Alberta human rights commission proposed: "Sexual harassment does not necessarily involve discrimination. In a one-man, one-woman office, either could be guilty of sexual harassment, but it is difficult to see how a discriminatory practice is involved" (Backhouse and Cohen 1978: 119).

accompanied by human rights commissions: specialized, administrative bodies created under the legislation, responsible for administering and enforcing the human rights legislation.[9] The function and importance of human rights commissions in administering human rights legislation has been explained as follows:

> Modern day human rights legislation is predicated on the theory that the actions of prejudiced people and their attitudes can be changed and influenced by the process of re-education, discussion, and the presentation of dispassionate socio-scientific materials that are used to challenge popular myths and stereotypes about people…Human Rights legislation on this continent is the skillful blending of educational and legal techniques in the pursuit of social justice. (Dr. Daniel Hill, former Director and Chairman of the Ontario Human Rights Commission, as cited by Tarnopolsky 1982: 31-32).

Commissions are generally mandated to administer and/or enforce human rights legislation, and conduct research and educate the public on human rights. (These functions have changed over time in some jurisdictions, including Ontario and British Columbia. Chapter 7 details these changes). A person who believes they have experienced discrimination can file a complaint to a human rights commission, and, a commission can also initiate complaints pertaining to issues of systemic discrimination. A complaint made to a human rights commission is assessed by commission staff, usually an "intake officer" or "human rights officer," who decides whether the complaint falls under its jurisdiction and whether there is enough merit to the complaint for it to proceed. If the complaint proceeds, an officer of the commission will investigate the complaint, seek a voluntary settlement through mediation, and submit a report to the commission documenting the findings of the investigation and mediation process. However, in

[9] The manner through which commissioners are appointed, the number of commissioners, and the length of their term all varies depending on jurisdiction. As the information here is intended to provide a brief introduction to human rights commissions and tribunals, I do not detail the architectural specifics of commissions, but instead describe general principles. Chapter 7 will discuss BC's human rights system in detail.

jurisdictions in which the human rights commission is given carriage of the complaint, the commission can decide to reject the settlement with the hope to proceed to a human rights tribunal for a hearing; for instance, when the complaint involves something of public importance or involves employees beyond the complainant (England 2008: 246-253).

If a human rights complaint does not end during the settlement stage, and the commission does not thereafter dismiss the complaint based on the report, the complaint may proceed for adjudication by tribunal. A human rights tribunal, either standing or ad hoc, is a specialized administrative agency created by human rights legislation. The hearing process is similar to a court: complainants and respondents can be represented by lawyers during the hearing, evidence is presented, and witnesses can be called and also cross examined. An attractive feature of addressing sexual harassment through human rights legislation is that accessing a human rights commission is free and the process, including the tribunal proceedings, are intended to be less formal and more accessible than courts.

Despite the appeal of using anti-discrimination law to combat sexual harassment, human rights commissions in the 1970s initially deterred or altogether rejected sexual harassment complaints on the basis that sexual harassment was not covered under the legislation. The position of commissions began to change as women spoke up about the prevalence and gravity of the problem (Backhouse and Cohen 1978: 118-119). At the time when *The Secret Oppression* was published, of sexual harassment complaints that were accepted by human rights commissions, the majority were found to be "unsubstantiated": of 13 cases, 4 ended in settlements and the remaining 9 were found to

be "unsubstantiated" (Backhouse and Cohen 1978: 122-127). And, some human rights commissions, such as Alberta, still rejected the idea that sexual harassment could be prohibited under human rights anti-discrimination protections (Backhouse and Cohen 1978: 118-119). The status of sexual harassment in law in Canada was unclear since no jurisdiction in the country had legislation mentioning sexual harassment and no human rights tribunal had answered whether sexual harassment constituted sex discrimination.

3. Milestone sexual harassment cases

It was not long after Backhouse and Cohen's breakthrough book before sexual harassment case law began to accumulate, as greater numbers of women lodged sexual harassment complaints with human rights commissions. I will now turn to the landmark cases establishing sexual harassment as a prohibited form of sex discrimination, and employer liability for the sexually harassing practices of supervisory employees, co-workers, and third parties, including sexual harassment from customers. I will also discuss the legal treatment of sexist dress codes as sex discrimination.[10]

In 1980, the first sexual harassment complaint went beyond a human rights commission to an Ontario Board of Inquiry where sexual harassment was determined to be a prohibited form of sex discrimination.[11] The case, *Bell v Ladas*, involved two female waitresses who were subjected to verbal and physical forms of sexual harassment by their boss. Owen Shime, who made up the one-person Board of Inquiry, wrote a decision filled

[10] In chapter 1 I outlined my legal methodology for selecting cases. The purpose of this section is to briefly provide an overview of the landmark sexual harassment cases in Canada. Some of the cases explored in this section of the chapter are taken up in greater detail in chapter 7.
[11] *Bell v the Flaming Steer Steak House Tavern Inc*., (Ont. 1980) 1 CHRR D/155 (Shime).

with powerful statements about the promise of law in combatting sexually harassing practices in the workplace. As Shime's decision reads:

> There is no reason why the law, which reaches into the workplace so as to protect the work environment from physical and chemical pollution or extremes of temperature, ought not to protect employees as well from negative psychological and mental effects where adverse and gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment.[12]

The *Bell* case was celebrated as a victory for deciding an important legal question and in so doing recognizing women's experiences of sexual harassment as a legal harm. Human rights commission and tribunals across Canada followed *Bell* and a few jurisdictions amended their human rights laws to explicitly protect against sexual harassment.[13] The question as to whether sexual harassment counted as discrimination seemed to be put to rest, that is, until a decision in 1986 by three judges on the Manitoba Court of Appeal.[14]

In *Janzen v Platy* two waitresses who worked in a restaurant in Winnipeg, Dianna Janzen and Tracy Govereau, complained about being subjected to verbal and physical sexually harassing practices of a cook, Tommy Grammas, who also had supervisory

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[12] *Ibid* at para 1389.

[13] Ontario was the first jurisdiction in Canada to amend human rights legislation to directly prohibit "sexual harassment." The Ontario *Human Rights Code*, 1981 S. Ont. 1981, c 53 at s (2) and (3) read:
(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.
(3) Every person has a right to be free from,
(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
(b) a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.
The sexual harassment provision of the Ontario *Human Rights Code* now reads: "Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee." *Human Rights Code*, RSO 1990, cH 19, s 7(2).

[14] *Janzen v Platy Enterprises Ltd.,* (Man. C.A.) [1986] MJ No 560.

responsibilities. The Manitoba Human Rights Tribunal[15] agreed with the complainants and found that sexual harassment had occurred in breach of the sex discrimination provision of the human rights legislation; the Manitoba Court of Queen's Bench subsequently upheld the decision.[16] However, the Manitoba Court of Appeal overturned it, arguing that sexual harassment did not constitute discrimination on the ground of sex under the *Human Rights Act*. The Court reasoned that sexual harassment could not be equated with sex discrimination because sexual harassment was motivated by sexual attraction—a personal characteristic of the complainants, which the Court proposed, was separate from gender. Sexual harassment, the Court stated, "Involves vexing or troubling a person with respect to sexual matters such as repeatedly touching or making suggestions, or threats… When a schoolboy steals kisses from a female classmate, one might say that he is harassing her. He is troubling her; vexing her; harrying her; - but he surely is not discriminating against her." [17] This judgment reflected the idea that sexual harassment is based on sexual attraction, echoing the biological/natural model of sexual harassment feminists naming sexual harassment opposed. The Court dismissed the complaints, and subsequently, the Manitoba Human Rights Commission appealed the decision to the highest court in Canada. [18]

In 1989, seven judges sitting on the Supreme Court of Canada unanimously affirmed sexual harassment to be a form of sex discrimination that "detrimentally affects

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[15] *Janzen and Govereau v Platy Enterprises Ltd.,* (1985) 6 CHRRD/2735 (Man. Bd. Adj.).
[16] *Janzen and Govereau v Pharos Restaurant and Grammas et al.,* [1985] MJ No 476.
[17] *Ibid* at 5.
[18] The appellants raised four grounds of appeal: (1) the appeal court erred in finding sexual harassment of the type the complainants experienced was not sexual harassment; (2) the appeal court erred finding that the employer could not be held liable for sexual harassment; (3) the appeal court erred in confirming the Queen's Bench decision to reduce damages awarded by the human rights tribunal adjudicator; and, (4) the court of appeal erred in awarding costs against the Human Rights Commission for the hearing before the adjudication board. *Janzen v Platy Enterprises* [1989] 1 SCR 1252 at 1276.

the work environment or leads to adverse job-related consequences for the victims of the harassment." [19] In defining sexual harassment, the Court considered the definitions put forward in the books published Backhouse and Cohen (1978), MacKinnon (1979), and Aggarwal (1979).[20] The Court's definition of sexual harassment resembled a feminist understanding of sexual harassment as happening within the context of economic and sexual power relations.

> 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.[21]

This discussion of sexual harassment suggests the growing influence of feminist legal scholars on this aspect of the law. The Supreme Court firmly rejected the Manitoba Court of Appeal's argument that sexual harassment was based on the personal characteristic of sexual attractiveness and therefore could not be connected to a group claim based on sex or gender.

> To argue that the sole factor underlying the discriminatory action was the sexual attractiveness of the appellants and to say that their gender was irrelevant strains credulity. Sexual attractiveness cannot be separated from gender. The similar gender of both appellants is not a mere coincidence, it is fundamental to understanding what they experienced. All female employees were potentially subject to sexual harassment by the respondent.[22]

With the Supreme Court's decision, all human rights statutes in Canada whether or not they expressly mentioned sexual harassment were to be interpreted as including sexual

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[19] *Ibid* at 1253.
[20] *Ibid* at 1279-1281. The Court quoted definitions of sexual harassment put forward by the authors. In defining sexual harassment the Court was influenced by a feminist approach to sexual harassment by recognizing sexual harassment as happening in the context of a relationship of unequal power, specifically economic and sexual power.
[21] *Ibid* at 1284.
[22] *Ibid* at 1290.

harassment as a form of prohibited sex discrimination.

Another significant development in sexual harassment law came with the introduction of employer liability for sexual harassment committed against its employees. Imposing employer liability for sexual harassment had widespread implications for employers, including pressuring employers to become more involved in preventing sexual harassment (Aggarwal and Gupta 2000: 265). Employer liability first encompassed the sexually harassing practices of employers and was later extended to practices of supervisory employees, co-workers, and third parties such as customers. In *Robichaud v Canada*,[23] the Supreme Court of Canada addressed the question as to whether an employer is responsible for the discriminatory acts of its employees in the course of their employment, and specifically, acts that amount to sexual harassment. Bonnie Robichaud began working as a cleaner for the Department of National Defence at its Command Base and was later promoted to lead hand. Dennis Brennan, the foreman of the cleaning department and Robichaud's supervisor, sexually harassed her. The Court determined that the purpose of the *Canadian Human Rights Act* was to "give effect to the principle that every individual should have an equal opportunity with other individuals to live his or her own life without being hindered by discriminatory practices based on certain prohibited grounds of discrimination."[24] It also decided that this aim was to be achieved by identifying and eliminating discrimination rather than finding fault and punishing those who discriminate.[25] The Court argued that those people who control an

[23] *Robichaud v Canada (Treasury Board),* [1987] 2 SCR 84.
[24] *Ibid* at 89.
[25] The Court cited the broad purposive interpretation it gave to human rights legislation in its decision of *O'Malley v Simpsons Sears Ltd.,* 1985 2 SCR at 547: "The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to

organization are in the best position to fulfill this purpose by taking remedial action. As the decision explained, "The Act is concerned with the effects of the discrimination rather than its causes (or motivations): only an employer can remedy undesirable effects and only an employer can provide the most important remedy - - a healthy work environment."[26] Before the *Robichaud* decision human rights Tribunals had to undergo "legal gymnastics" to find an employer liable for discriminatory actions of its employees (Aggarwal and Gupta 2000: 257).[27] The Supreme Court refused to attach a specific label to employer liability for sexual harassment, and instead proposed that employer liability is "purely statutory."[28]

In finding employers responsible for discriminatory acts of supervisory employees, the Supreme Court of Canada briefly touched upon the effect employer conduct may have on the extent to which an employer is liable for sexual harassment, when it comes to remedial consequences. As the Court explained:

> while the conduct of an employer is theoretically irrelevant to the imposition of liability in a case like this, it may nonetheless have important practical implications for the employer. Its conduct may preclude or render redundant many of the contemplated remedies. For example, an employer who responds quickly and effectively to a complaint by instituting a scheme to remedy and prevent recurrence will not be liable to the same extent, if at all, as an employer who fails to adopt such steps. These matters, however, go to remedial consequences, not liability.[29]

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provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant," *Robichaud*, supra note 23 at 90.

[26] *Ibid* at 85.

[27] As Aggarwal and Gupta (2000: 251-258) explain, prior to the Supreme Court of Canada decision in *Robichaud* Tribunals either used the "organic theory of corporate responsibility," requiring the harasser be the directing mind of the corporation, or the common law "theory of vicarious liability," extending only to behaviour authorized by the employer in the course of employment. The Supreme Court's decision "alleviated uncertainty and confusion regarding an employer's potential liability for conduct of its employees, which had been created by the lower court's decision" (Aggarwal and Gupta 2000: 258).

[28] *Supra* note 23 at 95.

[29] *Ibid* at 96.

This statement, indicates that steps taken by an employer could impact the extent to which an employer is liable, for instance by reducing the compensation paid to complainants, but will not negate liability. However, some jurisdictions that include liability provisions in their human rights statutes, such as the Manitoba and federal human rights acts, go further by incorporating specific statutory provisions allowing for a due diligence defence.[30] However, in jurisdictions in which there is no due diligence defence in the human rights statute, adjudicators and courts must rely on the *Robichaud* decision.

While the *Robichaud* decision dealt specifically with the discriminatory conduct of supervisory employees, employer liability for the discriminatory sexually harassing conduct has been extended to all employees and not just those with supervisory duties. For instance, in 1989, in *Wilgan v Wendy's Restaurants of Canada*,[31] the British Columbia Council of Human Rights found an employer liable for a non-supervisory employee who harassed other employees. The two complainants, Beverly Wilgan and Lesli Davis, had brought the sexually harassing conduct of their co-worker, Cliff Glegg, to the attention of the managers. Both women subsequently resigned, in part, because they did not think management was acting on their complaints. The Council found Glegg's actions, involving both physical and verbal sexual behaviour, to be sexual harassment, and found

[30] Section 19(1) of the *Manitoba Human Rights Code*, CCSM 1987, c 45, reads: "No person who is responsible for an activity or undertaking to which this Code applies shall (a) harass any person who is participating in the activity or undertaking; or (b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking." The *Canadian Human Rights Act*, RSC 1985, c H-6, also provides a defence of due diligence in section 65(2): "An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof."

[31] 11 CHRR D/119 (BC 1990).

the employer in violation of the BC *Human Rights Act*.[32] The Council also found that although Wendy's management *did* act on the women's complaints against Glegg, management did not inform the women of the action that they took. As the decision from the BC Council of Human Rights reads:

> I am aware that management did respond to the complaints about Glegg's conduct by telling him that his employment would be terminated if such conduct continued, and by ultimately terminating his employment. However, in the absence of a formalized complaint procedure at that time, management failed to communicate their initial actions to the complainants. This was one of the reasons for Davis' resignation. Wilgan's evidence is less convincing and I am left without a clear understanding of why she suddenly decided to resign on the same day as Davis. I have taken these points into consideration in implementing the provisions under section 17 of the Human Rights Act.[33]

The BC Council of Human Rights only cited *Janzen* for the Court's broad definition of sexual harassment and did not refer to the *Robichaud* decision or engage in a discussion on employer liability for co-worker harassment. The employer was ordered to pay the complainants compensation for humiliation and lost wages. The application of *Robichaud* to the situation of co-worker harassment came two years later in a Saskatchewan case involving a cook harassing a waitress—a case that also cited *Wilgan* as being persuasive.

In the case of *Thessaloniki Holdings Ltd v Saskatchewan Human Rights Commission*[34] the Saskatchewan Court of Queen's Bench affirmed the decision of a Saskatchewan Board of Inquiry that found an employer liable for the sexually harassing behaviour of an employee without supervisory powers. The case involved a cook who assaulted a waitress after she walked into the kitchen freezer. The cook grabbed the waitress by the waist, tried to kiss her, and pressed his groin against her buttocks. The

[32] As the decision reads: "the Respondent has contravened section 8 of the Human Rights Act in that the conduct of their employee, Glegg, constituted sexual harassment" (*Ibid* at para 42).
[33] *Ibid* at para 42.
[34] [1991] 6 WWR 590 (Sask. QB)

waitress complained to the employer but remedial action was not taken. At issue in the case was whether employer liability extended to the sexually harassing behaviour of the cook who did not have supervisory powers. In answering in the affirmative the Saskatchewan Court of Queen's Bench explained:

> The cook's opportunity to accost the complainant was related to their employment. She was obliged by her job to pass through the kitchen to gain access to the cooler. Obviously, the kitchen was the cook's domain. It would be difficult to say the offensive conduct was not in some way related or associated with the employment. True, the cook had no supervisory authority over the complainant, such as existed in both Robichaud and Janzen, but if that were the sole criterion for imputing accountability to the employer, the lengthy analysis in Robichaud would not have been necessary.[35]

The *Thessaloniki* decision was a clear indication that the Supreme Court's finding of employer liability for sexual harassment in *Robichaud* applies to the behaviour of non-supervisory employees. [36]

Tribunals have also extended employer liability for sexual harassment to include the sexually harassing practices of customers.[37] Katherine Lanteigne worked at Sam's Sports Bar as a server from September 1994 to January 1995 when she was fired.[38] During an evening shift while Lanteigne was at the bar waiting to pick up a drink order, a "regular" customer grabbed Lanteigne's breast as he was leaving the restaurant. Lanteigne immediately told her manager, who took no immediate action. Lanteigne later raised the issue of sexual harassment at two separate staff meetings and asked if the

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[35] *Ibid* at 3.
[36] The Nova Scotia Human Rights Board of Inquiry treated the *Thessaloniki* (1991) decision as persuasive in *Miller v Sam's Pizza House*, [1995] NSHRBID No. 2.
[37] The BC case discussed here (*Lanteigne*) cited an earlier case from Saskatchewan called, *Nixon v Greensides* Sask., 1992, CHRR D/469 Sask. Bd. Inq. *Nixon* also involved a customer sexually harassing a woman who worked in a bar and employer liability was extended to encompass the employee sexual harassment from the customer. The finding from *Nixon* that an employer can be held liable for the sexual harassment of customers was upheld by the Saskatchewan Court of Queen's Bench, *Greensides v. Saskatchewan* (Human Rights Comm.) (Sask. QB) 1993, 20 CHRR D/474.
[38] *Lanteigne v Sam's Sports Bar Ltd.* (c.o.b. G.G.'s Sports Bar) [1998] BCHRTD No. 40.

restaurant could establish a policy to handle sexual harassment from customers. Three days after the second staff meeting, Lanteigne was fired. She subsequently filed a human rights complaint with the BC Human Rights Tribunal arguing that she was fired for inquiring about a customer sexual harassment policy. Her employer, Ms. Laudisio, the bar owner, disputed this claim, arguing that she was fired for being late.

At issue in the case was the question as to whether or not the employer discriminated against Lanteigne based on the grounds of sex (including sexual harassment).[39] Even though it was a customer who sexually harassed Lanteigne the Tribunal found the employer had "an obligation to protect its employees from sexual harassment by its customers."[40] According to the Tribunal the employer did not act in a timely manner and took Lanteigne's experience "lightly." The Tribunal found that the employer's inaction upon learning about the customer's behaviour followed by the firing of Lanteigne for asking about a customer sexual harassment policy constituted a violation of the Human Rights Code.[41] In response, the Tribunal ordered the employer to create a sexual harassment policy to cover behaviour from both employees and customers and ordered the employer to pay for lost wages and compensation for injury to the complainant's dignity, feelings, and self-respect.[42]

Human rights tribunals have also found sexualized dress code requirements based on sex to be a prohibited form of sex discrimination. In *Mottu v MacLeod*[43] (2004),

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[39] *Ibid* at para 12.
[40] *Ibid* at para 15.
[41] *Ibid* at para 19.
[42] However, as I will explain in chapter 7, the Tribunal failed to discuss the important part customers play in tipping workers and creating a work environment that is conducive to sexual harassment. Moreover, in calculating lost wages, the Tribunal decided, "No compensation is to be provided for lost gratuities" (at para 22). It also needs to be said that the claim in *Lanteigne* was strong in that the behaviour complained of was sexual assault from customers.
[43] *Mottu v MacLeod,* [2004] BCHRTD No 68.

Andrea Mottu worked serving drinks at Barfly Night Club. The regular attire for servers consisted of a black shirt and black skirt or pants. However, on one evening the nightclub hosted a beach-themed fundraiser during which the female servers were to dress in a bikini top and sarong or surfer shorts. The male bartenders were to wear a Hawaiian shirt with shorts. Mottu was scheduled to work the fundraiser and she protested the dress requirement. She asked Cass MacLeod, her boss and part owner of the nightclub, if she could wear a summer dress over her bikini top. MacLeod refused her request and informed Mottu that she could either wear the bikini top or not work and not be paid. Mottu went to her union representative, who told her she could not be forced to wear the bikini top.[44] On the night of the beach-themed fundraiser, Mottu began work in a bikini top layered with a tank top and sweater. She subsequently faced retaliation from her employer for not complying with the dress requirement (including not being able to sell the drink special, being moved to a section in the back of the bar where there were fewer customers—both of which would substantially impact her sales and tips—and having her work hours cut). The Tribunal decided that because the male staff at the nightclub was not required to wear gender specific, sexualized attire, the differential dress requirement for female staff was discriminatory.[45]

In less than two decades sexual harassment went from being a problem that had no legal recognition to an illegal form of sex discrimination for which tribunals may be willing to assign liability to employers, including for the acts of supervisors, co-workers,

[44] It is worth emphasizing here that union representation for restaurant and bar workers is very low, and the fact that the complainant was a part of a union makes this case quite unique.

[45] In its decision the Tribunal mentioned three previous cases in which dress codes based on sex were found to be sex discrimination. All three cases involved complaints from women who worked as waitresses. The first from New Brunswick: *Doherty and Meehan v Lodger's International Ltd*. (NB 1981), 3 CHRR D/628. And two cases from Ontario: *Giouvanoudis v Golden Fleece Restaurant & Tavern Ltd*. (Ont. 1984), 5 CHRR D/2978, and, *Ballentyne v Molly 'N' Me Tavern* (Ont. 1982), 4 CHRR D/1191).

and customers. Tribunals have also found sexualized dress requirements that target one sex and not the other to be a form of sex discrimination. Although two decades may not seem substantial when it comes to developments in legal jurisprudence, it is important to remember that the milestone cases I reviewed above were a real part of the lives for the women who brought their complaints. For Diana Janzen and Tracey Govereau, their legal battle took five years to finally receive affirmation that what they had endured was in fact discrimination based on sex and was wrong. For Bonnie Robichaud, her battle took seven years to confirm that what she experienced was sexual harassment and her employer was responsible. And, for Katherine Lanteigne, and Andrea Mottu, their fights lasted three years before getting the validation that they had been discriminated against.

What eventually became known as "sexual harassment" in law started with the consciousness raising efforts of activists in the women's movement. In naming their experiences, women were speaking out and challenging practices that were simply viewed as the way things were for women in paid work. The naming of sexual harassment and its legal recognition as sex discrimination are historic:

> Sexual harassment is one of the most dramatic attempts to change the rules, in this case, the rules surrounding the sexualized nature of male-female relations. Prior to the development of the doctrine, conduct which went some distance beyond 'normal office banter' or the 'office pass' or the 'usual' ways in which a man might indicate to a woman that he finds her 'attractive' might merit disapprobation, but otherwise men expected the right to act as men in the workplace and women expected men to act as men: this was 'normal'. Women might not like it, they might feel angry, hurt or frightened by it, they might lost employment opportunities because of it, but they could do little about it: it was what happened to women, a part of normal sexual interplay. (Hughes 1994: 19)

Before it was named, "sexual harassment was literally unspeakable, which made a shared and social definition of it inaccessible" (MacKinnon 1979: 27). As the renowned *Ms.* magazine article from 1977 described, "women have often suffered sexual harassment in

silence, assuming that nothing could be done, that it was their personal dilemma, that they were somehow at fault for not being able to avoid it, or even that it was somehow an inevitable part of 'women's lot'" (Lindsey 1977: 50). In less than a decade, women's experiences of unwanted sexual attention at work went from being an issue human rights commissions turned away to an unlawful form of sex discrimination for which employers can be found liable. The Supreme Court of Canada has defined sexual harassment as "demeaning," "a profound affront" to one's dignity, and an "abuse of both economic and sexual power." However, with all the legal victories in the area of sexual harassment law, sexual harassment is still a problem for women in paid work. The next section of this chapter will turn to explore how feminist legal scholars have made sense of this disjuncture.

4. Feminist reflections on the limitations of sexual harassment law

As the body of sexual harassment law developed, feminist lawyers and legal academics quickly questioned to what extent the law was receptive to women's experiences of sexual harassment in paid work (Backhouse 1981; Kadar 1983; Goundry 1985; Gallivan 1991). Feminists were concerned with whether the legal analysis and management of sexual harassment would "like the law of rape, become divorced from women's experience by the imposition of male-defined conceptions and analyses as to what actually constituted sexual harassment" (Goundry 1985: 10). MacKinnon articulated a similar apprehension of sexual harassment law in the US:

> When the design of a legal wrong does not fit the wrong as it happens to you, as is the case with rape, that law can undermine your social and political as well as legal legitimacy in saying that what happened was an injury at all—even to yourself… It is never too soon to worry about this, but it may be too soon to know whether the law against sexual harassment will be taken away from us or turn into nothing or turn ugly in our hands. (1987: 105)

As MacKinnon cautioned, if sexual harassment law and sexual harassment as women experience it do not resonate, the consequence can be a subverting of women's experiences, or a personal doubting of whether what happened matters. Thus, keeping women's experiences at the centre has been key for feminist lawyers and legal scholars when assessing the effectiveness of sexual harassment jurisprudence.

Feminist lawyers and legal scholars have heavily criticized definitions of sexual harassment that emerged from case law and informed legislation and public policy. Although exact definitions of sexual harassment vary, depending on jurisdiction, definitions have one element in common that feminists have regarded to be particularly problematic: sexual harassment must be "unwelcome" sexual conduct.[46] The "unwelcome" requirement in the legal definition of sexual harassment has been criticized for overlooking the systemic elements of the problem of sexual harassment emphasized by the feminist consciousness raising, and, for evoking and reinforcing dominant male practices concerning normal sexual interactions in a given workplace. Feminists have observed that when sexual harassment is framed as behaviour that is unwelcome, sexually harassing practices get portrayed as something that may otherwise be consensual. Consequently, sexual harassment is represented as a "misunderstood invitation" to an otherwise consensual sexual interaction (Faraday 1994: 48). The notion of unwelcomeness is problematic for its framing of sexual harassment as a problem between two people, rather than a problem connected to the collective experiences of women (Sheppard 2010: 82). As Faraday has argued, framing sexual harassment as

[46] The Supreme Court of Canada 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 the harassment'' *Janzen* supra note 18 at 1284.

"unwelcome," "individualizes the conflict, downplays the economic coercion that is inherent in sexual harassment, and absolves the employer of responsibility for changing inter-sexual relations in the workplace" (1994: 48).

Another problem feminist legal scholars have risen with the "unwelcome" element of the legal definition and analysis of sexual conduct concerns the creating of a threshold upon which to measure whether or not behaviour is to be considered "unwelcome." How does law distinguish between welcome and unwelcome sexual conduct? Soon after the *Bell* decision, feminists questioned the legal analysis of unwelcomeness and were concerned with the legal tests that would be used to decide if impugned behaviour would be found to be unwelcome. Feminists asked: "How many times must an 'ass' be slapped, breasts ogled, or an invitation to discuss a wage over dinner be made before a woman is certain that she is, legally speaking, being harassed and therefore entitled to some form of legal redress?" (Goundry 1985: 29). And, "Who will determine if the victim did not welcome advances or solicitation?" (Kadar 1983: 361). In evaluating human rights adjudicators' assessments of when behaviour crosses the line and becomes sexual harassment, feminist legal scholars have unpacked law's supposedly objective analysis, and uncovered a male norm.

While the legal tests for determining unwelcomeness vary by jurisdiction, feminists have pointed out that usually, in practice, the standard of unwelcomness "is 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). Analyzing sexual conduct from the *perpetrator's* perspective means the dominant male norms of a workplace remain unchallenged (Goundry 1985; Gallivan 1991; Faraday

1994: 44; Fudge 1996). In evaluating whether or not something constitutes sexual harassment, using the socially accepted norms of a workplace as the threshold assumes that the workplace is gender neutral. This assumption ignores gender hierarchies in workplaces and the fact that ‘‘what is conventionally understood as acceptable behaviour on the part of bosses is in fact masculine behaviour’’ (Fudge 1996: 246). Moreover, feminist critics have challenged the legal tests used by adjudicators to evaluate unwelcomeness for using the existing workplace environments as the threshold against which to measure whether or not something constitutes sexual harassment. With such an analysis, a "status quo approach," that evaluates "a claim of sexual harassment by reference to existing gender stereotypes" and judges the "world from the vantage point of the male experience" prevails (Gallivan 1991: 28). The end result of the objective standard is to essentially deny women's experiences (Kadar 1983: 362). Thus, scholars have rejected law's conceptual framing and legal tests for deciding what is and what is not sexual harassment because they maintain the gender stereotypes that pervade the workplace.

In response to the limits of (and frustrations with) sexual harassment law that feminists attributed to legal doctrine, scholars proposed reforms to legal definitions, standards, and tests. Although the specifics of the proposed ways to improve the law varied, the suggestions were largely aimed at trying to make law more responsive to women's experiences. For instance, in the formative years of sexual harassment law, scholars advocated for defining sexual harassment more broadly by eliminating the "unwelcome" aspect of the definition of sexual harassment to more widely capture, "any sexually oriented practice that endangers a woman's job, that undermines her job

performance and threatens her economic livelihood" (Kadar 1983: 363). Others suggested replacing an objective assessment of unwelcomness with the perspective of a "reasonable victim" or a "reasonable woman" (DeCosse 1991; Gallivan 1991). The reasonable woman standard, it was argued, should recognize the individual narrative of the claimant, while also considering race, class, sexual orientation, one's financial well-being, and any disabilities of the claimant (DeCosse 1991). The reasonable victim standard would take account of not only the social location of the complainant, but also workplace hierarchies and, the victim's relationship to her employer and co-workers (Gallivan 1985). Sexual harassment law reformers also suggested a need to reassess the legal framework of sexual harassment all together, and introduce new standards to account for the influence of broader cultural norms and the impact they have on shaping experiences of sexual harassment, and how experiences are subsequently understood. As Hughes (1994: 30-31) articulated:

> The conceptual framework of sexual harassment thus requires not only that men's conduct be reassessed by new standards, but that women's conduct be understood as often reflecting a culturally dictated response (both from gender culture and racial culture perspectives). Adjudicators must learn that women's responses to sexual harassment are often engendered by the experience of sexual harassment itself, as well as by other experiences of gendered and cultural power relations outside of the workplace.

These proposed reforms to the legal conceptions and tests of sexual harassment recognized the crucial need to observe existing gender stereotypes concerning appropriate gender behaviour in a workplace—and how these stereotypes colour adjudicators' perceptions of sexual harassment. However, the emphasis on altering legal definitions and tests in order to better encapsulate women's experiences of sexual harassment did not go far enough. The criticisms of sexual harassment law and suggested reforms did not

sufficiently question nor examine how gendered practices and expectations concerning sexual harassment were constructed and maintained within workplace organizations. In order to understand the limitations of sexual harassment law, we must look to the workplace context within which women's experiences of sexual harassment happen.

In light of ongoing limitations of sexual harassment law, Colleen Sheppard has called for the investigation of the institutional context within which sexual harassment takes place (1996, 2010: 80-102). Central to what Sheppard calls a proactive and systemic approach to sexual harassment, is "an inquiry into the institutional context that makes diverse women vulnerable to sexual harassment" (2010: 85). Sheppard argues that such an approach must start with the experiential knowledge of those who live sexual harassment, and then move to examine organizational structures, practices, and workplace norms that institutionalize sexual harassment. Such an understanding, Sheppard proposes, "is critical to responding to individual cases of sexual harassment in a more systemic way" (Sheppard 1996: 95). Sheppard's call for a systemic approach goes beyond the traditional study of law and is a re-orientation in focus from law to the experiences of women in paid work. In the next section of this chapter I look to research on the topic of sexual harassment and law in the everyday. I will examine the work of socio-legal researchers who have studied sexual harassment in the context of work organizations.

5. Examining sexual harassment and law in the everyday

There is little empirical research examining sexual harassment within the context of specific work organizations, and even less that attends to how law interacts with

women's experiences of sexual harassment at work. In this section I will discuss the work of two scholars, Quinn and Marshall, who have studied women's experiences of sexual harassment at work from a law and society perspective—that is, exploring law and its relationship to broader social relations. Although both researchers offer great insights into reasons for which women experiencing sexual harassment at work may not use the law, their analyses of law does not account for the relationship between law and gender relations—such as the insights learned from feminist legal scholars in the preceding section.

Beth Quinn, a sociologist, has sought to understand why women do not identify their experiences with the legal category "sexual harassment." Quinn has asked, "with the knowledge of the remedy of sexual harassment law, why would a woman refuse to define incidents of sexual harassment in her life as such?" (2000: 1152). In an attempt to answer this question Quinn conducted a two-phase project in 1994-1995 by interviewing 18 men and 21 women.[47] Phase one of the research involved people who worked in a range of occupations. Participants included an artist, a nanny, and a military veteran. Phase two of the study attempted to address the lack of sexual harassment research focused on a specific workplace. It involved employees working at "Acme," a company that designs, manufactures, and services electronic equipment. Even though the study included employees from a specific workplace, the research did not relate women's experiences of sexually harassing practices to the work. There was no discussion of their labour at Acme, nor how labour was organized at the work site.[48]

[47] All participants had to be currently employed to participate in the interviews.
[48] Participants were asked open-ended questions dealing with "workplace culture, relationships between men and women (both in the workplace and outside it), and their understanding and opinions about sexual harassment and the laws and policies that seek to regulated it" (Quinn 2000: 1159). If the term "sexual

Rather, Quinn's analysis focused on worker *reactions* to sexist and sexualized humour in the workplace that often involved crude jokes based on derogatory stereotypes about women. Male workers used "harassment humour," as Quinn called it, to build camaraderie, enact masculine identities, and create boundaries of exclusion. The common response to harassment humour by both men and women workers was to not react, or to not "take it personal," even when comments were embarrassing, uncomfortable, and painful. Complaining was seen as a sign of weakness and signified one's inability to take a joke. Not taking it personal, by deflecting comments, remaining silent, and refusing to react meant avoiding escalating jokes and avoiding being the target of more sexist humour in the future (Quinn 2000: 1163). Thus "not taking it personal," Quinn argued, was used as a tactic of resistance.

Quinn's research illuminates a significant contradiction between how women actually respond to sexually harassing practices at work and how law expects women to react. Quinn noted how the strategy of not taking it personal contradicts what US law requires women seeking legal redress to do: that is, to name an experience "sexual harassment." As Quinn explains, "[T]o claim sexual harassment one must take it personal. To name and claim it, one has to acknowledge the insult and its harm" (2000: 1172). Using the law instrumentally requires people to complain in a legally recognized manner. However, as Quinn argued, "Once tactics of displacement are in play, a track record of toleration is constructed. A woman's history of not taking it personal and other tactics of deflection betray her when standing before the law" (2000: 1174). Quinn pointed out that even using law discursively demands naming an experience "sexual

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harassment" did not come up during the interview, then Quinn would bring up the topic and name sexual harassment directly to get participants thoughts on the subject.

harassment." Whether instrumental or discursive, both "rest on the same fundamental requirement: that the harm be named in legal terms" (Quinn 2000: 1155). Quinn concluded that "[i]f one fails to name the harm as sexual harassment, the law is immobilized both ideologically and instrumentally" (Quinn 2000: 1155). According to Quinn, gender relations disempower both women in the workplace faced with sexist humour, and sexual harassment law.

While Quinn importantly sheds light on the disconnection between the practice of deflecting and ignoring sexually harassing humour and the responsibility law places on women to name and object to an experience as harmful, I believe the relationship between law and gender is more complicated than Quinn suggests. It seems that Quinn's analysis of the relationship between gender and law is unidirectional (gender relations immobilize the law). Rather than gender relations halting law, an otherwise neutral instrument, could law not constitute and reinforce the gendered power relations of work organizations? Qunn's work does not provide an answer to this key question.

Another study that has placed the topic of sexual harassment in an organizational context is the work of sociologist Anna-Maria Marshall. The question Marshall asked was: how does the law shape the meaning women university workers give to unwanted sexual attention at work? (2003, 2005). Marshall described her research as a bottom up approach to studying the relationship between law and social change. She interviewed 25 female administrative workers in an American university in 1997-1998. She supplemented interviews with a survey questionnaire of 350 employees. Most of the women in her study were familiar with the legal regime of sexual harassment. This information often came from their employer. The university had both a sexual harassment

policy and internal grievance procedure in place, and, the participants were aware of both. The university had also circulated their sexual harassment policy to staff and offered sexual harassment training programs. Moreover, all of the women interviewed knew about the Anita Hill and Clarence Thomas sexual harassment hearing before the US Senate (which had enormous mass media coverage). With this level of awareness of the law and existing company policy and procedure on sexual harassment, Marshall was interested in how women experience harassing practices at work. "Does the right to be protected from sexual harassment on the job mean anything to women who encounter harassing behaviors in their daily lives?" (Marshall 2005: 121).

Marshall argued that the meaning women gave to their experiences, whether or not women framed their experiences as "sexual harassment," was not only shaped by their knowledge of law. Law was just one "cultural schema" with which women understood their experiences (Marshall 2003: 662). Alternative "frames," including broader ideas of women and sexuality in the workplace, and notions from managers and people working in human resources that framed sexual harassment narrowly, shaped how women university workers interpreted sexual behaviour from their supervisors and co-workers. Marshall argued, "Women rely on these meanings to decide whether to complain or to ignore the behaviour or even to participate in sexual joking and banter with co-workers. And the bundle of these women's decisions—and management responses—shape the meaning of sexual harassment law in particular workplaces" (2005: 2-3).

For example, women in Marshall's research were skeptical of the effectiveness of the university's sexual harassment policy. They were cautious of the staff responsible for

implementing the grievance procedure, and believed they would do so in favour of the employer (2005: 54). Marshall found that women workers learned that managers interpreted the University's sexual harassment policy narrowly, in a way that protected the University and the harassers. This shaped how women used the sexual harassment grievance procedure to respond to unwanted sexual attention at work: complaining when they had proof, when more than one woman was being harassed, or when the behaviour was especially "outrageous." As Marshall (2005: 159-160) explained:

> In the adversarial atmosphere created by the Written Policy's complaint process, women's definition of sexual harassment narrowed to include only those behaviours they could prove. This perceived evidentiary requirement further reduced employees' interest in complaining. For these women, supervisors did not need to dismiss complaints for failing to violate the policy. Women's own frames for sexual harassment accomplished this task by censoring complaints before they ever formed.

When women did complain about a harassing co-worker or supervisor, it did little to help and occasionally would do more harm (e.g. women may receive a poor performance review for not getting along with co-workers).

Marshall's work brings attention to how organizational practices influence workers' use of sexual harassment policies. She has called for more research on what she refers to as the legal consciousness of employees, that is, how people understand and make use of the law situated in the context of work organizations. Marshall claims it is important to observe when rights are ignored because, "When employees reject a grievance procedure, when they say that the policy is not relevant to their dispute, when they let their rights remain idle, they diminish the power of law to constitute their everyday relationships at work" (2005: 166). In response to Marshall's analysis, however, it is important to ask, can the law ever truly be idle?

A limitation of Marshall's research is that she uncritically accepts law's treatment of sexual harassment, law's "injustice frame" as she puts it, as gender neutral. In analyzing sexual harassment, as it is known in law, Marshall seems to take law's definition of sexual harassment at face value, rather than question how law takes up and shapes women's experiences of sexual harassment. She does so by using the legal definition of sexual harassment as the starting point from which to measure her participants' experiences. Marshall begins her research by asking how law shapes the meaning women university workers give to unwanted sexual attention at work, without questioning sexual harassment law and its construction. In contrast to this emphasis on law's instrumental quality, my research takes a different position. Learning from the feminist legal scholars who have criticized sexual harassment cases and the research conducted for this dissertation, I approach law as a gendered phenomenon and I argue that law reproduces and reflects the gendered subtext of workplaces. Even when it seems like the law is absent, its absence still constitutes women's lived daily experiences. Law is never idle.

The work of sociologists Quinn and Marshall have made an important contribution to law and society research exploring the topic of women's experiences of sexual harassment within the context of specific work organizations. Although their research goes beyond law in the sense that it moves analysis from legal cases to the everyday of the workplace, the questions posed by the two projects are still driven by law. Quinn's research asked why women do not identify their experiences with the legal category "sexual harassment," while Marshall's research asked how does sexual harassment law shape the meaning women university workers give to unwanted sexual

attention at work. Moreover, both researchers view law as a gender-neutral tool that is halted or made idle by gender relations or organizational practices. And, even though their studies focus on sexual harassment in the context of work organizations, their analyses of law concentrate exclusively on sexual harassment law, while labour law and its significance in constructing workplaces as organizations is overlooked.

6. Conclusion

This chapter has sought answers to the following broad question: how is sexual harassment an illegal form of sex discrimination while simultaneously sexually harassing practices feature as a common experience for women in paid work? I began to answer this question by exploring the historical origins of the concept of sexual harassment as it was named during the women's movement. I then reviewed the milestone legal victories that established sexual harassment to be a violation of human rights legislation, and a practice for which employers can be held legally liable. Following this foundation, I explored both literature from feminist legal scholars and socio-legal researchers asking, how has the disjuncture between the legal treatment of sexual harassment as a prohibited form of sex discrimination, and the persistence of sexual harassment as part of women's experiences at work been understood? The important analysis of feminist lawyers and legal academics has illuminated how legal definitions and tests for sexual harassment centered around the conduct in question being "unwelcome" reflect gendered stereotypes regarding what is and what is not appropriate behaviour for a place of work. Feminists problematized legal definitions and analyses of sexual harassment exposing how law's "objective" legal tests are actually based upon the perspective of a male perpetrator. The

work of feminist legal academics has revealed how the law maintains the gendered status quo of workplaces. However, reforms based on this revelation focus too much on fixing legal doctrine to better encompass women's experiences of sexual harassment in the workplace, and fail to question how the structure and organization of workplaces may undermine sexual harassment law. Colleen Sheppard (2010) called for a systemic approach to sexual harassment that interrogates the institutional context within which sexual harassment is institutionalized as normal—an investigation that starts with experiential knowledge of those who live sexual harassment. Although the work of a few socio-legal scholars, as I explained above, has studied women's experiences of sexual harassment within the context of specific work organizations—and Marshall's work has done this more so than Quinn's—their analysis of law is not as sophisticated as that of feminist legal scholars. Both researchers unquestionably accept law's definitions of sexual harassment as their point of departure. Furthermore, both feminist legal and socio-legal scholars overlook the role of labour law in structuring workplace organizations, and shaping women's experiences of sexual harassment in paid work.

The research presented in my dissertation is oriented in a different manner. As I will explain in the next chapter, rather than being driven by law, as my point of departure, my research is driven by the experiences of women full-service restaurant workers. At the core of my research is a questioning of how women in restaurants experience unwanted or uncomfortable sexual behaviour at work. The questions I ask about law, both labour law and anti-discrimination law, have been guided by what I have learned from speaking to my research participants. My research approach, institutional ethnography, which I will explain in detail in chapter 3, has allowed for insights into how labour law and anti-

discrimination law, are not just instrumental, but are shaped by and shape the restaurant environment is such a way that women's reactions to unwanted sexual interactions at work are restricted and sexually harassing practices from managers or employers, co-workers, and customers become normalized.

Chapter 3

Institutional ethnography: a feminist research strategy for foregrounding experience

The starting point of feminist work must be found in women's lives and not in legal definitions. (n.a. 1986, cited by Graycar and Morgan 2002: 2)

The heart of feminist methodology is a critique that views the apparatus of knowledge production as one site that has constructed and sustained women's oppression. (Devault 1999: 30)

1. Introduction

In this chapter I explain how my socio-legal project has been informed by a feminist research practice developed by sociologist Dorothy Smith called institutional ethnography (IE). At the heart of my dissertation are the experiences of the women restaurant workers I interviewed. What follows is a retrospective account of my search for understanding how there are women working in restaurants as servers, bartenders, hosts, and even chefs who are experiencing unwanted or uncomfortable sexual interactions at work from managers and supervisors, co-workers, and customers. This chapter will introduce institutional ethnography, which is feminist a method of inquiry. I have focused my discussion for this chapter by emphasizing the teachings of institutional ethnography that are particularly relevant to the research project at hand. In discussing what institutional ethnography entails I will also explain what attracted me to this research approach and why I decided to use it to conduct my research. I will then account for how I used institutional ethnography in crafting and carrying out my research. In detailing my research process I report on the multiple sources of data I used including

interviews, legislation, sexual harassment cases, and Statistics Canada data. I will begin this chapter as both feminists naming sexual harassment did, and as institutional ethnography does, by starting in experience.

2. Research origins

Personal experience was my initial window to the research topic of women and sexual harassment in restaurants. Beginning at the age of fourteen I worked in Ontario as a hostess throughout high school. Once I reached the legal age requirement to serve alcohol (eighteen-years old) I worked as a server and bartender while also attending to my undergraduate studies, as many college and university students do. During these years sexual and sexist comments from customers, co-workers, and managers were common. To get specific, I am referring to "compliments" on my body and physical appearance; crude remarks about other girls or women in the restaurant; sexual innuendos (e.g. a restaurant owner repeatedly asking me when my 18th birthday was and when I would be "legal"); inquires about my sex life and preferred sexual positions, etc., etc. My last restaurant experience, albeit short lived, was great impetus for my decision to pursue a PhD studying the topic of sexual harassment in restaurants. Hired as a server at a restaurant the summer prior to beginning my Master's education, I was instructed by managers to wear all black and dress in a "classy provocative" manner. The owner of this particular restaurant also referred to all female staff as "baby" and after working with him I quit. After roughly seven years of working in restaurants, that last experience was the straw that broke the proverbial camel's back. As my introduction to the topic of sexual harassment in full-service restaurant work was based on personal experience, the

emphasis on and valuing of experience was a part of institutional ethnography that immediately appealed to me.

3. Institutional ethnography: an introduction

Institutional ethnography is a feminist method of inquiry developed by sociologist Dorothy 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. Researchers committed to an institutional ethnographic research practice do not begin within the categories of sociological discourse, for instance, by using the empirical for the purpose of explaining a pre-selected theoretical orientation. Nor do they start by forming a hypothesis based on a traditional review of the literature. Instead, "the institutional ethnographer's fundamental resource is people's experience" (Smith 2005: 124). The lived, material site of the experiential is the starting point for institutional ethnography, as it was for feminists of the women's movement.

The foundation for institutional ethnography, a project Smith spent twenty-five years creating, was the women's movement. Smith modeled institutional ethnography after the powerful tool of consciousness raising. Consciousness raising was a political tool used to fight against an oppressive masculinist regime. As Smith (2005: 7) reflects:

> It's hard to recall just how radical the experience of the women's movement was at its inception for those of us who had lived and thought within the masculinist regime against which the movement struggled…There was no developed discourse in which the experiences that were spoken originally as everyday experience could be translated into a public language and become political in the ways distinctive to the women's movement. We learned in talking with other women about experiences that we had and about others that we had not. We began to name 'oppression,' 'rape,' 'harassment,' 'sexism,' 'violence,' and others. These were terms that did more than name. They gave shared experiences a political presence.

With an understanding of the importance of consciousness raising as a method to challenge dominant forms of knowledge created from a male perspective, institutional ethnography values experience. For "[s]peaking or writing experientially has been central in how women have been able to go beyond and outside established discourses as well as to disrupt what seemed at one time the consolidated forms of masculine dominance of intellectual, political, and domestic life" (Smith 2005: 124). The importance Smith placed on consciousness raising in constructing institutional ethnography as a research strategy and the pivotal role consciousness raising had in naming sexual harassment out of women's lived experiences—the history of which I explored in chapter 2—was a parallel that caught my attention when I first began to read about institutional ethnography.[1] The shared valuing of women's experiences is connected to the fact that both projects challenged the process for the creation of knowledge in society, another parallel.

Both the naming of sexual harassment through consciousness raising practices and institutional ethnography as an alternative sociology confronted the supposed objectivity of knowledge in the academy, and the traditional and largely unquestioned embrace of positivist research methods by social science disciplines. Around the same time that women in Canada were speaking out in large numbers about sex at work, south of the border in the United States, Lin Farley was preparing to teach a course on "women and work" at Cornell University in 1974. However, in designing the course Farley ran into a problem: literature on the subject was scarce. Farley and the class turned to consciousness raising and the women in the seminar shared their experiences of paid

[1] I first began to read Dorothy Smith's work as I was also reading the early work of Backhouse and Cohen (1978) and MacKinnon (1979) on sexual harassment and law. The similarities between these bodies of work in their understanding of the need to begin with experience to challenge objectified forms of sociological discourse (for Smith) and law (for MacKinnon and Backhouse and Cohen) that rendered women's experiences invisible attracted me to institutional ethnography as a research strategy.

work. In the opening of her book *Sexual Shakedown*, Lin Farley describes the first consciousness raising session of the course:

> there was an unmistakable pattern to our employment. Something absent in all the literature, something I had never seen although I had observed it many times, was newly exposed. Each one of us had already quit or been fired from a job at least once because we had been made too uncomfortable by the behavior of men… the male behavior eventually required a name, and *sexual harassment* seemed to come about as close to symbolizing the problem as the language would permit. (1978: xi, emphasis in original)

Feminists did not invent sexual harassment, they named it (MacKinnon 1979). Sexual harassment was happening long before it had a name. Acknowledging this point recognizes just how important consciousness raising practices were (and are) to challenging and disrupting dominant forms of knowledge.

Similarly, in Smith's foundational writings on institutional ethnography found in her book *The Everyday World as Problematic: A Feminist Sociology* (1987), Smith argued that the discipline of sociology, in constructing knowledge, did so from a male standpoint. Forcefully making this point, Smith commented on her experience teaching at the University of California Berkeley in a faculty full of men:

> It was a male world in its assumptions, its language, its patterns of relating. The intellectual world spread out before me appeared, indeed I experienced it, as genderless. But its apparent lack of center was indeed centered. It was structured by its gender subtext. Interests, perspectives, relevances leaked from communities of male experience into the externalized and objectified forms of discourse. Within the discourses embedded in the relations of ruling, women were the Other. (1987: 7)

Smith's development of institutional ethnography is rooted in an understanding of the disguised male standpoint within the discipline of sociology, a sociology that committed its researchers to "the position of universal subject" and "the position outside the world from which it could be grasped objectively" (Smith 2005: 28-29). Similarly, feminist

legal scholars have criticized law's apparent objectivity. As Hunter explains, "to the extent that law assumes and has been built around an apparently non-gendered, undifferentiated legal subject, this not only fails to correspond to gendered social reality, but the purportedly neutral, universal legal subject turns out in practice to be masculine: law's objectivity is a male subjectivity" (2013: 207).

It is with this foundational understanding of the social organization of knowledge that Smith developed institutional ethnography as an alternative sociology that would be connected to the experiences of women; a sociology Smith later described as a sociology *for* people, as opposed to a sociology in which people are the objects of investigation whose behaviour the "expert" sociologist is to explain (2005: 1). Stepping outside of sociology's discourse and abandoning the discipline's "objective" standpoint has been called an epistemological shift. In his momentous essay *Political Activist as Ethnographer* George Smith (1990: 633) speaks to the importance of this change:

> It is precisely this epistemological shift that allows Smith's method of sociology to embrace the standpoint of those who stand outside a ruling *regime;* whether this be the historical position of women in patriarchal society, the position of gay men and lesbians in heterosexual society, the location of people of color in a racist society, or the standpoint of working people in class society to name but a few of those individuals who often stand outside a ruling *regime*.

The concern with how knowledge is socially constructed and organized that underpins institutional ethnography is the reason for the methodological importance institutional ethnography places on experience.

While the institutional ethnographer begins with experience, they do not stop there. "Institutional ethnographers are attempting to *explicate* everyday experiences and people's accounts of them, not just collect and describe them" (Campbell and Gregor 2002: 86). This explication involves exploring the social relations and forms of

organization that shape our everyday. Although research methods used for an institutional ethnography are similar to other ethnographic research methods—they may include interviewing, observation, participatory research, etc.—institutional ethnography differs from other ethnographic approaches to research in that it takes experience as an entry point into the larger relations constructing the social (Campbell 1998: 57; Campbell 2006: 92). This facet of institutional ethnography has ties to Marx's method of materialism, in that it seeks an understanding of the "ways in which people produce their existence" (Smith 1990: 17). Institutional ethnography starts with the assumption that "the social comes into being only as the doings of actual people under definite material conditions and that we enter into social relations beyond our control that our own activities bring into being" (Smith 1999: 25). The intention is to explicate and make visible the larger social relations that organize daily life, and the relations within which experience is embedded (Smith 2007: 409). It is because we are active participants in the social organization that we can change the ways our lives are ordered and experienced. Institutional ethnography is a research strategy for social change. "Institutional ethnographers generally have critical or liberatory goals; they undertake research in order to reveal the ideological and social processes that produce experiences of subordination" (DeVault and McCoy: 2006 19).

Institutional ethnography is described as a method of inquiry because research is approached as a process of discovery. The research is open-ended and evolves based on what is learned in previous phases of the research (Smith 2005: 20). As DeVault and McCoy have described, "the process of inquiry is rather like grabbing a ball of string, finding a thread, and then pulling it out" (2002: 194). At the same time, however, how the

research unfolds is not random. Projects are designed to be multi-phased and questions and directions develop along the way (Smith 2005). Although this type of research can take many forms, especially depending on one's choice of the research methods, the ethnographer generally starts with an experience, looks for institutional processes shaping the experience, and then investigates those processes "to describe analytically how they operate as the grounds of the experience (DeVault and McCoy 2002: 194-195). The intention is to make visible the complex relations that organize daily life.

Although it is not a requirement, many researchers inspired by institutional ethnography as a research strategy have come to their research projects with some personal familiarity with the general topic. For example, Griffith and Smith (2005) began with their experiences of single motherhood, Diamond (1992) with working as a nurse, George Smith (1990) with the everyday experiences of living as a gay man at the height of police steambath raids in the 1980s, Pence (2000) with her experience working as an advocate for battered women in the US, and Marsden (2013) with working as a immigration and refugee lawyer. When researchers employing an institutional ethnographic mode of inquiry have explored law, law has been found to be a ruling regime or institution that subordinates, oppresses, distorts or erases people's everyday lives.

George Smith's (1990) research focused on the Toronto police raids on gay steambaths in the early 1980s and asked *how* the police bath raids took place. He conducted a textual analysis of two undercover police officers' "first visit" to a steambath and argued that gay men experienced steambaths radically differently than how steambaths were constructed in police reports. His analysis revealed how police work

was organized by the requirements of the *Criminal Code* in a manner that reconstructed the pleasurable sex men experienced at the steambaths into illegal "indecent" acts.

Pence (2000) was concerned with the experiences of battered women in the US. After investigating textually mediated practices and structural features of the criminal justice system, she argued that women's experiences of violence and intimidation in intimate relationships get erased through the institutional accounts created by the work of the criminal justice practitioners (police officers, probation officers, judges and prosecutors). This process begins, for instance, with a call to the 911 dispatcher who adheres to a written script, a script that not only facilitates the conversation over the phone, but begins the written record of a woman's experience as a "case." Pence followed the development of a case through the bureaucratic forms of management used in the criminal legal system. A case or file created by criminal justice practitioners trained to write in "institutionally recognizable ways" becomes the legal institution's representation of a woman's experience as an "incident" (Pence 2000: 203). She argued, "battered women's lives are twisted into reformulated categories created not in the lived experience, but in the professional discourse" (2000: 203).

Nandita Sharma (2000) examined the social organization of the category "migrant worker" that arose through the restructuring of immigration practices from 1969-1973 that led to the Non-Immigrant Employment Authorization Program (NIEAP), a program Sharma calls "border-control policy." Under the NIEAP the migrant worker was a "non-immigrant migrant worker whose sole purpose in entering and living in Canada was to work for a specified employer, in a specified occupation and in a specified location in the country — all on a temporary employment authorization that was renewable only at the

behest of the employer and with the permission of an immigration department official" (Sharma 2000: 20). Sharma conducted a documentary analysis of parliamentary debates in the House of Commons (1969-1973), debates Sharma characterized "as constituents of the social relations existent in Canadian society and beyond" (2000: 7). Sharma explicated how the re-framing of certain people as "migrant workers," and their accompanying unfree employment relations, was made possible and legitimized in order to "help make Canada a more attractive site for capital investment" (2000: 7). She argued that racialized as well as gendered social relations were key to placing people of colour into categories and citizenship and immigration law and policy helped construct people as "migrant workers" and create commonsense notions of who belongs and who does not.

Sarah Marsden's (2013) doctoral legal research began with her experience as a practicing immigration and refugee lawyer working for people with "uncertain" migration status (e.g. Marsden encountered a pregnant woman with an expired work permit, and a construction worker who entered the country undocumented and later broke her arm on the job). She explains that her traditional analysis of legislation, policy, and practices was informed by her experience as a lawyer and her knowledge of legal issues likely to arise for migrants, and by the interviews she conducted for her research with people who identified as having uncertain migrant status (2013: 42-43). Marsden's research explored how migration status, a legal construct created through law and state institutions, impacts the lives of people who self-identify as having "uncertain" immigration status. Marsden interviewed both migrants and representatives of Vancouver-based community groups serving migrants. When interviewing migrants, Marsden found that the concept of migration status was a key organizer of problems

faced by migrants when it comes to employment and accessing social services providing by the state. Status, Marsden argued, "exaggerated power differentials" in the employment relationship and reduced workers' labour mobility, bargaining power, and employment protection (2013: 22). Moreover, status also impacted entitlement to education, healthcare, and income security. For example, even when people were legally entitled to a social service, the fear of detrimentally impacting their status kept people from claiming benefits (2013: 22).

As the brief review of the work of G. Smith (1990), Pence (2000), Sharma (2000), and Marsden (2013) shows, institutional ethnographies probe how the everyday comes to happen as it does: be it for gay men whose sexualities are criminalized (G. Smith 1990), for women who experience violence and intimidation in intimate relationships (Pence 2000), for people entering Canada who are designated "migrant worker" (Sharma 2000), or for people living with "uncertain" migrant status who face challenges in their working life or accessing social services (Marsden 2013). I will now turn to detail my research process for inquiring into the experiences of women restaurant workers who face unwanted or uncomfortable sexual interactions at work.

4. The research process and sources of data

In this section I discuss the process through which I carried out my research by recalling the data collection methods I used and how my data analysis was shaped. The major research method I used was interviews with restaurant workers. As I explain below, what I learned from interviewing women restaurant workers is at the core of my research process. In recalling how and why I carried out the research as I did, I will provide details of my research activities.

Institutional ethnographers use interviews to get beyond experiential accounts in order to identify "the *social organization* of people's activities" (Smith 2005: 129) and "make visible the ways the institutional order creates the conditions of individual experience" (McCoy 2006: 109). A very important aspect of the research is not only to account for and describe experience, but move beyond experience to uncover how those experiences are socially organized. Interviewing can be used formally through arranged interviews, or more informally through more spontaneous conversation at or away from research settings, or somewhere along this "conversational continuum" (Grace 2012: 48). For the purposes of my research I used prearranged semi-structured interviews. By "semi-structured" I mean I both compiled a list of various topics with prompting questions to raise during the interviews, but made sure the questions I asked were open-ended. I approached interviews with an openness to provide space for direction from participants and allow interviews to go places I may not have anticipated.

Over the course of eleven months I conducted twenty interviews with both current and former restaurant workers. Interviewing people who used to work in restaurants along with people working in restaurants at the time of interviews was a deliberate decision. I wanted to be sure to hear from women who had left the industry and to learn why they had left. I also decided to interview restaurant workers broadly, rather than focus on workers from one particular location (as ethnographies generally do). This choice was made for a couple of reasons. First, restaurants are small workplaces. Given the level of detail in interview quotations as research is written up (and made publically available) it would be difficult to protect confidentiality. Moreover, had I interviewed only people from one particular restaurant, and a worker shared stories about the sexually

harassing practices of managers, co-workers, or customers it would not only be hard to protect confidentiality but because of this challenge workers could have been at risk of reprisals for speaking out (e.g. economic or other consequences). Knowing these limitations and risks workers may have been less inclined to speak candidly about their experiences. Second, I had a hunch that the unwanted or uncomfortable sexual behaviour and interactions experienced by women restaurant workers went beyond a single workplace. Having worked at a few restaurants and having friends and family members who had also worked in a variety of different restaurants, I suspected that the problem went beyond a single workplace. Therefore, I designed my participant recruitment process to encompass full-service restaurant workers in the restaurant industry more widely.

I recruited research participants using posters and emails. I placed posters calling for research participants in coffee shops on community notice boards of various retail stores, and on bulletin boards on campuses at post-secondary institutions in the city of Victoria, British Columbia. I also advertised the research by emailing post-secondary school student listservs. I interviewed twenty restaurant workers (18 female and 2 male participants).[2] Participants were a mix of people currently working in the industry, people who identified as "seasonal workers" (mainly working in the summer or around winter holidays), and former restaurant workers. The age of participants ranged from 19 to mid-40s, with the majority of participants were in their 20s. The informants I interviewed had worked at a large range of restaurants both within British Columbia and across Canada.

[2] While I set out to interview women restaurant workers, I also interviewed two men who had restaurant experience. During the course of my research I was approached by two male workers interested in the study; one had years of experience as a bartender and the other had worked in kitchens. I was very clear that the research was centered on women's experiences and all research materials they had received communicated this objective.

Types of restaurants ranged from smaller family-owned diners to renowned fine-dining establishments. I interviewed people with just a few months of experience, as well as workers who were or are veterans of the industry. The interviews lasted between half an hour and two hours. Interviews took place in a variety of locations depending on where it was convenient for the informants, including coffee shops, restaurants, private rooms in libraries, the women's centre at post-secondary institutions, or at the informant's home. With the permission of the participants I audio recorded (nearly) all of the interviews.[3]

The purpose of the interviews was to learn about the unwanted or uncomfortable sexual interactions women restaurant workers faced from managers, co-workers, and customers. I approached the interviews with the intent to learn how these experiences happen as they do within the distinctive context of full-service restaurant work and how these experiences are talked about and handled. I also set out to listen and learn how workers naturally describe their experiences and whether there is a local culture of talk through which various unwanted sexual behaviour at work gets discussed. Paying attention to language and how participants subsequently spoke about and described, for example, sexual jokes, sexist comments, and dress requirements was a chief concern because in informants' language there can be clues as to how their experiences happen as they do (DeVault and McCoy: 2006).

During the interviews I used the following topics/ prompting questions in order to get a feel for the social setting in which women experiences happened:

- How/when did participants start working in restaurants? What was their overall trajectory in the restaurant industry (e.g. how many different jobs they

[3] Unfortunately my recording device failed me halfway through one of the interviews. After the interview, upon realizing, I wrote out all that I could remember from the interview.

had, why they left working one restaurant job for another, whether they see themselves working in restaurants in the future).

- What does the daily work of participants actually entail? (I asked participants, "Can you describe what a work shift is like?").
- How is the work of participants organized (including, scheduling practices, the assignment of tables/sections for servers, dressing requirements, pay, etc.)
- What aspects of working in restaurants do informants enjoy?
- What challenges do restaurant workers face at work and how might these be improved?
- What are interactions at work like with co-workers, managers, and customers? Have participants had any experiences with co-workers, managers, and customers that made them feel "uncomfortable," and if so, what did they do in those types of situations?

It is important to emphasize that the list of discussion points was only a rough guide and the interviews were far more conversational than a question and answer session. Interviews were brought to a close once the conversation died down. I ended interviews on a note of asking participants if there was anything else they would like to further discuss or topics they would like to raise that we had not already touched upon.

During the interviews I did not ask research participants directly whether they had experienced "sexual harassment." I had a strong rationale for this choice. For one, based on my experience working in restaurants, I had a sense that the sexualized interactions I was seeking to learn about may not be described using the language of sexual harassment. In addition, previous studies have shown that researching "sexual

harassment" in restaurants is complex because conduct that may fit the legal definition may be a regular part of restaurant culture and thus workers may not label experiences "sexual harassment" (Giuffre and Williams 1994; Restaurants Opportunities Centers United and Forward Together 2013). I wanted to stay away from legal language and legal definitions of "sexual harassment." I did not want to impose this language on informants, or limit the interview based on definitional boundaries, but rather listen for how informants described their experiences. Instead of outright asking whether informants had experienced sexual harassment I asked them 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. When informants did use the language of "sexual harassment," it was often a struggle for informants to define sexual harassment and think about their own experiences in relation to the phrase (an aspect of the research I closely examine in chapters 6 and 7). I chose to maintain this complexity by not naming a woman's experience sexual harassment unless she did so herself. During the interviews 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 happen was challenging and complex. In what follows I review my thinking and process used in embarking on this research journey.

I made the decision to transcribe the interviews myself. This work was effortful but an extremely valuable part of my research process. Rather than wait for all interviews to be completed and then begin the transcription process, I simultaneously transcribed completed interviews and continued with new interviews.[4] Thus, analysis and data collection were simultaneous. Thinking about, reflecting upon, and making sense of the data as I carried out the research was important in order to take direction from and listen to what I had learned from the restaurant workers I interviewed. Moreover, transcribing the interviews myself provided a closeness to the transcripts I do not believe I would have had if I used a professional transcriber. In transcribing the interviews myself, for instance, I was able to note parts of the interview when informants had a particularly hard time communicating what they wanted to say; moments when there were a lot of long pauses, "umms," or repetitive "I don't knows;" and times when participants struggled with the language of "sexual harassment" and thinking about their experiences in relation to this term.

5. Analyzing interviews and explicating social relations

The analysis of the data began as I was conducting the interviews. Data analysis was centered around the experiential accounts provided by the informants who, for instance, spoke about times when they were propositioned by customers, told by managers to "show off their boobs" when dressing for work, or had their asses leered at or grabbed by customers and co-workers. However, these accounts themselves were not

[4] I used a transcription software called "InqScribe." Transcribing the earlier interviews as I continued to interview more participants, I believe, also made me a better interviewer. In playing back an interview two or three times as I transcribed it, I heard moments when I could have held on to silence a bit longer rather than immediately filling an uncomfortable void. I also approached the transcribing process with an understanding of the importance of transcripts themselves. As DeVault and McCoy (2006: 24) argue, "Transcripts of interviews are an important text in themselves, facilitating analysis and providing a way for research participants to 'speak' in published accounts of research."

the object of my investigation; rather, my inquiry was directed towards the practices and social relations organizing those accounts, and the ways in these accounts were subsequently understood by workers as something women in the restaurant industry simply had to deal with. As I read through my interview transcripts I reflected on a post-it note I had taped to the wall in my workspace with advice from Campbell and Gregor (2002) for institutional ethnographers analyzing their data. The post-it note read: *What does this tell me about how this setting or event happens as it does?* The constant orienting and re-orienting back to experience is a way of safeguarding researchers from carrying out work that is disjointed from issues that are of importance to participants; this aspect of IE is in harmony with feminists methodologies that support research that matters to women and research that can lead to social change that women benefit from (Devault 1999: 31). Answering the question posed by Campbell and Gregor I had wrote out on my post-it note for my research purposes meant questioning what the interviews revealed about how women's uncomfortable sexual experiences working in restaurants were happening as they were. How, I asked, were women restaurant workers perceptions that uncomfortable sexual experiences at work were simply part of the job description or a part of working in the restaurant industry brought into being? These questions drove my analysis of the interview data and took my attention from informants' experiences to the social relations within which their experiences were embedded and produced. Below I will provide a few examples to demonstrate how this work was done.

While I conducted and transcribed the interviews I reflected on what I was learning by using both free writing and more put together "progress reports," the latter of which were suggested to me by Dorothy Smith and shared with my supervisory

committee. This process was extremely helpful with my data analysis and deciding what social relations I would investigate and further explicate. Moreover, for the purpose of this chapter these reports have been useful in helping me to recall what my research process entailed and why I made the choices I did. For example, in these reports I made connections between the uncomfortable sexual behvaiour from customers restaurant workers endured and the economic organization of restaurant work, especially through the tipping system. As this topic was key to the ways in which informants spoke about their experiences, I mapped out the economic ordering of restaurant work shaped by both common social practices and employment law by analyzing the BC employment standards legislation and regulations constructing a liquor-servers minimum wage, the practice of customers tipping workers, and the practice in restaurants of pooling tips. To provide another example, when I was hearing from informants that part of the reason why they tolerated sexual comments from customers was because to do otherwise would reflect poorly on them as a waitress because they have to provide good "customer service" (a recurring term used by informants when describing their work), I took up the notion of "customer service" and explicated how it organized how women workers responded to sexually harassing behaviour from customers. Moreover, I examined how gender relations organized restaurant work through hiring practices that sexually segregated work and placed emphasis on female attractiveness. In mapping out how gender relations shaped restaurants as work organizations, I supplemented interview data with statistical analysis based on Statistics Canada Census data from 2006 which showed the prevalence of a sexual division of labour throughout the full-service restaurant industry in BC, and also Canada.[5] Chapters 4, 5, and 6 present my work of mapping out

[5] I used Statistics Canada Data from the 2006 census because this was the last mandatory census. The 2011

the social relations pivotal to understanding how women working in restaurants experience uncomfortable sexual conduct as a pervasive part of restaurant work.

6. Sexual harassment law and women's experiences of restaurant work: mapping the gap

How did what I had learned from the process of interviewing restaurant workers—what I learned about how unwanted/uncomfortable sexual experiences happen in restaurant work and how workers subsequently talk about and react to these experiences—shape my exploration of law and the legal treatment of sexual harassment under BC's anti-discrimination and human rights system? As I described in my introductory chapter, what I learned by interviewing informants was the central driver of my analysis of sexual harassment law in BC. I will draw on the progress reports I created towards the end of my interview stage to demonstrate and explain my how legal analysis of sexual harassment law came to be.

As chapter 2 illuminated, this dissertation wrestles broadly with the gap between the treatment of sexual harassment as an illegal form of sex discrimination and the continued presence of sexually harassment practices for women in paid work. This disconnect was evident during my analysis of interviews. Below I have reproduced parts of a progress report I wrote in which I discussed this disconnect:

> Here is another, broader, aspect of what I'm hearing during the interviews and when I'm transcribing and analyzing them. Sexual harassment in restaurants is visible and invisible at the same time. It is visible in the sense that unwanted sexual experiences or uncomfortable interactions are happening, they are present, and people are talking to me about them. But the experiences are also invisible in restaurants in the sense that (1) rarely are the experiences talked about or taken up

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National Household Survey that replaced the mandatory long-form census is a voluntary survey. The consequence of this shift was a less robust and less reliable data set.

> formally or with a serious tone and (2) the language of "sexual harassment" is rare when the women talk about their experiences.
>
> What do I mean when I say that the experiences aren't taken up *formally*? Of the people I've talked with, each of whom have worked in one to five different restaurants each, there doesn't seem to be any education or training put on by employers to talk about sexual harassment, what it is, and what to do about it. No one can recall ever seeing a sexual harassment policy or complaint procedures posted up in their workplaces or given to them. In addition, with the exception of one person,[6] no one can recall any information or formal talk about how to handle troubling customers or various uncomfortable experiences in general.
>
> …
>
> I am now learning that there is a gap: a large gap exists between how sexually harassing experiences are legally addressed and how unwanted sexual experiences are actually handled and talked about in restaurants. This gap will be part of the ethnography.

With the realization that unwanted/uncomfortable sexual behaviour from customers, co-workers and managers was visible in interviews with restaurant workers about their everyday work, yet at the same time invisible in the sense that formal talk about these experiences as "sexual harassment" or formal action, such as filing an official complaint, was nearly absent led me to inquire and map out this gap. The analysis of this inquiry is presented in chapter 7, but I will provide a brief example of what explaining this disjuncture entailed.

For instance, during my analysis of the interview data I saw a disconnection between (a) how sexual harassment defined in law conceptualized sexual harassment as *unwelcome* conduct of a sexual nature, and (b) how for my informants the lines between

[6] The exception I was referring to here was a story a women I interviewed, working as a server for a banquet hall at the time, shared with me. A co-worker who she described as being "very inappropriate with touching and talking" and who repeatedly asked her out, and was mad when she kept rejecting him, gave her a bag one day at work. It was a bag into which the co-worker had ejaculated. The informant was a teenager at the time. The informant explained, "After that incident we had a meeting where the bosses kind of said 'If you experience sexual harassment please come and see us, talk to us.' But during that meeting I didn't understand it was related to the event that I had witnessed cause I had still kind of assumed that sexual harassment was beyond what I had experienced, it was an actual kind of—having physical sex with someone. So as much as we did have the talk, it didn't sink in. And as well, the managers were very [*she paused for quite a while*]. They weren't approachable."

unacceptable and acceptable, unwanted and wanted sexual interactions in restaurants was blurred. Rather than object to behaviour they were uncomfortable with, informants learned how to *put up with, take, and deal with* those experiences as simply a part of their work; otherwise, they quit (chapter 6). In chapter 7 I draw on interviews, policy reports published by the BC Human Rights Tribunal, human rights legislation and legal definitions and tests of sexual harassment in order to challenge law's conceptualization of sexual harassment and show how it is disjointed from women's experiences of sexualized behaviour and harassment in full-service restaurants.

7. Conclusion

This chapter has explained how taking an institutional ethnographic approach has shaped my research process. Institutional ethnography is a feminist research strategy that is dedicated to discovering how the world we live in is structured by social relations (the legal, the economic, the political, etc.) Modeled after the feminist political strategy of consciousness raising, the key tool for naming sexual harassment in the women's movement, institutional ethnography as a research strategy takes experience seriously. The chapters that follow will illuminate how using institutional ethnography has enabled me to analyze the complex interaction between law and social relations that shape the unwanted and uncomfortable sexual experiences of women restaurant workers in British Columbia.

The next chapter will discuss working conditions in restaurants and the ways in which restaurant workers can experience insecure and precarious work environments. Understanding how restaurant work is precarious is important because, as this

dissertation will advance, the precariousness of restaurant work is key to understanding how women's uncomfortable or unwanted sexual experiences at work are happening.

Chapter 4

The precariousness of restaurant work

I guess you could call it an unspoken rule. If you don't feel like doing your job there are ten more people waiting for it. (Jackie, former chef)

1. Introduction

This chapter explores the various ways through which working conditions in full-service restaurants are insecure and unstable. It argues that a complex interaction between the social context of restaurant work, low and inadequate employment standards legislation, and customary workplace practices (or workplace norms) lead to a precarious work situation. The business model of restaurants and the way in which it relies on customers shapes workers' schedules and income, and makes them precarious. Moreover, inadequate labour laws enable poor working conditions to thrive, while common workplace norms also undermine existing labour laws. Understanding how working conditions in restaurants are organized to be precarious is pivotal to understanding how women's uncomfortable or unwanted sexual experiences at work are happening—an argument I develop throughout this dissertation.

The chapter contributes to answering subset two of my research questions set out in the introduction.[1] I begin the chapter by discussing the notion of precarious work, and laying out my contribution to this field of research. Next, I provide a portrait of the industry and introduce the unique elements of restaurants as work organizations.

[1] Why is it that women restaurant workers do not complain of sexual behaviour at work from customers, co-workers, or managers? How is full-service restaurant work organized such that women workers endure sexualized interactions at work rather than formally complain? How is labour law and policy implicated in constructing restaurant work such that women workers endure sexualized interactions at work as part of the job? (pages 10-11)

Drawing on interviews with restaurant workers, I then describe what restaurant work entails and examine common practices of the restaurant work that contribute to its precariousness (the involvement of customers in paying workers through tips, a legally recognized practice, and insecure scheduling practices). Building on these sections, I explain how a combination of inadequate employment standards laws, coupled with social practices that undermine employment protections that *do* exist create work environments in which workers do not feel secure in their positions. The lack of job security experienced by workers matters because it can stop them complaining when their basic employment rights are violated, and also from complaining when they experience unwanted or uncomfortable sexual and sexist behaviour at work. As Jackie's words at the opening of this chapter reveal, workers come up against an "unspoken rule": "If you don't feel like doing your job there are ten more people waiting for it."

2. Precarious work and sexual harassment

Labour law and policy contributed to developing the "standard employment relationship" and continues to use this conception of work as its model for regulating labour. The standard employment relationship captured normative employment relationships often in unionized sectors. These relationships were highly regulated and usually involved 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; Fudge 2009). Precarious work arrangements are often described in relation to how they differ from the standard employment relationship. Although precarious work has traditionally been on the periphery of the labour market, performed by "women, people of colour and ethnic minorities and others who did not conform to the

(white) male breadwinner/worker identity," forms of work that deviate from the standard employment relationship are increasingly becoming the "new normal" (Strauss and Fudge 2014: 2). This disjuncture is especially troubling given the fact that the economy has changed significantly since the creation of the standard employment relationship when manufacturing industries dominated. Across Canada, 78.4 percent of employed persons now work in the services-producing sector (Statistics Canada 2015a), and in BC this figure is 80 percent (Statistics Canada 2015b).

Problematically, "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: 271-272). Research on precarious employment draws 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). My use of the term precarious employment is influenced by the discussion in Canada and researchers who use the term 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). Precariousness in employment relations can be shaped by a combination of "employment status (i.e. self-employed or paid employment), form of employment (e.g. temporary or permanent, part-time or full-time) and dimensions of labour market insecurity, as well as social context (e.g. occupation, industry, and geography) and social location (or the intersection of social relations, such as gender and legal and political categories, such as citizenship)" (Vosko 2000: 2). Precariousness is a continuum and

many different jobs can have elements of precariousness (Vosko, MacDonald, and Campbell 2009: 7).

Because labour law was structured on—and is still rooted in—the Fordist model of employment, the shift in Western countries from large-scale manufacturing to a heterogeneous service industry challenges the capacity of labour law to regulate work relations unique to service work (Albin 2010). The shift from a manufacturing to a service-based economy "has transformed not only the economy but also the work domain and work relationships. Demand for services has led to an increase in small-size establishments, the employment of women, ethnic minorities and youth, as well as the embodiment of their work" (Albin 2010: 966). The disjuncture between labour law and service work is especially visible when considering how customers impact work relations (Albin 2010, 2011) an issue that is underexplored. Even though the standard employment relationship is eroding, and more and more jobs resemble precarious work, it is important to be cognizant of the fact that restaurant work has never resembled the standard employment relationship upon which labour law was founded (Cobble and Vosko 2000).

This chapter explores the unique ways through which full-service restaurants as work organizations are insecure for the people who work in them. In doing so, the chapter begins to unpack the interconnection between precarious working conditions and women's experiences of uncomfortable or unwanted sexual interactions at work—an argument developed throughout my dissertation.

Only a handful of researchers have explored the connection between precarious labour conditions and women's unwanted sexual experiences at work. In a quantitative, 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 more 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. According to the researchers, power relations between workers and employers are exacerbated in temporary work and this impacts how workers respond to sexual harassment on the job. 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. The common response of ignoring the harasser meant that sexual harassment became "a routine part of being a temporary worker" (1997: 232).

In both of these studies, however, women's unwanted sexual experiences were an incidental aspect of the original research projects rather than a core driver of the research. The Australian study by LaMontagne et al. was a secondary analysis of a survey undertaken to explore the connection between stress and precarious work. Similarly, in

the study by Krasas Rogers and Henson—which involved interviews and participant observation of temporary clerical work in Chicago and Los Angeles in the early 90s—sexual harassment was not the initial focus of the research. Questions such as, "Who did you work with and what were those relationships like?" brought out women's experiences with sexual harassment (1997: 218). In contrast, as I explained in chapter 3, exploring women's unwanted or uncomfortable sexual experiences in restaurant work is at the center of my research. During interviews with restaurant workers I learned how their experiences are connected to conditions of restaurant work, and these interviews have driven my analysis of precarious elements of restaurant work. Mapping out how restaurant work is organized is key to understanding the environment within which women's unwanted and uncomfortable sexual experiences at work with customers, co-workers, and managers happen and are handled.

3. The social context of restaurant work: A portrait of the restaurant industry and the people who work in it

In the last couple of decades both the amount of visits to restaurants and the amount of money spent in them have been rising. In 2014, the average household in Canada spent an estimated $2, 229 eating and drinking in restaurants (Statistics Canada 2014), [2] a large increase from the $1, 487 spent in 2003 (Statistics Canada 2006e). In addition to the time spent in restaurants as consumers, many people in Canada have worked some type of restaurant job. In BC, the "accommodation and food services sector, composed of 41 percent full-service restaurants, is the third-largest service sector in the

[2] British Columbians spend more money eating out in restaurants than the national average at $2, 487 annually (Statistics Canada 2014).

province and employs 8 percent of BC's workforce (Statistics Canada 2006). Full-service restaurants[3] are therefore an important source of paid work in BC, and also Canada more broadly.[4]

Restaurants are a source of many entry-level jobs. In British Columbia 41 percent of full-service restaurant workers are between the ages of fifteen and twenty-four (Statistics Canada 2006a).[5] 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. This proportion of young workers engaged in restaurant work is worthy of attention because people in this age category make up just 16 percent of the overall labour force in BC (Statistics Canada 2006c). Moreover, it is important to note 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.[6] Not only are young

[3] I am using the North American Industry Classification (NAICS) definition of full-service restaurants used by Statistics Canada's. Full-service restaurants are "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." Hereinafter, whenever I discuss "restaurants" or "restaurant work" I will be referring specifically to full-service restaurants.

[4] Nationally, "Food services and drinking places," a sector comprised of full-service restaurants, bars or pubs, fast-food restaurants, coffee shops, food trucks, and cafeterias, is the third largest sector of the economy in Canada (with "educational services" being first and "professional, scientific and technical services" being second) (Statistics Canada 2006c).

[5] The demographic characteristics of restaurant workers presented in this section are close to the national averages. Across Canada 41 percent of full-service restaurant workers are between the ages of fifteen and twenty-four; 67 percent of cooks and chefs are men; with 58 percent of management and 75 percent of senior management positions; and, 80 percent of hosts/hostesses, bartenders, and food and beverage servers are women (Statistics Canada 2006b).

[6] Some of my informants began working in restaurants at the age of fourteen, and also noted working

people over-represented in restaurant work, but visible minorities are as well. Although 23 percent of the labour force in BC is made up of visible minorities, visible minorities represent 38 percent of restaurant workers in the province (Statistics Canada 2006d, 2006a).

Gender relations also shape the social organization of occupations in restaurants. Occupations in full-service restaurants 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: 68 percent of cooks and chefs across BC are men. Moreover, with 58 percent of management and 73 percent of senior management positions being held by men there is a clear gendered occupational hierarchy in restaurants. 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: 81 percent of hosts/hostesses, bartenders, and food and beverage servers in BC are women (Statistics Canada 2006a). (And chapter 5 will discuss workers' accounts of gendered hiring practices.)

In addition to the ways in which age, race, and gender relations organize restaurant work, the small size of restaurants as workplaces is another important characteristic of the restaurant industry. In British Columbia, 76 percent of full-service restaurants and limited service eating-places have less than 100 employees and are categorized as small enterprises (Canadian Industry Statistics 2014). The prevalence of small restaurants comprising the restaurant industry is related to the model of restaurant franchising. The franchisor-franchisee relationship is a contractual relationship. While the

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alongside twelve-year-old girls. However, their work would not be reflected in census data. What the government does not count, it cannot be brought to account.

specific terms of this agreement will vary, the essence of the relationship is that a franchisee pays the franchisor—for instance, a payment in the form of a franchise development cost and ongoing operating costs—for a license to operate a restaurant using the restaurant's name, trademark, marketing, products, etc. Importantly, under the franchise model the franchisor and franchisee are independent contractors and therefore there is no employment relationship between the franchisee and franchisor, or the workers in a franchisee restaurant and the franchisor.

The prevalence of small workplaces matters because the size of a workplace can impact the working conditions. For instance, small workplaces tend to have less formal and more familial relationships between an employer and employees (Albin 2010: 964). Many of the people I interviewed thought of their co-workers as friends and family. In some instances the workers were related: a restaurant owned by parents and managed by their daughter, two brothers working side by side in the kitchen, or cousins hostessing together.[7] In addition, smaller workplaces are more likely to be lower paying and less likely to provide workers with benefits, job security, and union representation (Fudge 2009: 139); as the stories that follow will illustrate all of these matters were discussed in interviews with restaurant workers. Another related characteristic of restaurant work is the notoriously high staff turnover rate— a feature of the restaurant industry associated with challenging working conditions and the frequent openings and closings of restaurants (Service Canada 2015). Starting a restaurant is well known to be a competitive endeavor, as profit margins are, on average, 2.1 percent in BC (Statistics Canada 2012). With high staff turnover comes little union presence. Ninety-three percent

[7] It was common for workers to speak about their workplace as their other or second family. As Amanda, a server described, "My favourite part was that sense of family at the beginning." She continued, "[T]he staff felt like a community and we did everything together."

of workers in food and beverage service are not members of a union or covered by a collective agreement (Labour Force Survey 2013). Without collective agreements negotiated with employers by unions, non-unionized restaurant workers rely on employment standards legislation, law designed to provide a basic floor of labour rights. "While employment standards matter to all workers, they are especially important for 'vulnerable' workers – those who are least able to negotiate fair and decent working conditions with their employer and those not represented by unions. Vulnerable workers are disproportionately women, recent immigrants, racial minorities and young people" (Fairey 2005: 6).

One of the more prominent characteristics of restaurant work is the way in which customers impact the organization of labour, especially when it comes to scheduling practices and income from tips (both of which are precarious). Unlike other forms of work, such as manufacturing in which the products made can be stored and sold after, meals made in restaurants must be consumed almost immediately. Consequently, the work in restaurants is not done at a steady rate but "comes in waves and rushes" (Prole.info 2014). Restaurants depend on customers being present. The schedules of workers typically mirror the dinning patterns of customers; depending on the hours a restaurant is open there could be a breakfast, lunch, dinner, or late night "rush." In between rushes, when the restaurant is slow, workers may be sent home or "cut" so the employer can save on labour costs. Moreover, the income of servers and bartenders tied largely to tips from customers is a unique pay structure of the restaurant business that benefits employers and acts as an incentive for workers to please customers. As Finkin (2016) describes:

> Management wants its food and drink to be served, courteously and expeditiously, to create an ambiance that customers find so welcoming they will return. But management cannot possibly monitor the infinite and varied exchanges between the clientele and the wait staff. It could rely on customer complaint – of rudeness, indifference, or sloth; but that would be cumbersome and of questionable efficacy on a day to day basis. By relying on the tip, the staff is motivated to monitor itself.

While tips are essentially precarious, I will soon unpack how employment standards legislation enables such a practice.

In what follows I relay four accounts from interviews with current and former restaurant workers that provide a descriptive picture of restaurant work and precarious working conditions. All of the characteristics of restaurant work I have just discussed, the young workers, the segregation of labour based on sex, the small size of workplaces and accompanying familial feel, and ways through which customers shape working conditions will be evident throughout the workers' stories.

4. An (a)typical shift: restaurant workers' accounts of their work

What does restaurant work entail? There are many different types of restaurants. The people I spoke with 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 (although the latter was far 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 restaurant industry. Even though the people I spoke with worked in a range of restaurants, precarious working conditions, in some form or another and to varying degrees, featured in all of the workers' accounts of at least one workplace they had experience in. Drawing on interviews with

restaurant workers, this section provides an overview of four precarious characteristics of restaurant work: flexible work schedules; being paid an illegal wage; relying on customers for tips; and, working without proper breaks for low wages. I will subsequently unpack these features of restaurant work and examine how they come to be.

4.1 Customers and "flexible" work schedules

Eve has had a part-time job since she was twelve and began working in restaurants at the age of fifteen while she was in high school. She has worked in four or five restaurants so far and currently works as a hostess while she attends post-secondary school. Her restaurant job is just one of three jobs she has at the moment. She describes the restaurant she currently works in as being on the more expensive end compared to the other restaurants she has experience in. "It's expensive and I like that cause bills are bigger and tips are bigger…in the summer my tips outweigh my paycheque." Eve tells me that she is hoping to move up and become a server because "servers make mad bank. Like, a lot of cash." "I've been asking to move up for awhile now and my manager is so annoying and funny about it. But, I have a job. A lot of people don't have jobs right now."

Shortly into our interview, I asked Eve what an ordinary shift at the restaurant involves. "I actually have to work tonight," she informed me. Eve painted a picture of how she expected her night to go. She began by describing how she gets ready for work:

> So, I'll go home, I'll take off my glasses. I'll probably do my makeup, put some makeup on. Usually I do my hair. I'm not going to tonight. Usually, your hair is supposed to be back or half back. I always wear my hair in a braid, or in a ponytail, or half back. I always wear pretty earrings…[At work] I put on my work uniform, which is black pants, black top, black shoes… I say hello to everyone cause it's like a family. I love my job there. I look at the books and see who's coming in. I assign all of the reservations to the floor plan. The floor plan is broken up into sections. Each server has a section. I make sure that the reservations are going in equally so that five reservations at six o'clock are not all

> going into one section. It's spread out so the servers will have equal tables. I then clean up the restaurant a little bit. I'll walk around, I'll vacuum, I'll light candles, I'll fill up water jugs. I'm usually seating people at this point. If a customer or a guest comes to the door I greet them with a big smile. 'Hello. Welcome. How are you?' 'Good.' [*She recounts the usual script*.] I ask them if they have a reservation. If they do, bring them up. If they don't, I bring them to a table depending on which server is up next on rotation. If they have a child they go into a certain section. I then water them [*she pours glasses of water for the table*]. I tell the server I sat them. Throughout the shift I'm doing that, and taking plates away, I'm bringing food to tables, I'm bussing tables—so as people leave I clear the table—I wipe the table, I re-set the table. Sometimes I shuck oysters…I joke around with my co-workers a lot. I do glass wear [*she polishes glasses and puts them away*]. I usually have two to three other hostesses with me, so I'll delegate to them cause I've been there longer… It's fun. Keeps you busy.

Eve's work begins at home where she prepares her appearance for work. Once in the restaurant her work is a very physical labour. "You're always moving," she tells me. Eve's job also requires a lot of co-ordination. Eve organizes where customers will sit by planning where reservations will go and seating other customers in servers' sections on a rotating basis to keep sections balanced. Dividing customers (and the tips that come with them) evenly among servers' sections is important in order to not slam one particular server with too many customers at once.

As I am interviewing Eve, she pulls out her cellphone and checks for a missed call. "I hope I get called off tonight cause I have a lot of [school] work to do," she shared. "I'm the 5:30 start so I'm the second host called on. I'm hoping I'm called off. They'll call me and say, 'Hey, you don't have to come in to work today. We're not going to be that busy.'" The practice of being "called off" speaks to how customers impact the organization of labour in restaurants and workers schedules for a particular shift. Eve's work and the work of other restaurant employees is organized around the presence of customers. Employers schedule workers to reflect the eating practices of their patrons. After checking her phone, Eve had not missed a call from her boss telling her she is no

longer needed. But if she had, Eve informs me that she would not have been paid for the shift she was scheduled to work.

4.2 The occupational hierarchy: stuck at the bottom with an illegal wage

In addition to hostesses, some restaurants have bussers working in the front-of-house (FOH). Erinn is a busser who typically works evening shifts. She has had two restaurant jobs and currently works at a "casual," "family type restaurant," which also gets a lot of tourists. "There's a bunch of people who have been there for like ten plus years, fifteen plus years, which is really weird for restaurants," she commented on the unusual tenure of workers. She described the work as "slammin' busy" and spoke about her work during an average night:

> [T]here's not much of a dress code there which is kind of cool. It's basically like no jeans, no T-shirts, it's very casual. I think most of the girls would dress up a little bit more on weekends, I know I do. A lot of us tend to wear all black…[Once at work] I'd go in, start my prep which is like—what do I even do—I just make sure the water station is good so I can just grab things easily. Um, sort of give the bathrooms a quick clean, make sure there's soap and paper towel and everything in there…I prep bowls for finger bowls. So get a bunch of bowls put a napkin in them, put a smaller bowl on top of them with lemons and stuff…There's certain dishes you order and they're just really, really, really messy. So the acid in the lemon helps get the grease off your fingers. So those are—they just take forever to do if you're in the middle of a rush, which we always kind of are. Um, and then yeah, the first thing is just get the customer water, make sure they have menus and all that stuff, and then the server will just sort of tell you if they need something. And then we just sort of go around to make sure waters are topped-up, make sure tables are set, wipe the tables, clear away any dishes, if they ask you for a drink make sure you relay that to the bar, if they ask you for dessert you can pretty much get it. Make sure that there is always communication with the servers, you have to, or else twenty minutes into your shift you're going to be crying. It's slamming busy in there.

Near the end of Erinn's explanation of what she does on a given shift, she points out how crucial it is for restaurant workers to be communicating with each other. Working

together is essential because labour in restaurants is very integrated, as will be evident in the stories to follow. Seating customers, cleaning and setting tables, making drinks, cooking meals, and cleaning dishes requires co-ordination among many different jobs.

Erinn has been working her job for a couple of years and is waiting to be promoted to a server. For a person without serving experience beginning as a hostess or busser is the usual path to becoming a server. Being promoted to a serving position could take weeks, months, or even years. In some restaurants climbing the occupational ladder may involve working as a bartender and becoming knowledgeable about the alcoholic beverages first, in other restaurants being a bartender *is* the top of the occupational ladder for a front-of-house worker, a position that is achieved only after one acquires sufficient serving experience. Regardless, waiting for the boss' promotion can be frustrating, especially when one feels they have paid their dues at the bottom. As Erinn shared, "I've been here for two years and they keep saying, 'Yeah, yeah, we'll put you on bar. We'll put you on bar.' And it has yet to happen. So, not quite making the big bucks yet."

Adding to Erinn's frustration is the fact that her employer is illegally paying her the "liquor servers minimum wage," a wage rate below the regular minimum wage that is supposed to only apply to "liquor servers." Erinn has tried telling her employer that she ought to be paid the regular minimum wage: "I talked to them, 'Hey listen, serving alcohol is not part of my primary duties, may I please be paid what I'm due?' And to this day I'm getting paid $9.00 an hour, so that went well," she said sarcastically.

4.3 Serving a table and earning a tip

Michelle entered the restaurant industry as a busser when she was twenty. She works at a restaurant that serves breakfast and lunch. Since starting she has been promoted to a serving position and the work, Michelle tells me, can be both mentally and physically exhausting. "In the beginning I had so much fun working there because it um, it started off with being about the people who worked there, you know. 'Do you have the right kind of upbeat corky personality that we're looking for?' So it was, you know fun." Three years into the job, she describes the work as sometimes being "monotonous." "I'm on my feet for 7 1/2 or 8 hours a day running around carrying heavy plates." I asked Michelle what a typical day at work involves:

> So I go in and I leave my things and I wash my hands. I make sure, you know, not only am I presentable looking, but I'm clean. You're handling someone's food so there is a certain standard you want to hold yourself to, obviously. Then I'm assigned a section of a restaurant… I would go and talk to the tables and make sure that they have drinks, because it is the responsibility of the hostess to make sure that a newly sat table has drinks. …sometimes that doesn't always happen, so I have to take care of that. And I don't know, I try to establish a rapport with people. Sometimes it's easier than others. Some people are, I don't know, like in everything right, you click with some people, you don't with others. Unfortunately that also translates into my tip. Someone could be having a bad day, which you know, nothing to do with me, and I, I pay for it. And that's fine, one of the more frustrating things about the industry. But yeah, I take, I take their food order and I make sure that while they wait for their food they have drinks and they're happy and they're not so hungry that they're willing to gnaw on their fingers. I deliver their food, I make sure that they're happy with their food. If they're not I try and, I don't know fix that in any way that I can, compensate for the fact that they didn't enjoy something, or they found a hair in their food, or whatever the circumstance may be. I just try and make sure that they leave happy and that they enjoy their experience. Yeah, and then they're done, I clear their plates, I give them the cheque, and they pay and they leave.

As Michelle expressed, one of the more difficult aspects of her work is the involvement of customers in contributing to her income through tips. Regardless of the quality of the

job a server does, if a customer is having a bad day or does not "click" with the server it can impact their income—as Michelle says, "I pay for it."

4.4 Working long hours without breaks for low wages

Jackie is a former chef. She began working in kitchens at the age of nineteen, attended culinary school, and worked for ten years in the industry before her career ended due to a workplace injury. She has been employed in a variety of restaurants from casual to five-star fine dining. Jackie exuded passion and love for cooking as she spoke about her history of working in restaurants. She reflected on her experience of entering and leaving the restaurant industry. As a new cook, much of the training happens on the job as you go. "You'd usually get about a weeks worth of training, if you're lucky, sometimes less…Technique is just something you build-up over time. You learn how to cut things faster, learn how to do things faster because people—at every restaurant there is someone who will take you under their wing." Jackie went on to describe the typical training process and the work in a kitchen:

> Usually training consists of what's in each dish on the menu. They'll give you a menu to look at so you'll understand what you have to do. They'll go through where you get the different pieces from, because prep for a restaurant is what you do. You pre-cut everything as long as it doesn't dry out. And then when you actually, during the line you put everything together. And a lot of the time you're doing both at the same time. So every time a bill comes in you make the bill and then you're back to prep.

Similar to working in the front of the restaurant, work in kitchens is extremely fast paced. As Jackie told me, working in a kitchen, "You're never not busy."

While Jackie reflected on her work, she spoke about the low wages she earned. "I ended my career as sous-chef, which is second in charge of the restaurant…I was sous-chef at a restaurant and I made under $30,000." Jackie made an hourly wage of sixteen

dollars an hour. “I was working between eight and twelve-hour days,” she recalled. “And when a chef says that they’ve worked twelve hours, it means that they have worked *all* twelve hours. There are no breaks. There’s no lunch. There’s no dinner. It’s literally you eat what you can as you’re working.” Jackie calls attention to a common practice in the restaurant industry that was shared by many informants: there are no real breaks.

The stories above describe a number of familiar customs experienced in the daily life of restaurant workers: being called off from work (without pay) and having an unpredictable work schedule, waiting a long time to be promoted, illegally being paid the liquor servers wage, having to rely on customers for insecure income in the form of tips, and working long hours without breaks. How do these working conditions arise? The following analysis takes up this question as I explore how restaurant workers are paid and how their work is scheduled. I argue that working conditions in restaurants and the creation of an environment in which workers have little economic security are a product of a complex interaction between the social context of restaurant work, low and inadequate employment standards, and customary employment practices or employment norms in the restaurant industry. Understanding the working conditions in restaurants is crucial, for as the chapters in this dissertation will argue, the context of restaurant work is key to understanding how women restaurant workers experience sexual harassment and uncomfortable sexualized interactions at work.

5. The economic organization of restaurant work: low wages and the wage-tip relation

The practice of tipping has been traced back to coffee houses and pubs in

sixteenth century England. Customers would insert coins into brass urns that read "To Insure Promptitude" (T.I.P.). Unlike the custom of tipping we are familiar with in Canada today however, customers originally paid tips *upfront* in the hope of securing better service from a waiter (Azar 2004). Today, predominantly waitresses, work to provide good service in the hope of securing a better tip at the end of the service exchange when it comes time for a customer to pay their bill.[8] As I will discuss shortly, tipping has become a practice so imbedded in restaurant work in Canada that the law recognizes tipping and accounts for it in setting minimum wages. The income of restaurant workers comes from two sources: an hourly wage paid by employers and gratuities paid by customers. Employment standards legislation acknowledges and reinforces the practice of tipping through minimum wage regulations that allow employers to pay alcohol servers below the minimum wage, thus entrenching the involvement of customers in restaurant work through a wage-tip relation. By tipping workers, customers engage in a function normally attributed to an employer, that of remunerating workers, but are outside of the employment relationship (Albin 2010: 970-971).

Restaurant work differs from other forms of wage-labour relations in that customers significantly contribute to the earnings of front-of-house workers through tipping. As Emily, a server and bartender shared: "Paycheques don't mean anything to me. I honestly forget when I get paid. It's so funny the dynamic between the kitchen and the servers. We'll be like, 'Is it, when's payday?' and they [the kitchen staff] know exactly when payday is because they rely on—that's their income, whereas I'll forget to

[8] The term "waitress" is somewhat anachronistic. I have used the term here to highlight that serving work, as it is now done in Canada, is performed mostly by women. However the people I interviewed typically used the term "server" to describe their job, and not waitress. Where "waitress" appears in this dissertation it is used either because informants have used it, or I want to remind readers that a "server" is not a genderless occupational category (Acker 2006).

cash a cheque for weeks." It is common for servers and bartenders to make more in tips from customers than wages from employers. The hourly, employer-paid wages of restaurant workers are low and it is rare for a servers and bartenders to have their wages raised by employers. 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."[9] Employer-paid wages in the restaurant industry are low. The average weekly earnings of employees in "food services and drinking places" are $344.53 (Statistics Canada 2015c). These weekly wages are the lowest among all industries.[10] The wage-tip pay structure is different for workers in the kitchen and for hosts and bussers whose main source of income is more likely to be paid by their employer. When Tracey was promoted from a hostessing to a serving position, her boss retracted the fifty-cent raise she had been given as a hostess. "They took it away from me, which I think it was illegal for them to do I'm not really sure. But I earned that so I thought I was going to be making it." The altering of Tracey's pay when she moved into a serving position highlights the differential wage structure for servers and bartenders: employer-paid wages are low and customers are a key contributor to the wage-tip relation.

In British Columbia, as well as some other provinces in Canada,[11] the level at which minimum wage regulations in restaurants are set is influenced by tipping practices,

[9] The liquor server wage is stated as being $9.00 here because the interview was conducted prior to the wage increase introduced in September 2016.

[10] This figure is based on payroll surveys and therefore may not include gratuities unless they are integrated into a payroll system (a rare practice). However, this statistic is important because it shows how low *employer-paid* earnings are.

[11] Ontario also has a 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,

and the effect is a gendered wage-tip relation. Prior to introducing the lower minimum wage for alcohol servers, the BC Ministry of Labour held meetings attended by "labour and business stakeholders" (British Columbia 2011). Employer lobby groups, including the BC Restaurant and Food Services Association and the Coalition of BC Business, used the social custom of tipping to pressure government to introduce a liquor servers minimum wage rate (British Columbia 2011: 5). In the *Summary Report on Employment Standards Stakeholder Engagement Process*, a report that provides an overview of the key themes from the meetings, the position held by employer groups on a "separate gratuity rate" is described as follows:

> Employer groups expressed very strong support for establishing a lower minimum wage for workers who receive gratuities, modeled along the lines of Ontario's 'liquor server rate'. In their view, this would provide cost relief to the food and restaurant industry that has been very hard hit by the implementation of the HST, recent changes to the laws governing drinking and driving, and the generally weak condition of the industry. They noted that in many licensed restaurants and bars, the servers earn more in wages and gratuities than anyone else, and that exempting these servers from the general minimum wage increase would make it easier for restaurant and bar owners to pay wage increases to employees who do not receive tips. (British Columbia 2011a: 5)

Without conducting any independent research on the impact of a lower minimum wage for alcohol servers on employees or employers in the restaurant industry, the government deferred to the business interests of restaurateurs and adopted the lower wage rate.[12]

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

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are as follows: 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. Alberta did have a lower wage rate for liquor servers but as of October 1 2016, liquor servers will receive the same minimum wage as other workers (a change announced as part of the provinces New Democratic government's commitment to a $15 hour minimum wage).

[12] A fact revealed by a Freedom of Information request by the co-chair of the BC Employment Standards Coalition, David Fairey.

introduced. Since the liquor servers minimum wage was introduced the gap between the regular minimum wage and the liquor servers minimum wage has grown from 25 cents to $1.25. Effective September 15, 2016 the general minimum wage in BC is $10.85 per hour, while the minimum wage for liquor servers is $9.60 per hour. The liquor server minimum wage applies to an employee "whose primary duties are as a server of food or drink or both," and "who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence to sell liquor has been issued under the Liquor Control and Licensing Act."[13] The low minimum wage and liquor servers minimum wage rates are especially concerning given that the living wage calculations for major cities in BC are much greater: $20.02 per hour in Victoria and $20.64 per hour in Vancouver.[14] Although the lower minimum wage appears to be a neutral regulation, as I have discussed, gender relations shape the organization of occupations in restaurants. Because women make up 81 percent of food and beverage servers in BC (Statistics Canada 2006a) they are far more likely than men to be paid the lower minimum wage assigned to alcohol servers.

The practice of customers tipping workers means customers become involved in restaurant work in a manner that impacts employment relations and contributes to the precariousness of the work. Tips make the income of restaurant workers insecure because with tipping it is unclear how much a worker will earn. "[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–

[13] BC Reg 396/95 at 18.1.

[14] A living wage is an hourly wage needed to sustain a two-parent family with two children and each parent working full time. The living wage is calculated regionally and covers basic expenses including food, clothing, rental housing, childcare, transportation, and small savings to cover illness or emergencies (Living Wage for Families Campaign 2016).

87). With the exception of automatic gratuity added to a customer's bill, a practice typically reserved for large tables, tips are paid at the discretion of customers and therefore, as a server, Jill, described they are "not very reliable." Depending on an inconsistent source of income can be exasperating. Michelle spoke about this aspect of her work:

> One of the big challenges is, you know, my income depends on how much somebody likes me. Or what their judgment of the quality of job that I've done is. You know, I could textbook, I could do absolutely everything right, but if I say one thing they don't like or, you know, I remind them of someone they dislike—any small cues that upset them, you know, they don't like me so they're gonna tip me less.

Michelle described this as the "most frustrating" part of her work. "My tips are, you know, that's how food gets on the table and how I pay all my other bills," she shared. "It's stressful. I need a new pair of glasses, obviously, and that comes out of my tips [*she pointed towards her broken glasses held together with tape*].

In addition to the particular tipping practices of a customer, the amount a server earns can also vary from one shift to the next, depend on the shift they are scheduled to work or even the area of the restaurant they are assigned to work in (both of which are usually determined by managers or shift supervisors). For one, 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. Without customers, the income of servers is low. Jill explained, "Since they expect us to be making tips, we don't get paid as much. And if it's a slow day, you're not making any money, pretty much. Which is awful, it's no good." Earnings through tips can also depend on the section of a restaurant in which a server is scheduled to work. Managers or shift supervisors usually divide tables among servers. Since 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, 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.

In addition, the ways through which tips are organized via unregulated tip pooling practices contributes to making the income of both servers and bartenders, and restaurant workers who benefit from tip pools unstable. 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 in to the tip pool may be based on a percentage of her sales or a percentage of the total tips she has earned for a given shift. In BC, employees or employers can facilitate and manage tip pools. For example, tip pools might be collected from servers and bartenders by an employer, who later redistributes tips to employees who may not be paid tips from customers directly—hosts/hostesses, dishwashers, cooks, bussers, etc. In this case, tips might be redistributed based on the number of hours one works, the position they work in, or “merit.” Alternatively, tips may be shared among employees without going through the employer. For instance, a server may “tip-out” a bartender directly for pouring and making their drinks during a shift. 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. Before the liquor servers minimum wage was introduced, worker advocacy groups brought this regulatory gap to the attention of the BC government (British Columbia 2011: 5), which subsequently decided not to attend to it.[15] The fact that tip pools are unregulated by law adds to the insecurity of the wage-tip relation. [16]

Although all forms of tip pooling will impact the amount of income from tips a worker walks away with after a given shift, some tip-pool arrangements can be more disadvantageous to a server or bartender than others. For instance, tip pools based on a percentage of sales, rather than a percentage of tips, can disadvantage a worker who, for a number of reasons, earns low tips during a shift. With tip sharing arrangements based on a percentage of sales in the worst instances a server may have to pay out of her own pocket when she does not make enough in tips during a shift to cover the required tip-pool payment. Erinn, who works as a busser, clearing and setting tables, discussed the

[15] Worker groups who attended consultation meetings held by the Ministry of Labour—including the Employment Standards Advocates Coalition of BC, and representatives from United Food and Commercial Workers—who opposed the liquor server minimum wage pointed out the presence of tip pool practices in restaurants. The groups noted that tips are largely unregulated under the BC *Employment Standards Act*. According to the summary report prepared by government, the worker groups argued: "if servers are required to rely upon gratuities for a larger portion of their earnings, then it would become necessary to enact regulations either to ensure that servers are allowed to keep all that they receive in tips or to set rules on how tips should be allocated within the tip pool" (British Columbia 2011a: 5).

[16] 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 has also recently introduced legislation to regulate tipping: *Protecting Employees' Tips Act*, SO 2015 C. 32. However, the legislation in Ontario is weaker than Québec, and provides a vague provision open to employer abuse: The Act allows employers to impose and run a tip pool and while the Act also states that employers are not to "share in tips or other gratuities redistributed" by the tip pool, it includes an exception if the employer "regularly performs to a substantial degree the same work performed by, (a) some or all of the employees who share in the redistribution; or (b) employees of other employers in the same industry who commonly receive or share tips or other gratuities" (s 4 and 5).

drawbacks of the tip-pool system that is based on a percentage of sales: “It really sucks on nights that people don’t tip well because I mean, I’ve seen tables where they have like a $400 bill and the guy left the server—who did an amazing job—he left her like twenty bucks, which is kind of ridiculous… I’ve seen servers have to tip out the kitchen and bar out of their own pockets.” All tip pools influence a worker’s income. However, if a server is required to pay a percentage of her sales for a given shift into a tip pool without having earned enough tips to cover this percentage, she will be paying out of her own pocket.

Tips and tip pooling can also impact restaurant work in a more subtle way that makes a server’s income dependent upon co-workers. As mentioned earlier, the labour performed in a restaurant is very integrated. Providing a meal and an enjoyable experience to customers requires collaboration among a number of employees including, hosts, servers, bartenders, food runners, kitchen staff, and managers. A customer might be put off by attitude they receive from a hostess, the length of time they have to wait for their meal, or a hair they find in their food and consequently tip less. If a customer is disappointed at any point during their dining experience, this could lead to a lower tip when they pay their bill.

To summarize, tipping is a social practice given legitimacy and reinforced by labour law through lower minimum wages for alcohol servers. The wage-tip relation disproportionality impacts women restaurant workers since 81 percent of food and beverage servers in BC are women. Tipping involves customers in remunerating restaurant workers and the unpredictability associated with tips—tips are voluntary, depend on shifts and serving sections, and make workers reliant on managers and co-workers to earn a tip—means the income of restaurant workers is essentially insecure. As

the next section of this chapter will discuss, the involvement of customers in restaurant work also impacts the scheduling practices in the restaurant industry.

6. Working a shift: open-ended scheduling practices and working under the floor

Restaurant workers work unpredictable shift work. Work schedules are often posted without much notice, shifts are open-ended, and workers may be expected to work split-shifts, or be "on-call" without pay or without any guarantee that they will work. All of these practices contribute to the precariousness of restaurant work because with these practices a worker cannot be certain of how many hours they will be working and, correspondingly, how much money they will earn in a given day, week, month, or year. Such common scheduling practices make restaurant work financially insecure for restaurant workers.

The schedules of restaurant workers can change from week to week and employers frequently post schedules a day or two before the beginning of a workweek. As Janet, a server who works in a small restaurant with six or seven employees described: "The scheduling, is also really up in the air, loose. Which is kind of more annoying in the sense. Our owner will schedule, and he's pretty lazy with making the schedule, so he'll usually schedule the next two weeks like three days before hand." Stories like this one from Janet were familiar for the workers I interviewed. Moreover schedules of restaurant workers usually only reflect the time they are to start work. As Erinn explained, "It's open ended. So basically you're done when you're done." While I was interviewing Eve, a hostess, she told me, "You never know when you're done. You can guess. And today I'll

start at 5:30, so I will be done latest 10 o'clock—probably more 9." Workers new to the restaurant industry can be caught off guard by open-ended scheduling practices:

> My very first shift ever they didn't tell me how long I'd be working and then I was here for nine hours and I didn't get to eat that entire time. (Jenn)

> When I first started working there I thought, 'Oh, they must have forgot to put my end time,' not realizing when I get there what's going on. And I get there and I'm like, 'So, what time am I off?' [*She recalled her boss' reaction*] 'I don't know eight or twelve…we don't know how the night is going to go. We have a reservation of twenty-five coming in at this time and we're going to need you for that.' (Amanda)

As a consequence of open-ended shifts the total duration of a day, or even week, of work is usually not known in advance.[17] The end of a shift depends on how busy the restaurant is: a combination of the volume of customers and number of staff working at the time. With 'flexible' work schedules, the hours a restaurant worker works can be all over the place. Before Amanda began working in the restaurant industry she was given a heads up about the (a)typical scheduling procedures. "I had my forewarning from my friend…[*she recalled her friend's caution*] 'This isn't just like a normal nine to fiver. You gotta work crazy hours. You work weird shifts and weird times, until the wee hours of the morning.'" 'Flexible' work schedules are so normal that it is difficult for those in the restaurant industry to see another way of organizing the work. As Amanda explained, "You have to have a flexible schedule to work at those kinds of places because those kinds of places have a flexible flow of how many people come in at what time and stuff like that." "If you had a set schedule," Amanda told me, "you wouldn't be able to run the restaurant. You couldn't do it."

[17] An exception, for instance, being workers who are scheduled to work until a restaurant closes—even still, customers walking in for a meal five minutes before a restaurant closes means restaurant staff must stay until the customers leave.

Split shifts are another common feature of restaurant workers' schedules that make working time uncertain. With this practice a worker will be scheduled two open-ended shifts in a single day; for instance, a worker may be scheduled a "12:00" lunch shift and a "5:30" dinner shift. As with a single open-ended shift, when "working a split" a worker will not know in advance how many hours they will work. In addition, they also will not know the duration of their leisure time in between shifts. This makes it hard for workers to plan their days. Moreover, if the time in between the two shifts is short, a worker might not have time to do anything but wait in the restaurant for their second shift to start.

Another way through which restaurant work is organized to be insecure is with the practice of "on-call shifts." As Jenn explained, "I had, probably at least once a week, an on-call shift. So I'd have to call like only an hour or two in advance to find out if I was working that night, which I really didn't like. You can't really plan your day around not knowing if you're gonna work or not." I asked Jenn if her employer paid her for being on-call. She laughed at the question; her answer was a definite "No." Flexible work scheduling practices, such as on call shifts and or open-ended shifts favour employers. If a restaurant is "dead" managers send workers home to keep the cost of labour low. On the other hand, if a restaurant is unexpectedly busy managers can have on-call workers come in at the last minute, using a "just-in-time" staffing practice.

7. Bad laws, bad practices, and the construction of (permanently) temporary bad jobs

> The word career and the restaurant industry does *not* compute for me. It's a job. It is a job. It's a vehicle for me to move towards my more pertinent goals. It's a—I think when I'm having a bad day, I think to myself, this is not my life. This is a temporary thing that will get me where I want to go. (Michelle, server)

I just graduated, so I want to get a real job. (Jill, server)

Inadequate employment standards legislation combined with workplace norms that undercut existing worker protections contribute to an industry full of bad jobs, jobs that are often perceived by workers as being temporary. The poor standards for work under the BC *Employment Standards Act* (ESA) contribute to the insecure scheduling practices detailed by restaurant workers in the previous section. Many of the scheduling practices informants spoke about—practices that allow employers to keep labour costs low—are actually legal under the *ESA*. For instance, 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.[18] Thus, having open-ended schedules posted last minute, or as Janet described, having an "up in the air" schedule, is perfectly legal. In addition, the employment standards legislation does not prohibit split shifts or on-call shifts; these forms of organizing restaurant work are also *legal*. But at the same time as inadequate labour laws can foster a work environment rife with precarious working conditions, workplace norms can also undermine existing (albeit low) labour laws. Such is the case when it comes to workers being sent home without pay and the practice of not breaking.

According to employment standards legislation, when workers are sent home (or "cut") shortly after starting a shift, or before they start work, employers are required to pay scheduled employees reporting for work for a minimum of two hours—a change introduced in 2002, when the minimum hours of pay was lowered from four hours to

[18] Bill 48, *Employment Standards Amendment Act* , 3rd Sess 37th Parl, British Columbia, 2002, at 12.

two.[19] Even though there is an additional protection requiring that workers scheduled for more than eight hours be paid for a minimum of four, whether or not they work,[20] this would not apply to restaurant workers whose shifts are open-ended. However, the minimum daily pay of two hours is rarely given to restaurant workers who are sent home from work. Eve, a hostess, recalled working at one restaurant where she was regularly sent home, or cut, shortly into her shift without being paid. "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." [21] With this practice, employers subvert the (low) minimum protection employment law is supposed to provide workers. Being cut and not receiving the minimum daily pay is a workplace practice many restaurant workers spoke about:

> I would come in and my manager would come up to me, and this happened just I think 2 or 3 times, and she said, 'Hey, it's actually—we actually don't need you today. You can go home.' And I said one time—cause that was in the summer when I didn't have a bus pass and I live about a twenty minute bus ride from my work, so it cost me $2.50 on the bus there. I didn't get a transfer cause I assumed I'd be there for two hours at least. And then, I get sent home and I have to pay $2.50 back. I just mentioned to her, I said, 'Hey, I understand if there's a day where you really don't need me but it cost me five bucks just to get here and back and if I'm not making any money it really sucks. Do you think you could try to call me half hour or forty-five minutes in advance next time you thought that was the case? And she's like, 'Oh well this is the restaurant business. That's not how it works.' (Roxy)

Managers and supervisors take advantage of the open-ended shifts of workers and engage in practices that legally constitute wage theft—as Roxy's boss told her, "this is the

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[19] *Ibid* at 14.
[20] *Employment Standards Act*, RSBC 1996, c 113 s 34.
[21] Workers' reactions to being sent home early vary. Sometimes workers want to be sent home when the restaurant is slow. As Eve, a hostess, explained, "Because if there's too much staff for guests in the restaurant it's silly and we're bored." Other times, workers are frustrated when they are sent home early because they have planned their entire day around working or have family obligations. As Ryan, a former server/bartender shared "It's not okay. I just planned my day around work and now I don't have anything to do… For trying to plan a family, like those are hard things." Ryan left the restaurant industry when his daughter was born. Insecure or 'flexible' restaurant work hours together with the lack of income security influenced his decision to leave the industry.

restaurant business." [22] In an environment in which the practice of not being paid the minimum daily pay is common, the law requiring that workers be paid two hours of minimum pay is regularly subverted.

On the topic of being sent home early without pay, Roxy touched upon the lack of training workers receive on their rights in employment: "[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." In British Columbia, employers are no longer required to put up posters in workplaces educating workers of their basic legal rights. This change to the law—also brought in with the 2002 amendments to the employment standards legislation—is especially relevant in the context of restaurant work where there are many young workers and people working their first job. During our interview Roxy talked about going home and researching her legal 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." Roxy described what she thought would happen if she confronted her boss about not being paid the minimum daily pay: "if I were to try and challenge that and say legally you have to give me two hours pay…they'd probably fire me." Employers do not care, she told me, "cause they know you're probably not gonna go that far with getting twenty bucks." Roxy calls attention to an important point: it is not

[22] Workers spoke of other practices that legally constitute wage theft. For example, as one server shared: "If you made a mistake on your cashout, like for some reason your losing money, and that has happened to some people, you have to pay like $20. It could get lost between the visa and the debit, but maybe you just rang something in wrong and you didn't get it fixed and you forgot, well you still have to pay it out because it was your mistake." Other stories included having to pay $1 per shift into a "dine and dash fund," an insurance like program, to cover workers who serve a table of customers who leave without paying (tables that "dine and dash"); having to pay fines for mistakes with food or drink orders, broken or spilled items, etc. These practices constitute unauthorized forms of deductions, contrary to section 21, (2) of the BC *Employment Standards Act* and are a form of wage theft as the costs are part of an employer's cost of doing business.

enough for legal protections to exist on paper or for workers to be knowledgeable of their rights. Even though the law on the books provides workers with the right to a minimum daily pay of two hours, as Roxy says, "it's just words."

Pervasive workplace practices can undermine even the most minimal legal rights, such as taking an *unpaid* meal break. As Jenn's account of her work as a chef presented earlier in this chapter detailed: "when a chef says that they've worked twelve hours, it means that they have worked *all* twelve hours. There are no breaks." Even though workers are legally entitled to an unpaid meal break of at least half an hour for shifts lasting longer than five hours, and are entitled to a paid meal break if they are required to work at any point while on a break, breaks are very uncommon:

> Nobody breaks. Nobody's allowed to break. There's no breaking. Yet they still take fifteen minutes off of everybody's shift every single time…If in fact you do try and take some time to eat they'll get on your case about it. And I've worked at other restaurants where there just are no breaks, and that's just the understood thing. (Roxy)

> I think every restaurant that I've worked at, like you don't get breaks. Even though you're supposed to get breaks they just aren't a thing. (Jenn)

> You don't really get a break. But you show up knowing that at least. I think just the nature of the industry just doesn't allow for that. (Erinn)

Even when workers are aware of their right to take a break, the "nature" of the restaurant industry—how the work is organized—creates a culture that does not allow for breaks and prevents workers from exercising their right to a break. As Michelle explained, she is "too busy to take breaks." "It's not because I'm not allotted a break by law…I literally do not have time to take a break….If I'm overwhelmed or you know, whatever, I can step away for a couple of minutes, but I'm responsible for a certain number of tables…[Co-workers will] help me out but they're not gonna look after my section for me so I can sit

for half an hour and take a break. ” The regular practices of workers being sent home without receiving the minimum daily pay and not getting proper breaks while working violate the minimal labour protections afforded to restaurant workers.

However, workers may not feel secure enough in their jobs to be able to complain when their rights are violated. As Jackie shared there is an “unspoken rule” that “[i]f you don’t feel like doing your job there are ten more people waiting for it.” The staff turnover rate in restaurants is high. Workers become aware of the transient nature of the restaurant industry by seeing others come and go while a steady flow of new faces dropping off resumes. “The industry is transient,” Ryan told me. “They can fire you at any fucking time. They can hire anyone. Everyone’s looking to be a fucking server.” The high employee turnover in restaurants makes unionizing difficult and feeds into the circuit creating (permanently) temporary bad jobs with very little job security. The lack of collective support for workers can make it difficult for them to protest when their rights are violated. For a non-unionized restaurant worker there is little advantage and a lot of risk in opposing an employer’s disregard for basic employment rights:

> In the unionized environment, because you stand together cause you have a union you can stand up and say, ‘Fuck you man. That’s not right.’ And they can’t fire you. But in a non-unionized environment you say, ‘Fuck you man.’ They say, ‘Get the fuck out of here.’… So if you want to take that next step and go to the human rights tribunal or go to the labour board, that’s a lot of extra work—for what? For an extra hundred bucks? For your job back in a place where you don’t even want to work at? (Ryan)

Importantly, when the floor of working standards is so low to begin with, workers may not think that objecting to their rights being violated is possible, or even worth it. It is within this workplace context with high job instability and disregard for even the most basic rights that women experience uncomfortable or unwanted sexual behaviour and at

work. Not only does the precariousness of restaurant work prevent workers from complaining when their basic employment rights under the *Employment Standards Act* are violated, but also when they experience sexual behaviour at work that they are not okay with (as will be taken up in chapters 5 and 6).

8. Conclusion

This chapter has discussed the ways through which working conditions that comprise restaurant work are insecure and unstable. By way of a complex interaction between the social context of the restaurant industry (including a business model highly dependent upon customers), inadequate and low employment standards legislation, and illegal workplace customs restaurant work is highly precarious. The involvement of customers in remunerating workers through a legally authorized wage-tip relation contributes to making the income of workers unpredictable. "Flexible" open-ended shifts, based around the presence of customers in restaurants, exacerbates the unpredictability and insecurity restaurant workers face. In this chapter I have also explored the co-constitutive relationship between the poor and inadequate employment standards laws that allow workplace practices below minimum employment standards, and workplace practices that undermine existing employment standards to thrive. Understanding how restaurant work is precarious matters because precarious aspects of restaurant work—e.g. the involvement of customers in work relations and the overall job insecurity workers face—are important to understanding how women experience unwanted or uncomfortable sexual attention at work from customers, co-workers, and managers. Employment standards law plays a role in maintaining the insecure working conditions

experienced by restaurant workers, and in this way law is co-constitutive of the social. Similarly, chapter 7 will show how law reproduces and maintains the gender order of restaurant work. Next, in chapter 5, I will examine how the legally legitimized wage-tip relation reinforces gendered social relations that organize restaurant work, and ultimately help construct situations in which workers reactions to

sexual behaviour from customers are constrained.

Chapter 5

Gender, sexuality, and the ordering of restaurant work

1. Introduction

"[T]here is 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." Carole a woman in her mid 40s talked about what working in restaurants as a teenager was like. I was struck by the similarities between her experience three-decades ago and the experiences of women I interviewed who currently work in, or very recently worked in, the restaurant industry. Talk about "expectations" to look or dress a certain way and behave in a particular manner was typical in interviews. Karen, a young woman shared, "I definitely felt that as someone working in a restaurant that it was kind of expected of you to put up with the flirtatious comments or the cat calling and that sort of behaviour that goes on." Similar talk was echoed by Roxy. "It's a very kind of under the surface, like just barely under the surface thing, you know." I asked her if she could explain. "The expectations about how you're supposed to act. Or I don't know these things that aren't always out right said but you know are expected in terms of how you act and how you dress and how you look." How do these particular "expectations" women restaurant workers speak of arise?

Building on chapter 4, this chapter contributes to answering subset two of my research questions.[1] Learning from interviews with current and former restaurant workers

[1] These questions, outlined on pages 10-11 of my introduction are: Why is it that women restaurant workers do not complain of sexual behaviour at work from customers, co-workers, or managers? How is full-service restaurant work organized such that women workers endure sexualized interactions at work rather than

this chapter unpacks the "expectations" women restaurant workers can face and argues that restaurant work is organized in a way that makes workers feel the need to look and act in a certain sexual manner at work. The emphasis placed on providing customer service and pleasing customers, the hiring practices of employers that lay stress on women's sexual attractiveness, the gender specific and sexualized characteristics of dress, and the wage-tip relation can all shape restaurant work in such a way that sexual labour[2] becomes a part of the work, and is essentially exchanged for a tip—a form of institutionalized *quid pro quo*. Chapter 4, explored relations of power between employers and workers *and* customers and workers that characterize the working relationship in restaurants and showed how the working conditions in restaurants are made precarious by unpredictable scheduling practices and income that is insecure and uncertain. It is important to keep this context in mind in this chapter, especially the reliance workers have on customers for tips, in order to understand how the "expectations" that Karen and Roxy speak to—to put up with flirtatious comments and cat calling, and look and dress in a certain way—become enmeshed in the labour process.

2. Providing "customer service"

We used to have a girl who had very large breasts who worked there. And she was subject to a slew of verbal abuse from customers…She was serving a table. I don't remember if they were all men, it doesn't really matter, but it was the end of the meal and she asked if she could get them anything else. And this one guy says to her, 'You can jump up and down for me.' I think it goes back to the whole idea that in the service industry people do treat us like servants. And it is kind of dehumanizing. People don't treat us like people. (Michelle)

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formally complain? How is labour law and policy implicated in constructing restaurant work such that women workers endure sexualized interactions at work as part of the job?

[2] I am using the term sexual labour broadly to capture the work involved in displaying a certain image (makeup and dressing practices) and behaving and responding to sexualized interactions and sexual harassment from customers.

When I asked restaurant workers what they enjoyed and what challenged them about their work the answer was often the same—customers. A number of people I interviewed found the social aspect of restaurant work pleasurable, and many took pride in their work. "I love working with the public," Jill told me. "I'm a very social person. I like to meet new people and be chatty and talk to all different types of people," Emily shared. But workers also spoke of the low level of respect and status associated with restaurant work, often reflecting on how customers treated them. As Jackie told me, "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.'" In the "servants industry" restaurant workers exist to serve and be subservient to customers.

The service-producing industry is large and heterogeneous and the social status of service occupations varies greatly. 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 in which 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 person receiving the service 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). As Michelle, a server in a breakfast diner commented, "people reserve a special kind of bullshit for you when you work in customer service, and the food industry specifically. I don't know what it is with people and their food or people

and their drinks—people become so meticulous. It's so ridiculous…God forbid you give somebody scrambled eggs when they ask for over-easy. Holy shit!" Michelle elaborated on the low status attached to restaurant work and how customers treat her:

> [P]eople talk to me like I'm stupid [*She sighed*.] I don't know. Like it's just—Have you seen that movie 'Waiting?' [*She referenced a comedy from 2005. A film popular among restaurant workers and full of stereotypes about restaurants and the people working in them.]* Okay, that woman: 'How hard is it to take a food order?' [*She quoted a line a customer in the movie says to a waitress.*] It happens sometimes where people think, you know, she can't do anything else so she has to serve. There's still this weird stereotype about what servers lives are like. Like it's a fallback. It's so easy anyone can wait tables. Where have you gone wrong that you have to be serving tables? Why aren't you doing something else?...People still treat me like I'm subservient. They snap at me like this all the time [*she snapped her fingers in the air*]. They talk down to me all the time. Everything is my fault. You know people speak slowly to explain things to me. Oh my goodness it's actually ridiculous. Especially as a woman interacting with male customers is very different because of, because of that….I feel, I mean men and women both, or all, yeah, regardless of gender people can be rude to me. Although I do feel like I'm treated with less respect by men. They won't look me in the eye when they speak to me. They ignore me when I come to the table or when I say something—I feel like that happens much more often with men than it does with women. Although you know, assholes are assholes it doesn't matter.

Michelle conveyed her frustration with customers who treat her as if she were lesser than them, a practice she experiences as being gendered.

The customer-oriented focus of restaurant work is evidenced in the popular saying *the customer is always right*. This maxim is entrenched, even though not always followed,[3] in relations 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

[3] See Paules (1991) for ethnography on how waitresses exercise power in their daily interactions with customers and managers (e.g. a waitress may ignore or giving poor service to customers who are known for "stiffing," that is, not tipping).

industry it's too stressful." The emphasis placed on customers and customer service is central to full-service restaurant work. Michael Hurst, a former professor of restaurant management and previous chairman of the National Restaurant Association (NRA) in the US, argued that restaurants sell more than food; they sell a "dining experience." 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).

But what exactly is customer service? What does it involve? Below are three women's understandings of "customer service," an aspect of restaurant work that is second nature but can also be hard to pin down.

> 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 coming back. And if I didn't do my job to try to make them happy I wouldn't have that job. (Jenna)

> Being a person who's been on both sides, as someone who's had really shitty customer service experiences and someone who's had a customer be really shitty to me, and a customer service person, um I just, I feel like it's about—oh geez—I think about everybody leaving happy. Person A gets what they want. Person B gets what they want. I don't know. It's about, I don't know, it's difficult to explain I suppose. I don't know why considering I've worked in it for like seven years. [*She paused while and collected her thoughts.]* Being able to deliver goods or services professionally and appropriately with as little, you know, as little friction as possible. And it's also about interacting with people in positive ways. (Michelle)

> My attitude towards it has always kind of been like it doesn't really matter what they ask for I'm going to do my best to accommodate that. And you know, be

> personable, and be truthful, and be familiar with the menu, and be familiar with the beverages that we have, and be able to provide them with any information they need. You know, try to tailor their dining experience to whatever they are hoping to have, or their drinking experience, that too. Like if you get a stagette, you want to make it fun for them. So you kind of have to be flexible to the different tables that are going on cause you might have a table of like elderly people at one end and a table of rowdy twenty somethings at another end. (Jill)

Articulating what exactly customer service *is* can be difficult. At its core is pleasing customers. As Jenna, Michelle, and Jill describe, customer service work requires that customers be happy with their "dining experience." The association between customer service and one's employment in the restaurant industry is well known. As Jenna stated, "[I]f I didn't do my job to try to make them happy I wouldn't have that job." As part of providing good customer service, Eve tries ties to remember the names of customers who come in frequently (the "regulars"). "I try to learn their names because that's important." While she may take a bit more care with regulars, she tells me, "you treat all guests with a high level of standards. I have a high level of standards cause the better you treat people, the more they tip. And I'm just there for the money."

The emphasis placed on pleasing customers reinforces certain gendered expectations women restaurant workers face. Customer service work can hold workers back from objecting to customers' sexual comments. Karen, who worked in a restaurant that was part of a hotel resort, would try to "politely" shrug off inappropriate customers, for instance, when customers who would comment about her physical appearance. When I asked why she reacted in a polite manner, she 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.

Front-of-house workers struggle in navigating providing "good service" and responding

to sexual behaviour from customers that they are not okay with. Erinn speaks to this challenge:

> 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?' [She imitated them with a suggestive tone]. '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.

Erinn touches upon an important point, that is, some restaurants encourage sexualized interaction from customers, or simply ignore it. Below I will explain how the hiring practices of managers, dress codes and dressing practices at work, and the wage-tip relation that involves customers tipping workers are all a part of how sexual labour becomes embedded in restaurant work.

3. Getting in: hiring and the organization of occupations in the restaurant industry

Entering the full-service restaurant industry can be the next step up for a young worker who has worked their first job in a retail store, fast-food chain, or in a cafe. For others, working in restaurants *is* their first job experience. Many of the women I interviewed had a friend or a relative in their social network who worked in a restaurant; they were often attracted to the industry after hearing their friend or family member talk about the tips. Erinn, had a cousin who worked as a server: "I'd always see her going to pick up her tips and she would be thumbing through fifties and I'd be like, 'I want that!'" Amanda had a friend who worked as a hostess: "she would tell me how much the servers made and I was like, 'Oh, I wanna make that much money.'" Shortly after learning how

lucrative tips could be, she dropped off her resume at a popular restaurant in town. Amanda had a job cleaning tables the next day. "I didn't really even have an interview. They just phoned me and they were like, 'Hey can you come in today and help out?'" The connection between gender relations and occupations in the restaurant industry is reflected, in what Acker (2006b: 115) calls "prerecruitment" processes. In seeing cousins, sisters, and friends in their social circle work in restaurants, another young woman is also drawn to the work. Moreover, for a young woman with little or no formal work experience working as a waitress can be thought of as the typical thing to do. "It just seemed like the normal thing to go into," Erinn reflected on how she became involved with working in restaurants. "Like, 'Oh, I'm a girl. I should go into—I should go be a server." The gendered construction of jobs in restaurants is often taken for granted.

Occupations within the restaurant industry are organized in a distinctive manner. As I discussed in chapter 4 labour in restaurants is sexually segregated: 81 percent of hosts/hostesses are female while 68 percent of chefs and cooks, 58 percent of managers, and 73 percent of senior management positions are held by male workers (Statistics Canada 2006a). This composition of jobs means that more often than not, the people doing the recruiting, hiring, and firing of restaurant workers are men. Given the gendered organization of jobs and the layout of restaurants, the physical space in restaurants (the front-of-house and back-of-house) mirrors the strong gender divisions. Janet, who serves in a small franchise establishment, commented, "We're like a typical restaurant. We have girls in the front and guys in the back [*she laughed*]. That's just how it goes." Sometimes the hiring practices of managers are made explicit. Jill worked in a restaurant where she often heard the manager blurt out, "I don't let women in my kitchen." Likewise restaurant

workers might be aware of gendered staffing practices in the front-of-house: “They didn’t hire male servers. If you were a man and you applied to work there they would laugh at you. No male servers.”

Hiring practices reflect ideas about appropriate gendered and racialized bodies for certain jobs (Acker 2006b: 115-117). Research highlights 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 (Woods 1979; Hall 1993; 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). Racist and sexist hiring practices in the restaurant industry are not new. Woods who wrote about waitressing in the US in 1979 observed: “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 US also draws attention to the racialized hiring practices which lead to white workers typically working as servers and bartenders interacting with customers, while workers of colour are working “behind the kitchen door” (ROC 2005). “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…[T]his 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: 117).

For some restaurateurs and chain restaurants hiring "attractive" women is part of a business model that deliberately targets younger, heterosexual, men customers. The classic and most obvious example is "Hooters" (LaPointe 1992). The bodies of young women are Hooters brand. As the Hooter's website reads, "Hooters *Girls* are the very essence of Hooters [emphasis added]" (Hooters n.d.). Restaurants that exploit young women's bodies and (hetero)sexuality for profit are on the rise. A consultant to the restaurant industry has even coined the term "breastaurant" to describe restaurants that sell female sex appeal. The idea of using women and their bodies as a "concept" for a restaurant is an accepted industry practice so normal it is comparable to a restaurant specializing in a particular type of food. "Breastaurants" in the US have become "the second-fastest growing sector in the casual dining industry behind upscale burgers" (Kingston 2012). The website of one such "breastaurant" called "Twin Peaks"—a chain originating from the US that now has franchises in Canada—tells its customers "we make you feel special":

> Hearty made-from-scratch comfort food, draft beer served at a teeth-chattering 29 degrees and all the best sports in town shown on high-definition flat screens. All of this is served by our friendly and attentive Twin Peaks Girls, offering their signature "Girl Next Door" charisma and playful personalities to ensure that your adventure starts at the Peaks. (Twin Peaks 2013)

This description is the epitome of how restaurants intentionally hire young women to be used as a marketing tool to create a hyper-masculine environment. Breastaurants provide a magnified example of how gender and sexual relations construct restaurant work.

Although none of the women I interviewed discussed working in a restaurant in which the association between female sexuality and work was as explicit as it is in the above example from "Twin Peaks," the connection was still present, to varying degrees.

In the excerpt below from Roxy, she discusses the use of women and their bodies to attract customers:

> A lot of restaurants create kind of very specific personas that they kind of require everyone to fall in line with, which makes sense in a lot of ways. It's just the, kind of sexualized aspect that I don't like about it, and gender expectations. I understand that if you're working at a fancy restaurant you're gonna have different requirements than if you're working at a pub. But yeah, I don't know. It kind of takes away like your right to just be able to be a good worker and engage with customers. It takes away [*she paused*…] like dejustifies or, what's the word, like kind of assumes that you're not gonna be able to help a restaurant be successful and help gain regular customers with your personality and your skills. It's more like you're gonna gain our customers with your tits and with your looks.

The topic of physical appearance and hiring practices was common in interviews. Through hiring practices that emphasize physical appearance women workers learn that their bodies and their looks are wrapped up with their employment. Below Karen describes the serving staff where she worked:

> 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)

Karen speaks to how manager-hiring practices in restaurants are gendered and racialized. As her words show, workers may learn that managers view women's bodies "as being profitable," and thus ascertain that sexual attractiveness is connected to being employed in a restaurant. Sometimes, workers may also pick up on specific patterns in the hiring decisions of managers. Eve, a hostess explained: "there was two hiring managers, the owner of the restaurant and one of the managers who hired me. And if you lined up all the girls [who worked there] you could tell by their body type which manager hired which girl." One of the managers was known for hiring "curvy girls that are workers" and the other for hiring "little thin girls" who were "very, very, pretty." Through hiring

practices that take into account a woman's appearance, workers learn that their bodies and appearance can be wrapped up with their employment. For some workers I interviewed this connection was very clear. As Amanda, who works as a server and bartender told me: "Anyone that's a female that you talk to in this industry, you know, it was kind of what we were hired for. They hired a female bartender at my work because they had too many male bartenders. Why do you think they hired a female one? To serve the men. That's why I got my job."

Moreover, some workers may even learn that their bosses considered their own physical appearance when they were hired. This was the case for Jenn:

> I knew I wasn't perhaps as qualified as they would've liked me to be… I knew I was fully capable for the job, but I knew they were also looking for someone who was really good. And so they hired me because they needed someone fast. But my manager sort of let me know that I was almost hired as default. He told me that everyone else that they interviewed weren't good at all. He didn't say that I was hired by default but that's sort of how I took it. And then another girl that I work with said that when they were trying to decide who to hire, he was like, 'Yeah well, you know Jenn's pretty hot.' And then I sort of—I didn't even take it as a compliment. I kind of took it as, well did I just get hired because of how I look? And I don't want to ever be hired for that reason. But I mean, I feel like that's always kind of a factor in restaurants. Yeah, which I'm not a fan of.

Jenn shared how hearing her boss call her "hot" made her feel: "Pretty much like my worth as a person other than my looks wasn't really important. And then I really felt like I had to prove myself. And I really wanted to work hard to show that, 'Hey look! I'm actually really good at this for other reasons.'"

A worker can also be made aware of the association between their employment and physical appearance when their boss asks them to comment on the level of attractiveness of someone who drops off a resume. For instance, a woman was asked by her employer to participate in a rating game. When someone would come to the

restaurant looking for a job, she would notify the manager. The manager would ask her to rate the applicant on a scale from one to ten. "I'm not going to answer that question," she would respond. The manager would reply, "Okay. Then just take the resume." After the manager would refuse to walk to the front of the restaurant and speak to the applicant, she would give in. "Fine. An eight," she would counter. Once she complied with the manager's rating system the manager would change his mind, "Okay. I'll go talk to her." This practice, the server told me, was one that was "out in the open." The connection between physical appearance and type of job was so strong at this particular restaurant that workers would assume an attractive person walking in with a resume would be applying to work in the front-of-house and automatically notify a front-of-house manager rather than the kitchen manager. The server reflected on her participation in rating job applicants. "It's interesting because I'm a women's studies major but I just, you fall into—you know, I have to make a living. And so I'd be like, 'Someone dropped off a resume' and I would bring people down to their body parts. I'd be like, 'She's thin and she's very attractive'… I would never do that in the rest of my life, but the way I operate within the restaurant is, is different." Employer hiring practices that stress sexual attractiveness mean that for women restaurant workers their sexuality can be a condition of getting hired and a key part of their employment.

4. Dressing for work

In addition to hiring practices, workers' bodies can also become an integral part of restaurant work with sexualized dress codes and uniforms that are implied, suggested, or stated outright by employers and managers. Sometimes dressing expectations are

ambiguous and workers question whether comments made by their managers have a sexual undertone.

> When I first started working there, I think I was just wearing these pants [*she pointed towards the pants she had on*] and a black shirt or something. It was the assistant manager who hired me. He said, 'What you're wearing is fine, it's technically dress code, but they want you to dress *nicer*.' And I didn't know if he meant nicer as in just sexier or look more, I don't know, dress fancier. I have no idea….I mean, I'm not going to go there. I'm honestly not going to take off my clothes for a job. (Jenna, server)

Another server also had an exchange with a manager that she questioned during our interview. At one of her restaurant jobs, Jenn served in a sports bar. "I was really cold one day. I was wearing like a dress or a short-sleeved shirt and I put on a black cardigan, the dress code was all black, and my manager told me that I couldn't. He didn't really have a reason. It didn't really make sense to me because we were allowed to wear quite casual things. But I guess—he, he was the owner and also the manager so pretty much whatever he said went."

Other employers might directly ask workers to present themselves in a particular "sexy" way that involves wearing short skirts and high-heeled shoes, showing cleavage, and wearing make-up to work. In high school, at the age of eighteen, Jenn worked as a hostess, greeting and seating customers in a restaurant that was known for hiring "attractive" staff. "All women there are required to wear a skirt or a dress. You're not allowed to wear pants and you can't wear any tights. If you want to wear nylons they have to be sheer. And you have to wear high-heels, at least an inch high," Jenn shared. The dress code was communicated to workers with a training manual and was also discussed by a manager at the orientation for new staff members where one worker questioned it. "[A]nother girl who was hired with me, straight up was like, 'That's sexist

that the men are allowed to wear pants and the women aren't allowed to wear pants.' I don't really remember my boss' answer, but he was kind of vague and tried to avoid it."

Roxy also noticed sexualized and gender based dress expectations during orientation:

> We all got oriented and trained together. And one of the first things I noticed too in orientation was they talked to the men and the women were differently in terms of, you know, the ladies this and the guys this. It was very, very assumptious about the kinds of things. They're like, 'Oh yeah ladies just dress as if you're going out for a night with your friends. Make sure that you have your hair and your makeup done.' And I totally get like the needing to be clean and looking put together, but the way they made it out was very obvious that they wanted us to be more sexualized. (Roxy)

Sometimes restaurant managers are very explicit about how they want workers to look. Eve, worked as a hostess at a restaurant she described as a place that had great food and where children are allowed, but had more of a "pub feel." She talked about the 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, which really surprised me cause you're bending down, you're bending down all the time to pick up things and bending down In a short skirt, if anyone has done that, it's hard. And I was repeatedly asked to show off my boobs, which made me feel very uncomfortable…And they said at the staff meetings like, 'Stay in shape, don't get fat. Boys keep things tight. Go to the gym, tuck your shirts in, look sharp. Girls, I know it's winter but still keep your legs bare.' We weren't allowed to wear pants.

Eve left working at that particular restaurant, and now works as a hostess in a different restaurant. Her uniform, she describes, "is black dress pants and a black top. So I wear a black t-shirt and black pants and like black sneakers." Even though at this restaurant Eve is not required to dress in a sexualized or gender-specific manner, as she was before, she tells me, "I do try to keep things sexy, but not too sexy. You know, cause you do get better tips if you look good. And that's just how it works. I wear red lipstick a lot because red—there's a study that if you wear red lipstick, like the colour red symbolizes like sexuality and people will tip more."

In some restaurants the degree of sexiness expected to be conveyed through dress may change depending on what part of the restaurant one works in. Emily has eleven years of restaurant experience. She started as a hostess when she was fourteen and now works at as a bartender and server. She has worked in four restaurants and discussed how at one restaurant job she had the dress requirements for a waitress working the lounge, the area surrounding the bar, differed from dress requirements for women working in the rest of the restaurant: "basically more provocative clothing. You have to wear skirts. You're not allowed to wear tights … every season the dress code changes a bit and they have samples of what you should look like." By "samples" Emily was referring to a book she was given when she was hired that had photographs displaying how she was to look (makeup, hair, dress, and even accessories). Emily was also required to wear high-heeled shoes, a painful requirement given that some days she 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."

Many of the women I spoke with talked about feeling pressured by their supervisors or bosses to conform to a particular sexualized look; a look, that they are told, will make them more money. Jill has worked in restaurants for eight years. She got her first restaurant job at the age of seventeen. For the past few years she has worked as a server in a restaurant she described as "family dining," but that also has more of a bar atmosphere at night. One evening she was working at the coat check at the restaurant and shared how she was advised to show more skin to increase her income. "My manager—I don't know if it was really jokingly cause, it was weird—he was like, 'So since you're

doing coat check tonight, are you gonna wear a low cut top?' And I was like, 'I'm wearing this.' And it was kind of a higher cut sweater. It was tight. It wasn't overtly sexy, I don't think, but it was put together." Her manager told her, "Oh well you'll make more money." Jill rejected this association between tips and wearing sexually revealing clothing, telling the manager, "[y]ou're never going to see me do that." Similarly, when I asked Karen what she found challenging about working in a restaurant/serving environment she told me, "[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." She described 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.'" These stories from Karen and Jill show how restaurant managers can expect workers to sexualize their bodies—and presumably put up with ogling from customers—like it is a part of their job.

With sexualized dress practices, that are either explicit or implicit, the physical appearance of women workers, become connected to their work—although not without protest—and the wage-tip relation reinforces this connection. The custom of tipping and the perceived connection between dressing in a sexualized manner and earning higher tips, a connection that some employers proclaim, shapes sexual interactions between customers and workers.

5. Serving for tips: institutionalized *quid pro quo*

Customers do not have the authority to fire workers, but the "power" of customers materializes in the remuneration of servers with tips. As Albin (2011: 184) has eloquently

stated:

> 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.

When the customer service ethos of restaurant work is challenged there can be economic consequences for workers. The association between providing customers with "good service" and receiving a better tip, functions as an incentive to cater to the needs and wants of customers.

Emily described what could happen when a server or bartender cuts off a customer's alcohol consumption when they have drank to excess:

> When you cut someone off you are guaranteed no tip. People get really—that's a really embarrassing thing to get cut off... I've been sworn at, like the most horrible things, 'You fucking bitch.'... It sucks too cause they've probably been drinking there for a long time, their bill's really expensive, and oh yeah, you never get tipped when you cut someone off, which you know sucks for you.

In addition to deciding to not leave a tip, an angry customer can ask for a different server. This behaviour also has economic implications for a server who along with losing the customer loses her tip; this can reflect poorly on a server in front of managers. Erinn described how in the past she has had to serve a table after the customers requested a new server:

> I've been the person that kind of took over a table for a girl because she had said something and [the customers] weren't really unimpressed with it, they were like, 'We want somebody else.' And I was like, 'Alright, I will serve you now.' And it sucks. It sucks for the server. I think if you have a customer and they have a bad experience they're not going to come back. It's a money industry. You're there to make money and I think it's just, no matter how irritating [the customers] are, their dollars are still dollars in the bank.

The practice of customers tipping restaurant workers reinforces not only the emphasis on

customer satisfaction, but also the sexualization of restaurant workers.

The wage-tip relation, insecure income in the context of insecure work, contributes to and reproduces the expectations restaurant workers feel to put up with unwanted sexual behaviour and sexual harassment. 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 front-of-house restaurant workers in exchange for tips.[4]

> 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.' (Emily)

With the hope of earning a larger tip, the practice of tipping, and a server's dependency on tips, can lead to putting up with sexual behaviour from customers that she may not otherwise tolerate. Some workers I interviewed were very candid about the connection between tips and sexualized work in restaurants. As Roxy shared, "Everybody knows that if you show a little more cleavage and you lean a little closer—to some people who are

[4] It is also worth noting that kitchen workers who are predominately male benefit economically from the sexual labour women restaurant workers engage in for tips. For as I discussed in chapter 4, tip pools redistribute tips earned by workers in the front to workers in the back of a restaurant. And of course restaurant owners and senior management, who are also more likely to be male, benefit from sexual labour through profits.

obviously looking for that kind of attention—and you talk to someone in a certain way they're gonna tip you more. You know it's this weird thing, I mean it's so normal."

Tipping practices can 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: "[w]hen 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."

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, 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. There's boundaries and lines, big time.

Being hit on is not literally written into Amanda's job description, but it *is* a part of her work. Being a *female* bartender and acting in a certain manner is integrally connected to her ability to "make a lot of money." But the association between a workers' employment and sexuality is one that is learned with experience in the restaurant industry. As Amanda

later clarified, "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." 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 she 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, "[i]t'd be nice to make that much money without being treated like that. No one wants to be treated like that." Amanda speaks 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.

Amanda's story also speaks to the complexity of exploring the topic of "sexual harassment" in a workplace in which one's sexuality is tangled into 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 also

tricky because sexual behaviour may be, as Amanda explained, in some respects "wanted."

6. Conclusion

This chapter has explained how features of restaurant work pressure workers to conform to sexual expectations of them as women restaurant workers. The customer service ethos of restaurant work, employer hiring practices that emphasize sexual attractiveness, the details of dress codes and dressing practices (make-up, high-heeled shoes, skirts, tight-fitting clothes, etc.), and the wage-tip relation that involves customers tipping workers all shape a work environment in which women workers' sexuality can become connected to employment. Sexual labour that involves looking, dressing, and responding to sexual comments from customers in a certain way can become a part of work. The sexualization of women front-of-house restaurant workers becomes ingrained through the practices that organize restaurant work. Sexuality is a constituent of the gendered organization of employment relations (Adkins 1995).

The following chapter will explore how the uncomfortable sexual experiences women restaurant workers face are taken up and subsequently spoken about in an environment in which formal talk about "sexual harassment" in is absent.

Chapter 6

Deconstructing unwanted sexual experiences at work

1. Introduction

During my interviews with restaurant workers the absence of formal talk in restaurants about the issue of sexual harassment was glaring. As I discussed in chapter 3, I was careful to not impose legal definitions of "sexual harassment" onto interview participants. Instead, I asked the women I interviewed to talk about how they got into restaurant work, what their work entailed, and what their interactions with customers, co-workers and managers were like; I asked if they ever felt "uncomfortable" at work.[1] Typically near the end of the interviews I would ask if there was ever any talk in their workplaces from managers about how to handle such experiences as the ones they described. Or, if participants had used the language of "sexual harassment," I asked if they were aware of any sexual harassment policies or had any sort of sexual harassment training at work. My questions were met with confident noes and sometimes laughter. Eve, who has worked in four or five restaurants was quick with her reply: "Never…I've been to a whole bunch of staff meetings, there's never been that talk. Never. At [*she named a restaurant*] they said 'dress sluttier,' pretty much. They said, 'Girls keep it tight. Girls wear low'—like show off your body. They said 'show off your body.' Yup." Another worker shared, "I think that if you brought that [sexual harassment] up at a meeting it might not be taken seriously…[T]hat's kind of the one people brush off... [I]t sucks, but it's true."

[1] A few participants began to talk about sexualized dress requirements or hiring practices a couple minutes into the interviews after simply opening with a question along the lines of *How did you get in to working in restaurants*? Or, *What was the atmosphere and work environment like?*

This chapter addresses the first set of my research questions set out in the introductory chapter.[2] I explore how women's uncomfortable or unwanted sexual experiences in restaurant work—experiences they may or may not refer to as "sexual harassment"—are taken up and handled. How are these experiences responded to and subsequently talked about? The context of restaurant work, the organization of the work, and the workplace culture are all key to understanding how workers react to and understand sexual interactions, and in particular in this context, those they experience as uncomfortable. In chapter 5, I explored how sexual labour and sexualized interactions between customers and women working in restaurants as servers, bartenders, and hostesses can become enmeshed in the labour process, "the doing of work" (Acker 2006a). In this chapter I show that in the context of precarious work, in which workers discover that being "tough" and being "thick-skinned" is valued, workers react to uncomfortable situations by dealing with it, laughing it off, and not taking it personally. When women question instances when they are uncomfortable they confront gendered workplace practices, including discourses, that frame sexually harassing behaviour against women as "jokes" or "guys being guys."

2. "Making it" in the restaurant industry: thick skin and toughing it out

Restaurant work is extremely stressful. When a restaurant gets "slammed" with customers the work is fast-paced. "[Y]ou're running around like a maniac basically trying to do things for people and then getting yelled at in every corner," Amanda described

[2] These questions, presented at page 10 are: How do women restaurant workers experience their work? Do women restaurant workers have uncomfortable or unwanted interactions at work with customers, co-workers, or managers? If so, how do they react to and handle such situations? Do women restaurant workers complain about unwanted sexualized experiences at work to their employer or to the BC Human Rights Tribunal? How do workers subsequently speak about their experiences?

what a busy shift is like. During the chaos restaurant workers need to appear as though everything is running smoothly. Moving from the kitchen to the front-of-house (FOH) workers "put on a different face," Jill told me. "Sometimes you'll walk into the kitchen and it will be crazy and you'll have to walk out and pretend that everything's calm and everything's fine. You need to maintain a certain, you know, façade when you're working with customers. Like you don't want them to know that their chicken just caught on fire." In a high-pressure work environment restaurant workers must learn to keep their cool. Smiling, making eye contact, and being personable are critical for a skilled restaurant worker.

With the demanding working conditions in restaurants, as high stress and high-pressure environments in which breaks "aren't a thing," as chapter 4 discussed, restaurant workers often push their limits.

> The thing about the foodservice industry is that you sort of push yourself beyond what you really should. You know what I mean? Like doing a twelve-hour shift, and the only thing you've had in your stomach all night is Prosecco [*sparkling wine*]. You're just trying to work through a twelve-hour shift and by the end of the night you're starving, and you know, kind of storming through the kitchen stealing whatever they left out. It's kind of nice though, because when you get slammed like that, at the end of the night you can just sit and relax and it's like, 'Oh yeah, we made it through together.' I think that's kind of the bonding aspect of it. (Erinn)

With the pressure to smile through a shift combined with the physical exhaustion of busy work, sometimes workers break down. "We all cried a lot at the end of the night," Tracey, a former server, reflected on the two years she spent working in restaurants. "Not out of emotional pain, just out of stress. We were all tired of being on our feet. We were so tired of being smiley and friendly constantly throughout the night. It became a habit." Even

when a given shift went well, "cry[ing] it out at the end of the night," Tracey told me, was routine.

The stressful attributes of restaurant work—keeping up with its fast-pace, managing multiple tasks simultaneously, putting up with yelling, going without breaking or eating, and doing it all while smiling—create an atmosphere where making it through a shift becomes something workers accomplish together, as a team. This process creates a work culture that values resilience. Being a good worker means pushing yourself "beyond what you really should" and then coming back to do it all again on the next shift. Being "tough" is an admirable attribute in the restaurant industry. Workers cannot take things "too personally" or be "too soft."

> The service industry is definitely not for everybody. I've seen people crash and burn because there is a lot of pressure. You have to be able to perform in really stressful circumstances. (Michelle)
>
> If somebody shows up and is nose to grindstone, it's like 'Okay. You have a good work ethic, that's awesome.' Eventually you'll gain respect and you'll gain friends… And then you also see a lot of other people come in, and they, you know, show up late, or show up on the wrong day, or they're in the restaurant but somehow it's also like they're not doing anything. Then those people do tend to get weeded out pretty quickly. (Erinn)
>
> I've seen girls break down and cry. It's like, either you can make it or you can't make it in the restaurant industry. If you can, you have to have a certain kind of personality to do it. You can't be too soft and you can't take things too personally…[Y]ou can't be too timid. Otherwise, you're going to get eaten alive. So you need to be able to tough it out. And yeah, it could be really stressful. (Amanda)

Restaurant work is not for just anyone. "It's definitely," Tracey let out a sigh, "a position that you have to have a thick skin for." She left working as a server because, to use her words, she had a nervous breakdown. Working in a restaurant, Tracey tells me, requires a "type of personality where you can just let everything roll off your back." When someone quits their job or leaves the industry altogether, rather than question the work itself, it is

believed to be the individual who cannot "make it." When a worker is weeded out another will come in and take their place. As a former restaurant worker put it, "you have to take on a lot of abuse in the industry. It's just expected. That's part of the decorum, being unshakeable no matter what happens. You have to always be completely calm and pleasant and friendly…even if people are—no matter what they're doing, right. Otherwise you'll get replaced." It is within the context of a work culture in which pushing yourself beyond your limits, having thick skin, and being "unshakeable" is highly valued that restaurant workers face uncomfortable sexual behaviour from managers, co-workers, and customers. In a stressful work environment that values a tough-it-out attitude, dealing with uncomfortable sexual interactions at work becomes just another aspect of the work to endure to in order to make it through a shift.

3. Managers

In this section I explore the uncomfortable sexual and sexist behaviour of managers and the reactions from workers. While the women I interviewed questioned managers' behaviour that made them uncomfortable, in no instances were managers directly challenged. In listening to the women speak about their experiences, the authoritative positions of managers and the power that they have came across as an important part of their narratives. The behaviour of managers, both how they behave with staff and how they react to the inappropriate actions of customers, is important because managers set the tone for what is and what is not appropriate in a place of work.

"I have a story to tell you," Emily told me just a few minutes into our interview. She went on to describe an incident with a customer who frequently came into the restaurant ("the regular"):

> Okay so, last Christmas, I have this regular and he just, he really liked me. And he came in and he gave me a box of chocolates. And ah, I've gotten like so many presents, like Christmas presents, from regulars. So I was like, 'Oh, okay. Thanks so much.' Whatever and like gave him a hug. And he's, he's weird. But I was always nice to him and whatever. And I just put the box of chocolates in the fridge and I actually left them there. And the next day I came in and um, my boss was laughing and was like, 'Did you open that box of chocolates?' And I was like, 'No. No I didn't.' He's like, 'Um I'll have to show you what they are.' So he opens the box of chocolates, and they're chocolates in the shapes of penises. And like, he's bought them from a sex shop—like they're penises and breasts, like they must have molds for the chocolates. Um, like really, inappropriate…it was like a mold of like a girl giving a guy a blowjob and it was like, 'Blast of flavour' or something along—like all these inappropriate names for all the different chocolates.

Emily was upset with the customer's behaviour. But it was her boss's reaction that stood out for her when recalling the experience:

> [T]he weird interaction was that my boss was like, 'Oh my god, he's such a pervert. And that's really disgusting.' But there was no conversation of like, 'Are you ok?' I thought, it was the first time I thought this is really weird that you're not asking me like, 'Should I ask him not to come into this restaurant again?'

When the regular returned to the restaurant she shortened her interactions with him by refusing to engage in small talk. If working alongside another bartender, she would ask her co-worker to serve him. Five weeks later the regular apologized. Emily remembered their conversation: "He was like, 'Oh, well I thought it was more of a joke.' I'm like, 'We don't have that relationship. That was not okay.' And I just thought it was interesting that I had to have that interaction with him, rather than, you know, my boss." Emily was unsettled by the lack of intervention on behalf of her manager. "I can understand the humour in it. But I also like, beyond that, I think I've worked in restaurants for a long

time so I have pretty tough skin to that, but like, if I were another person, that is a really inappropriate interaction." Emily has worked in the restaurant industry for eleven years. In telling her story Emily calls into question her boss's behaviour, who laughed at the regular's behaviour. In the absence of her manager taking action, Emily was left to handle the situation on her own, a common theme when it comes to how inappropriate sexual conduct in restaurants is handled.

Eve also spoke about her manager's reaction to uncomfortable behaviour from customers. "Oh really? That's not okay," her boss would say. "But they've never kicked out a guest, but because a guest has never done anything too far with me. If I wanted them to leave, I would make them leave, personally. If someone touched me, if someone touched my butt or something I would yell at them. I don't care. I don't put up with any of it. And I know girls that do." In all the stories women restaurant workers shared, including when a customer reached down a waitress' pants, customers were never asked to leave—not by workers and not by managers.

When the inappropriate behaviour comes from the boss, the situation can be an especially difficult task to maneuver. Michelle is a server who is having "issues" at the moment with her boss, who manages the restaurant. "He is, what I will call a classic misogynist," she tells me.

> I don't understand why people think if they say something is a joke that it nullifies what they're trying to say. But it's always making jokes about how men are harder workers. 'I just want to fire all you ladies and hire a bunch of men cause they're better workers. Men are smarter than women,' this that and the other. He'll ask me a question and I'll speak and he'll go, 'blah, blah, blah, blah, blah.' Always making jokes about how women are a lesser sex. It is unbelievable.

Michelle expressed her frustration with the way her boss treats her and the other women she works with. “It’s infuriating,” Michelle says. I asked her how she responds to her boss’s behaviour. “When he says something that I find inappropriate generally I try and make some kind of retort. But the fact that I’m not taken seriously and that I, really, in the high-paced workspace that I’m in I don’t have the time to sit him down and say, ‘That is inappropriate.’ Yeah, it makes it difficult to deal with it appropriately.” She has thought about complaining to the restaurant owner, but said she has not done so because she is afraid. Michelle’s boss is good friends with the restaurant owner. “I’m afraid that if I say something to the owner and it gets back to the manager, that he is going to punish me for saying, for telling the truth basically.” Michelle is worried about “retaliatory actions.” “I feel like my job would be in jeopardy. Or at least, he wouldn’t give me the shifts that I want, that sort of thing.” Michelle’s concern with possible reprisals, her fear of being fired or having her complaint impact the scheduling of her shifts, speaks to the lack of job security restaurant workers experience and the precarious working conditions I discussed in chapter 4. Michelle’s co-workers have also been impacted by the boss’s behvaiour: “We’ve had three female co-workers quit specifically because of him.” Michelle too, has decided to quit:

> I’ve definitively decided that I’m going to quit. And, in all honesty [*she says with a sigh*] I don’t really want to. I’ve been working there for three years. It’s a comfortable position for me and I get the hours I want. I make a lot of money and I interact well with the rest of my co-workers. I just, I just *cannot* work for him. I feel immoral. I feel like I’m doing myself a disservice to work there, to work for him. I don’t want to leave but I feel like I have to. If I respect myself I will leave is kind of where I’m at at this point.

Michelle informed me that she is going to look for another restaurant job while she finishes her degree. In quitting, she will be losing the three-years of seniority she has and

a work schedule that currently suits her. However Michelle was clear that for her working in the restaurant industry would only temporary; she does not think of restaurant work as a career. When I asked why not, Michelle responded:

> because of the challenges that I've faced personally, I don't want to continue—I know I'm going to have challenges as a woman regardless—but I just, I've been so disenfranchised about the restaurant industry based on my experiences that I would never want to continue to be a part of it for longer than I need to.

Other women I interviewed also shared moments when they felt uncomfortable with managers. Tracey told me she felt "uneasy" being around one of her managers in particular. "He [*she paused*] always looked me up and down. He looked everybody up and down. And none of the other managers ever did that. I mean, I don't know if that's a form of sexual harassment but it was uncomfortable." Tracey described how this behaviour made her feel. "It made me not want to be near him. It made me feel that he was trying to control me with that." Erinn told me a story about when she learned from her co-worker that in her absence the manager had called her "hot":

> [O]ne day the bartender was talking to this general manager and she was saying something about 'Oh like Erinn,' you know.' And he was like, 'Oh, hot Erinn?'… I wasn't there. She told me about it afterwards. It's sort of like, I don't know, that's uncomfortable. So there is very much that sort of—they don't really recognize, I think, any sexual dynamics. Like they just sort of, I don't know [*she let out a sigh*]. There's multiple cases of different staff members like sleeping together and stuff and even having relationships, whether healthy or unhealthy…but I just, I don't know. I thought that was really weird that *management* was saying that about me, and you know spreading that view I guess of someone. You know?

Erinn was clear that she was particularly uncomfortable with the fact that her *manager* was the one spreading around the idea that he found her "hot." "[They] shouldn't be saying that. Think it, fine. But don't say it." She also questioned the overall lack of attention managers gave to "any sexual dynamics" in the workplace and in doing so

highlighted the silence on behalf of restaurant managers when it comes to sexual interactions and sexual harassment in the workplace.

As I described in chapter 5, some restaurants instruct workers to dress in a sexualized manner. Eve, woman who worked as a hostess, spoke about how she felt uncomfortable with the dress requirements her boss conveyed to her. "At seventeen I was asked to have plunging necklines and short hems, which really surprised me. Cause you're bending down all the time to pick up things and bending down in a short skirt, if anyone has done that, it's hard. And I was repeatedly asked to show off my boobs, which made me feel very uncomfortable." Eve was the only woman I spoke to who used the language of sexual harassment when describing the dress code she was subjected to. For Eve the dress code was a form of sexual harassment from management. Below Eve explains what "sexual harassment" means to her:

> It's unwanted sexual behaviour, verbally, or anything sort of demeaning, or degrading…[I]n the workplace I know that sexual harassment can be defined as um, almost like, what's it called, bribing. Like higher up bosses will be like, if you do this blah, blah, blah, blah, blah, you'll get a raise. I know that can be defined that way. But for me it's more unwanted sexual things. Itemizing. I hate being itemized.

Itemizing, she explained, referred to "physical remarks that are not given as compliments but given sexually to random strangers. I don't like that, um, when they stare at my chest." Eve reacted to the sexual harassment she faced from managers by quitting and finding a different restaurant job. "I left very quickly…because I had enough." In Eve's words, she had enough of "[t]he sexualization of the role."

The stories women shared about uncomfortable sexual experiences with managers are a strong reminder that these experiences are happening within the context of an employment relationship comprised of gendered power relations. In the context of

insecure work, complaining to the boss means risking retaliation such as losing good shifts, or worse, losing their jobs. Consequently, in the face of unwanted comfortable attention or sexual harassment from managers, the women I interviewed either kept silent at work or quit.

4. Co-workers and the kitchen

There's unspoken codes of things. Like if you're a female in the industry you just accept that the guys do. Otherwise you don't make it. You drop out. (Jackie, former chef)

The women I interviewed working in the front-of-house as hosts, bussers, servers, and bartenders, or in the back-of-house in the position of a cook or expeditor (a person who works in the kitchen communicating with the kitchen and organizing food orders for tables before they are sent out of the kitchen) shared many stories of uncomfortable experiences they had with co-workers. The instances they recalled usually involved their male co-workers who worked in the kitchens. The stories of the women I interviewed draw a portrait of highly masculinized workplace cultures.

> [The kitchen staff] would be talking about the waitresses and how they would want to take them home, just among themselves and then sometimes to waitresses. (Karen)
>
> I notice in restaurants more than anywhere else, the types of jokes that people do and the types of things they talk about, people are extremely racist and sexist. And its just totally not even questioned. (Roxy)
>
> In restaurants there's something known as 'kitchen talk.' Lots of vulgar jokes. And you're talking most about vulgar sex and that. (Eve)

The ultra-masculinized environment described above where sexist and racist "jokes" are rampant is viewed as normal. It is, as one woman put it, "just the dynamic of how they work." "Kitchen talk" can be standard. Although Eve tells me, at the restaurant she works

in now, where there is an "open kitchen" the talk is "more polite" because guests can hear kitchen workers when they are speaking loudly.

Whether or not and when workers are bothered by the sexual nature of talk in kitchens is complex. Some workers, like Michelle, may be okay with the sexualized talk because they themselves do not feel they are the target and do not feel *physically* uncomfortable. "[T]hat's just part of being in the industry. Trying to keep a positive, upbeat attitude all the time. It's playfulness, you know." "I don't feel personally uncomfortable," Michelle, a server shared. She continued, "it would not surprise me to hear that people would be uncomfortable." Although Michelle said that sometimes she *is* offended by the remarks that get said, she does not feel personally targeted by the jokes or comments and no one has pushed her boundaries. "No one has ever crossed the line and made me feel physically uncomfortable." Some workers enjoy sexualized banter with certain co-workers but not others. "There's a couple of our sous chefs that make sexual jokes, but it's like we have that relationship. And then there's the new guy and he gets hired and starts trying to make the jokes and its like, 'No, you're not allowed to do that,'" Emily shared with me. Likewise, Eve in finding the "flirtation" from a new kitchen worker "annoying." "I haven't known him very long. I've only known him for like a month. I've known all these other guys for a year," she told me. "I don't like his tone. His tone is very sarcastic…[H]e just irks, me, you know. I can't explain it." Two workers may say the same joke, but depending who it is coming from can determine whether or not it is acceptable.

Often times the sexual comments made by kitchen workers are understood as *guys being guys* and subsequently brushed off. When Jill first started serving she got a lot of

sexual comments directed at her from her co-workers in the kitchen. “I happen to be tall so they always used to call me ‘long legs’ or something. And comments around what they can do with people with long legs, in a sexual way and stuff like that.” She took their behaviour as that typical of men in the kitchen. “I don’t get—I wouldn’t say it affects me. I don’t really take it that seriously, cause I know it’s just kind of guys being guys in the kitchen, and just being stupid, basically. I’ve never really been in a situation where I felt kind of at risk.” The “cat calling,” “sexual joking,” and “flirting” that happens in kitchens becomes legitimized through a discourse that explains away the behaviour as guys being guys and not taking it seriously becomes a regular reaction. After all, it is just “kitchen talk.” Jill also shared that it makes her uncomfortable to hear how the guys in the kitchen treat *other* staff members. Jill explained that at the kitchen she worked in there was “definitely a lot of inappropriate comments sometimes, cause the girls are wearing little dresses and stuff like that. Just like, inappropriate comments about how they’re MILFS [*an acronym for ‘Moms I’d like to fuck’*].” Jill shared her struggle with how to react to such inappropriate comments: “Where’s my duty to be the tattle tale of the whole thing, you know. And that doesn’t really reflect well on you as a team member either.”

The common response of ignoring sexual behaviour from co-workers is something new restaurant workers learn as they are socialized into the work culture. I asked Joyce, a young woman who spends her summers serving to pay for school, if she ever felt uncomfortable with co-workers. She shared that she got “hit on” a lot by the chefs. “I’d sort of been told when I started, you know, watch out for this one particular staff member… I guess he was known to be a little sleazy.” The other waitresses told Joyce to just ignore him if he started something with her, so when he did she was not

"super surprised." "He definitely made me feel uncomfortable." Joyce went on to describe her interactions with him:

> There actually were quite a few different things and I can't necessarily remember them all. But I remember one time he was like, 'Oh what colour underwear are you wearing?' And he just went through a list of colours. He was just like, 'Is it green? Is it yellow? Is it blue?' …The problem is, is that he's doing his job and I'm doing my job and he's just saying this to me in the 20 seconds that I'm just back there getting a plate. And so it's not, it's not like I'm sitting there having a conversation with him. It's just these intermittent little comments…. in some ways that made it better cause it's not like I could just stand around and be uncomfortable. I could just leave.

Joyce would deal with her co-workers remarks by walking away. When he started getting "personal," however, that was when he crossed the line:

> I think he did take it too far personally. Cause it got really personal about saying he wanted to have sex with me and sort of really blunt things like that. And that's sort of where I drew the line. I can handle kind of casual stuff, cause I'm not super flaky. But when it got that direct, I was like okay, no, I'm not dealing with that. And I told him that. I wasn't really passive.

Another chef also interjected and spoke to the co-worker after hearing some on the things said to Joyce. After that, Joyce said the comments were "light hearted." She provided a description of what he would say and how his talk changed: "I'm French. I fall in love with a woman every time I see her'…[N]ot necessarily degrading things but just really flirting…he kind of was like that to everybody so at that point it wasn't personal any more." The chef's remarks about women more generally, were more tolerable—they were not "personal" anymore. Joyce's story provides an illustration of how women restaurant workers support each other by letting new workers know whom to watch out for. At the same time though, this practice teaches new workers that behaviour from the "sleazy" chef is to be expected and simply disregarded.

In addition to feeling uncomfortable with kitchen talk that becomes too personal, behaviour from co-workers that is physical also crosses the line of what is acceptable. I asked Erinn if she ever felt uncomfortable from the behaviour of co-workers. "The guys in the kitchen tend to be pretty inappropriate. The chefs and stuff just kind of say stuff and it's just kind of, I don't know there's a lot of sexual comments that go on and depending on who it's from, you're sort of like, 'eh, whatever.' But yeah, no there's actually one dishwasher that's there right now that I'm actually having a really big issue with." She elaborated on the trouble she's having at work:

> [T]here's a ladder that you have to climb in the back that gets you to a loft where you grab all you're stuff for stocking to-go containers and stuff, which is part of my job. I always have to run up and do that, it's part of my job and he's been standing there starring up my skirt. Or he'll talk about like, 'Oh, you're ass looks really great from this angle,' or something like that. And I've yelled at him about half a dozen times. And he's, I don't know, he's grabbin' my ass before when I'm walking by. And I've called him on it. And he's just like—actually he got really mad once when I was kind of telling him, 'listen this is inappropriate you need to stop it.' Cause we were in the middle of the shift and he was just being an asshole. And he basically went insane like throwing dishes around, breaking things. Um, they have to do cutlery. So the dishwashers wash cutlery, and then they put it out. I'm the one that takes it out and you know puts it into the bins at the front and then sets all the tables. So if he's mad at me and doesn't do cutlery then the entire restaurant is screwed.

Erinn struggled with responding to the behvaiour of the dishwasher. She talked about her reaction:

> I left the room because at a certain point I'm like look it's busy. I have a job to do. I can't just stand here you know fighting with you. I need to go get work done, so I just left. And it's kind of this compartmentalization. What happens in the kitchen, anything bad that goes on any like fights between staff, like I'm very—not everybody has it. You know I've seen servers like whine to their tables about something that's going on with another server on shift. And I don't know, I think I was just trained to be a little bit more um, just like compartmentalized about it. And just no—you know the customer should not have to feel stressed. Even if I feel like going home and crying my eyes out. The customer should not know that. So that was sort of, I don't know, just go back out on the floor and do my job

Erinn's reaction speaks to the façade restaurant workers put on in the front-of-house when interacting with customers. Taught to be "compartmentalized," she walks away from the dishwasher, carries on with her work, and keeps what happens in the kitchen separate from her work with customers "on the floor" (in the front-of-house).

Erinn's co-worker saw the dishwasher grab her and immediately phoned the manager, who was not at work, to tell him what happened. Erinn subsequently spoke to management about the dishwasher and she shared their reaction: "[T]hey're sort of like, 'Yeah, we're really fed up with him blah, blah, blah....one more thing he does and he's going. We're taking this seriously.' I'm just like you know what—I just think if I had an employee that grabbed someone's ass, I'd fire them on the spot. I don't know, that just pissed me off a little bit." Despite Erinn's bosses being aware of the situation with the dishwasher, "nothing really changed." Erinn has been thinking about quitting and finding work in a different restaurant. However competing with her desire to quit is the fact that she is currently being scheduled shifts that fit with her school schedule. Additionally, having spent two years at the restaurant, Erinn has seniority and is waiting to be promoted to a serving position; leaving would mean starting from scratch at another restaurant. "There's something to be said for having established yourself at a place and to have people, you know, to go into work and have people be happy that you're working that night because they know that you have a good work ethic." For Erinn, her options as she sees them are to tolerate the behaviour of the dishwasher while she waits for a promotion, or quit and find another restaurant job.

While women front-of-house workers can and do walk away from kitchen workers and their verbal or physical sexual behaviour, women who work in the kitchen

cannot. Jackie talked of particular rules in restaurants. “There’s unspoken codes,” Jackie told me. “If you’re female in the industry you just accept what the guys do. Otherwise you don’t make it. You drop out.” For Jackie sexual harassment was an ever-present part of her restaurant experience.

“Every single place that I’ve worked has had the issue of sexual harassment of some sort.” Jackie worked in a range of restaurants from casual to five-star fine dining; she worked in BC and in another province as well. “One of the places that I worked wasn’t even sexual harassment, it was just plain I was a woman and you could tell that he didn’t want me in the kitchen.” Jackie explained that this mentality was popular with a lot of older chefs, which as she pointed out, “is hilarious because women should be barefoot, home, pregnant in the kitchen but not in the professional world.” She described a chef who thought a woman’s place in a restaurant was as a server, not working in the kitchen. He would swear about her under his breath, purposely ram into her and knock her shoulder, hide her kitchen tools, and destroy the food she made. “[H]e literally pushed me out of the restaurant. I ended up having to quit because it was just untenable to work there anymore.” Before quitting Jackie did speak to management about the chef, who told her they needed three documented instances. Working in this environment though, took a toll on her “mental state,” Jackie told me, and so she eventually left.

While Jackie was in the early phase of her career, she informed me that she would be really upset by the kinds of things her kitchen co-workers would say to her. She recalled a time when she was chopping something and her arms were bare. Her co-worker remarked, “Man, you have really hairy arms.’ What are you a man?”

> [T]hey’d say chiding comments like that, constantly trying to put you down, and break you down and annoy you. And at the time I didn’t have that thick of skin. I

> had somewhat thick of a skin because I had been bullied as a child, but it still wasn't enough. So I remember going home that night and crying because it really upset me that he said things like that.

With time spent working in the industry Jackie's skin grew thicker. She spoke about a restaurant where she faced the most "sexual harassment." At this point, it was later in her career, and as she described, she was not "fazed" by it.

> [I]t was probably my second week there, I have a pretty thick skin by this point because I had been in the industry for about three years by the time I went to [culinary] school. And, I was walking into the cooler one day and Dave had come to work that day being like, 'Oh, yeah I totally shaved my balls today they're nice and smooth.' And he's constantly talking about his genitalia because that's what they do. And I was walking into the cooler and he walked out. And I guess it was something he would do to all of the apprentices—he'd walk out of the cooler holding his junk and say, 'Look what I found!' And they'd all look and get freaked out because, you know, he's exposing himself. He did it to me and because at that point I'd seen it all, I'd heard it all, nothing really fazed me. I remember walking by him and being like, 'You missed a spot shaving' and kept going. After that, I was one of the boys. They'd joke around with me, they'd play around, say crude things. I remember for a week straight Dave would pull Adam's pants down at least once a night. And, it just, it would happen.

Jackie learned to play along her co-workers behaviour, and they eventually accepted her. "[I]t's not as though you can fight back," Jackie told me. "[W]hen you fight back it just gets worse, and exponentially worst…[S]o I learned to just take it. Because if you take it and you laugh at them, or you smile and laugh, they take it as, 'Okay. She got the joke.'" During the interview Jackie also questioned the tendency to frame what she faced as humor. "We'd call it joking around because that's all it was to us. It was just *having a good time* [*she said sarcastically*]. But the reality of the fact is when you actually sit down and define it, it is harassment plain and simple. It's just not defined as such. *It's glossed over*," she said in a whisper. I asked Jackie what she meant by "sexual harassment." She answered, "The sexual harassment would definitely be they'd smack

you on the ass, grab you're boob randomly…coming out of the cooler holding their penises. It's like really, you're what four years old? You just discovered that?"

Evident in Jackie's stories is a work culture in which acceptance of sexual harassment is learned:

> So that was definitely the most experience I had with sexual harassment. But like I say, it doesn't faze me because it's what I as a female accepted as normal. Because if you don't accept that as normal, you're not going to make it. Plain and simple. You can fight the uphill battle, you can fight the uphill stream the entire time and it just feels—you learn very quickly that it's hopeless. And if you don't accept it then you don't make it in the industry. And I had enough love of the industry that I just said, ignore it. Grow a thick skin. Just move on with it because that's, that's what's gonna happen.

With time Jackie became used to the sexualized atmosphere and sexual harassment in kitchens. The only exception to this type of work environment she experienced was when she was a part of an all female kitchen, something Jackie tells me is "unheard of" in the restaurant industry.[3] Otherwise, working in male dominated kitchens she accepted the behaviour of her co-workers and became "one of the boys." Adam and Dave became two of her closest friends. "[T]he closeness that came from the kitchen," Jackie explained, "was the joking around, was the bullying, was the sexual harassment."

The sexual remarks and inappropriate "jokes" made by kitchen workers are an ordinary feature of male-dominated kitchens. In a highly sexualized work atmosphere, a worker's boundaries can be pushed: things becomes "too personal" when an individual is the target of kitchen talk or the behaviour is physical. But often, the behaviour of co-workers is framed as *guys being guys* and comes to be accepted as a normal part of restaurant work. As Jackie stated, "if you don't accept it then you don't make it in the industry."

[3] In this particular restaurant Jackie would joke around with her co-workers and have fun, but it was not a "macho environment" she had faced before.

5. Customers

The women I interviewed 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." Surrounded by an absence of formal talk about sexual harassment, how do women handle and subsequently think about uncomfortable or unwanted sexual interactions with customers? And what challenges might women face along the way?

Speaking of what she found challenging about working in the restaurant industry, Tracey described: "Some of the men [customers] were out of line and inappropriate, and sexual harassment. But to make it just easier we just kind of played along with it, instead of being resistant to it." By using the term "sexual harassment" Tracey meant the "crude comments" customers would make. "[Y]ou just kind of put up with it…I kind of just take it. I don't go farther with it. I walk away and I just ignore it." One specific example she recalled involved a man asking her, "Who's your daddy?" Her response highlights the work involved in ignoring customers' sexually harassing comments and also how typical this work is:

> I didn't really answer it. And I know they wanted me to play along. They were very intoxicated at this point, so I thought that was, that was a little annoying. But I just dealt with it. That's what you have to do when you're in the restaurant industry as a female. You just have to, kind of deal with it and move on and just get through the night.

As Tracey matter-of-factly described, dealing with harassing customers is just something women working in the restaurant industry "have to do." Going along with a customer's sexual remarks is easier than resisting. When it comes to sexual interactions with customers, what does *putting up*, *taking it*, or *dealing* look like?

The women I interviewed responded to sexual behaviour from customers by telling co-workers, using humour, and sometimes talking back. Speaking with co-workers is a way for women to get past inappropriate comments customers make. Emily thought back on an incident that stood out in her mind:

> [O]ne time, there was ugh [*she expressed disgust*], these four guys sat down in my section. I went over and someone must have spilt something on the ground… and I had my tray and I almost slipped. And I'm like, 'There's a puddle on the ground.' And one of the men that I was serving was like, 'Oh you must not have been wearing underwear.' Like alluding to.... that I was wet, which was really inappropriate. And my first reaction is to go back and tell my [co-workers], 'Oh my god the guy at 51, you'll never believe what he just said to me.' That's like, it's almost the way of— if I didn't have anyone to talk to about it—it's almost my way of getting over how gross and creepy that was. Just telling the story to someone and being like 'Eww that's disgusting,' and then we'd continue on from there. So yeah, there is like a lot of conversation that happens, but never with the managers.

Sharing a customer's sexual remark with co-workers and pointing out the "pervert" sitting at table 51 is way to move past a customer's "gross and creepy" remarks. Partaking in such practices during a shift can be so commonplace it might be difficult for workers to recall specific instances. "There was so much of it that I can't even remember one incident," Tracey expressed.

Workers also deal with the sexual behaviour from customers with humor. Humor is used to "laugh off" sexual remarks and is a response that is learned. Restaurant workers pick up on their co-workers' reactions to customer behaviour. "Everybody else just kind of deals with it, so it's like, laugh it off and keep going," Karen, a former waitress shared

how she would act when customers were "inappropriate." Another worker remarked: "That's a common response, you just all laugh about it." Although the practice of positioning customers' sexual comments as something to be understood through humor is common, it does not go unquestioned.

Eve, a hostess, confronted the typical response of laughing things off. In trying to make sense of her own experiences in relation to the concept of "sexual harassment," Eve raises the question of when does a "joke" go too far?

> [T]here's this half-naked statue of a woman in the restaurant. Fine, it's décor… But in the summer, if you get drunk guys they come in there and go, 'Oh, was that modeled after you?' We're just kinda like, 'Oh come on knock it off.' But I don't think I would define that as sexual harassment, because it's just under the line. This is what I've been having issues with. Because last month, I was standing at the host stand and an old gentleman—well not gentleman—he was a little drunk and he looked at me and he looked me up and down and smiled. He walked behind me, looked me up and down again and was kind of making like 'Owww' sort of remarks. And I turned around again because I was uncomfortable and he said, 'Oh, I love your body.' And he opened up his coat and said, 'Why don't you come in here there's enough room for two.' And then he points to one of my co-workers and goes, 'Oh, you come on in here too. We'll have a real party.' And that made me so uncomfortable. And I'm like, 'Okay my manager will bring you to your table.' And I didn't—usually hosts bring people in and I'm like, I don't want to talk to this guy. I didn't go into that section of the restaurant for the rest of the night because I didn't want to go near him. And I think I define this a sexual harassment. I told my dad. My dad's like, 'Oh, he's just making a joke.' But if it makes you uncomfortable, would you call that a joke?

Eve faces a discourse that excuses the customer's behaviour as a joke, a discourse that her father also supports. For Eve, "sexual harassment" means "unwanted sexual things." In the first instance of the customers comparing a half-naked statue to her body she is hesitant to call the experience sexual harassment because it is "just under the line," Eve explains. In wanting to define the other customer's actions as sexual harassment, the discomfort she feels is in tension with an alternative understanding that positions the customer's remark as a "joke." Eve confronts a long-standing myth told about sexual

harassment: women who object to sexual harassment lack a sense of humour and are too sensitive (Backhouse and Cohen 1978: 47-48). But as Eve queries, "if it makes you uncomfortable, would you call it a joke?"

While humor may be used to explain away sexually harassing behaviour, restaurant workers might also use humor to deflect and cope with the uncomfortable comments made by customers. Erinn spoke about using humour to deal with customers she knows will be a problem:

> I think a really good way of dealing with it is establishing a joking relationship right of the bat. Cause you can kind of see it sometimes in tables you're like, 'Oh, I know you're going to be trouble.' And it's like, I don't know, this visceral reaction. I can feel that that's going to be a bad table. So kind of getting there before it happens… And yeah, when people do say inappropriate things to me, there's just this fine line of sass that you can get away with. So, I'll generally try to do that… You know they'll say something to me and I'll kind of laugh it off or I'll chirp them or something a little bit. Just enough to be like, not making them feel uncomfortable for making the advance, but also kind of going, I'm not going to respond to that. Yeah, so there kind of is—there's like a fine line you can work there I guess.

As Erinn explains she works to negotiate the boundaries of chirping a customer, that is, she explained, responding with "a mild joking insult," and making a customer feel uncomfortable for making the advance. Occasionally, restaurant workers do call out customers who are being rude or inappropriate. Emily spoke about how she has learned how to handle such customers:

> I've really understood now that if someone's being rude or inappropriate I can tell them that they are. But when I was 19 or 20 I was, I was nervous. I laughed off everything and um so I'm a little bit better at telling people, 'That's inappropriate.' I've served a group one time, they were like 50-year-old men and they were making jokes about my body and those kinds of things. And I actually said to them, 'Do you guys, do you have daughters?' And they're like 'Yeah, why?' I'm like, 'Yeah, they're probably about my age, I'm about 21.' And they're like 'Yeah.' I'm like, 'Would you want someone talking to your daughter like this?' And they all just—I put it into, into kind of a right framework for them

> where they were like 'No this is really inappropriate.' But that—I would not have done that when I was 19 or 20.

Dealing with customers in the manner Emily did in her account above was an atypical response; perhaps because of the potential economic implications of doing so.

For instance, below Erinn explains why she would not want to upset customer who are inappropriate:

> If you make a customer feel uncomfortable, especially if it's someone with a big ego, even if they're treating you like crap already, you're only going to make it worse by bruising their ego, you know. It's going to be a zero tip bill. Or it's going to be, you know, they're just going to give you hell the rest of the night. There's sort of yeah, it's a fine line between dealing with it and accepting it I guess.…cause if you're a server or a busser you're locked in. You can't just ignore a table, right. So if they say something at the beginning and then you snap back at them, that's going to make the rest of your, you know, two-hour interaction very, very uncomfortable. And I've seen that happen a couple of times. I've been the person that, that kind of took over a table for a girl because she said something and [the customers] were really unimpressed with it… if you have a customer and they have a bad experience they're not going to come back. It's a money industry, right. Like you're there to make money. I think it's just, no matter how irritating they are, their dollars are still dollars in the bank.

Erinn provides multiple reasons for why workers act so as to not upset customers. It may not be possible for a worker to ignore a customer and so, as Erinn describes, she does not want to make her interaction with a customer who treats her like "crap" any worse. She is also conscious of the economic repercussions of offending a customer who makes an advance: they may not leave a tip, they may ask for a different server, or they may not come back to the restaurant at all.

To understand why workers might be careful to not upset customers, we must consider workers' reactions in the context of how their work is organized. Workers, like restaurant owners, have an interest in business from customers for they may risk losing their tip, work hours, or even their job if they offend a customer. As I argued in chapter 5,

tips are an institutionalized form of *quid pro quo* for tolerating and also engaging in, sexual interactions with customers. The tipping practices of customers influence how workers draw the line between what they will and will not put up with. Drawing boundaries is complicated work. "I don't know where to draw the line," Amanda shared. "I don't put up with crap from 19 year olds… but then if it's someone who's 25 or 26 or whatever, they're gonna have a little bit more push I guess. Because if I flirt with them, I know that I'm going to make money from them. Because generally, you know, 19 and 20 year olds don't really tip." She explained, "I allow it to happen, because I, because of the money. But yeah like I said, it's very hard to say where the boundaries are." The involvement of customers is work relations can restrict how women handle and make sense of sexual behaviour from customers.

Moreover, needing to please customers can make it difficult for workers to conceptualize their experiences as "sexual harassment." Below Jill describes what sexual harassment means to her:

> [Sexual harassment] to me it's any, any unwanted attention that has a sexual nature to *you*, even if they don't intend it to be. I still think it's more about *you*, and how *you* feel, and how *you* interpret it. But that's also where it kind of becomes a problem because you can accuse someone of sexually harassing you and they're like, 'I actually just wanted a hug.' You know. And so it's kind of a—it's hard, especially in a, in an [*she paused*] kind of an industry that you need to kind of suck up to your customers and stuff like that. You know a lot of girls if they get like a table of guys, they like have a couple of drinks and start flirting cause that's what they [the guys] do. And then the girl feels like she needs to respond and act flirty and like act a certain way to like get them to tip her, basically. We all know. And they know too, that's the thing. You're table knows that you're just doing it so that they tip you well. They know that you're not going to join them after for a drink, no matter how many times you say you will, you're not going to. It's almost like [*she paused*] a PG rated strip club is what it is, you know?

Jill speaks to the uncertainty women front-of-house restaurant workers come up against when thinking about their experiences in relation to "sexual harassment." Working in an environment in which they are required to "suck up" to their customers women may have a difficult time articulating the unease they feel. Complicating things even more is the part return customers can create in sustaining a culture of sexual harassment:

> I feel like definitely a lot of people aren't aware when they are being sexually harassed. They know they feel uncomfortable but they don't know, umm kind of how to express that. And, I definitely notice in restaurants that I've worked in, or that friends of mine have worked in, especially with return customers for some reason that become more of a leeway for that sort of thing… it's strange how the more comfortable you become with people in the restaurant or whatever you work at the more it seems okay to be inappropriate. (Jill)

Moreover, restaurant workers know that their managers want them to get return customers. The pressure on workers to get customers back in the door impacts how women respond sexual behaviour from customers:

> I never talk back to customers and I think I need to start doing that. And the reason why is because I would always, [*she paused*]—it's not the customer is always right, it's definitely not that. When you work in a restaurant—and I don't know if this is just me, like the girls that I work with, some of them do talk back. And then there's some people I know that are like me in that they do have a thick skin. Yeah, I can handle this kind of environment. But I just, you know it's like you want them to come back and spend money in your restaurant kind of thing. Because that's what your boss and everyone want you to do, is get people—you want return customers…you don't want them to never come back again cause that's how you start failing a business. (Amanda)

In responding to sexual behaviour at work, women restaurant workers might not want to disrupt the potential business from customers—for this, they know, is what bosses want.

In a fast-paced and stressful work environment in which workers understand that being thick-skinned is valued, women restaurant workers learn to "just deal" with uncomfortable sexual behaviour from customers as if it is just another part of the job. Dealing and moving is, as Tracey said, "what you have to do when you're in the

restaurant industry as a female." Workers share stories with each other of "gross" comments customers make as a way to cope with the remarks and continue on with their work. Laughing off customer behaviour is a regular reaction. Yet, some things are not easily laughed off. When the customary practice to laugh things off is challenged, workers confront a discourse that excuses men's sexually harassing behaviour as "jokes"—a discourse that extends beyond restaurants. Finally, to understand workers' reactions to customer behaviour that makes them uncomfortable, it is also important to acknowledge how restaurant work is organized economically. The involvement of customers in restaurant work, both how customers impact workers' incomes through tips and the structure of restaurants as work organizations that rely on everyday business from customers influences how workers respond and decide what they will tolerate and what they will not tolerate, a very complicated task.

6. Conclusion

This chapter has explicated the complex picture of women's uncomfortable or unwanted sexual experiences at work. The chapter has taken up the first set of research questions posed in the introductory chapter (at page 18). I have argued that how women restaurant workers take up, handle, and make sense of their experiences is shaped by the social, material, and discursive practices that construct restaurant work. In the context of a workplace culture in which "being tough," having "thick skin," and pushing oneself to their limits is an admirable attribute—an organizing discourse connected to the construction of precarious work—restaurant workers learn to *put up, take, and deal* with sexual experiences at work as another feature of the work, or quit. The involvement of

customers in restaurant work, needing to "suck up" to customers and rely on them for tips, can restrict workers resistance to behaviour they are not okay with; it also makes thinking about this behaviour as "sexual harassment" complicated. Laughing off, walking away, and ignoring are common ways women working in restaurants deal with behaviour they are uncomfortable with. When women do confront the sexist remarks of their managers, behaviour of customers, or actions of their co-workers they come up against talk that normalizes it all as "jokes." But as Eve asked, "if it makes you uncomfortable, would you call that a joke?" Immersed in a work environment in which resistance is met with increased harassment or material consequences such as losing a tip, good work hours, or even their job women learn to accept the unwanted sexual behaviour of men as part of the job, or leave.

The next chapter will answer my third set of research questions, as it turns to law and asks: how are women's experiences taken up through law as sexual harassment? And, how does this relate to how women working in restaurant experience unwanted or uncomfortable sexual behaviuor at work?

Chapter 7

The legal construction of sexual harassment in British Columbia

To establish that conduct constitutes sexual harassment, a complainant must establish that it was 'unsolicited' and 'unwelcome.' The test for determining whether conduct is unwelcome is an objective one: taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant? (*Mahmoodi v University of British Columbia*)[1]

If you're female in the industry you just accept what the guys do. Otherwise you don't make it…You can fight the uphill battle, you can fight the uphill stream the entire time and it just feels—you learn very quickly that it's hopeless. And if you don't accept it then you don't make it in the industry. And I had enough love of the industry that I just said, ignore it. Grow a thick skin. (Jackie, former chef)

1. Introduction

The Supreme Court of Canada defines 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."[2] Central to this definition is the requirement that the behaviour in question be "unwelcome." In British Columbia, the legal test for determining whether or not behaviour constitutes sexual harassment is an objective test from the perspective of a reasonable person. As the first quotation opening this chapter expresses, this test asks, "taking into account all of the circumstances, would a reasonable person know that the conduct in question was unwelcomed by the complainant?" How might this legal requirement based around unwelcomeness operate in the full-service restaurant industry? As the second quotation, from Jackie demonstrates, "acceptance" is highly constrained by systemic factors.

[1] [1999] BCHRTD No 52, at Para 140.
[2] *Janzen v Platy Enterprises Ltd*., [1989] 1 SCR 1252 at 1284.

In chapter 4 I argued that the complex interaction between inadequate employment standards and customary workplace practices constructs restaurant work to be precarious, by, for instance, involving customers in an insecure wage-tip relation and allowing for unpredictable shiftwork. Developing upon this argument chapter 5 showed how aspects of restaurant work, including the customer service ethos of the work, employer hiring practices that emphasize sexual attractiveness, gender specific and sexualized dress codes and dressing practices, and the wage tip relation shape an environment within which sexualized interactions between customers and women front-of-house workers can come to be a part of the work.[3] Chapter 6 explored how women take up, handle, and make sense of uncomfortable sexual experiences with customers, co-workers, and managers. I argued that workers learn to *put up, take, and deal with* these experiences as a part of their work, or quit.

This chapter turns to my third set of research questions and asks: How does anti-discrimination law in BC define and address sexual harassment in the workplace? More specially, how does sexual harassment law handle complaints coming from sexualized work environments? And, how does the way in which the law defines sexual harassment relate to my informants' experiences at work? In answering these questions I examine the following features of the legal regulation of sexual harassment in British Columbia: (a) the broad human rights framework, its institutional architecture, and how workers could come to know about and exercise their legal right to a harassment free work environment under that framework; (b) the process for bringing a legal complaint of sexual harassment; (c) and the substantive requirements of a successful legal complaint. I

[3] Together both chapters responded to my second set of research questions from pages 10-11.

begin with a section that discusses the first two of these features by providing an overview of the legal landscape for human rights in BC. This part will detail BC's model for administering human rights legislation—that is, a tribunal-only, complaints based approach—and provide important context for the rest of the chapter. I argue that BC's tribunal-only model reduces the problem of sexual harassment to the level of an individual responsibility, rather than a public concern. The third feature, the substantive component of a sexual harassment claim is the focus of sections three and four of this chapter. In section three, I discuss the legal definition of sexual harassment. Section four will analyze the objective legal test used to determine whether a "reasonable person" should have known that the behaviour in question was unwelcome. Lastly, section five of this chapter draws on my interviews with restaurant workers and argues that given the ways through which sexualized interactions between restaurant workers and co-workers, managers, and customers come to be normalized it would be difficult to satisfy law's objective test, namely that a reasonable person ought to have known these experiences were unwelcome. Ultimately, the chapter argues that the human rights complaint process and the requirement on complainants to satisfy the reasonably objective test (re)create the gendered subtext of restaurant work and contribute to the normalizing of women's uncomfortable or unwanted sexual experiences in restaurant work.[4]

Before delving into BC's human rights framework and what brining a complaint entails, I will explain how I moved from interviews with restaurant workers to my analysis of law and sexual harassment. The topic of the legal treatment of sexual harassment is vast. My interviews with restaurant workers were crucial in deciding what

[4] I am using the notion of a "gender subtext" as Dorothy E. Smith has to bring attention to the "gender organization of the apparently neutral and impersonal rationality of the ruling apparatus" or "relations of ruling." (1987: 2-4).

directions to explore and focus on. Given how important the context of the restaurant work environment and working conditions was to understanding the experiences of my informants, I questioned how the organization of work was or was not reflected in law's understanding of sexual harassment, especially in a work environment rampant with sexualized behaviour. After reading the Supreme Court of Canada's definition of sexual harassment provided in the *Janzen* decision, I became curious about the requirement that conduct be "unwelcome" to be legally defined as sexual harassment. Given the extent to which my informants seemed to tolerate the uncomfortable sexual interactions they experienced, and how in some circumstances they even learned to *expect* this behaviour as part of their job, I found it important to interrogate the "unwelcome" requirement of law's definition of sexual harassment.

I began reading sexual harassment cases from BC more closely to investigate how the notion of welcome/unwelcomness factored into Tribunal decisions. I started reading a mix of the earliest cases in BC, including the first case in BC to define sexual harassment as a prohibited form of sex discrimination, and the more recent decisions from the Tribunal.[5] With my attention turned to a sample of the most recent decisions from the BC Human Rights Tribunal on sexual harassment, I found a case the Tribunal frequently referred to in order to assess when behaviour being complained of was to be found "unwelcome." That case was the *Mahmoodi* decision, a case I will explore in detail in this chapter and one that involved the sexual harassment of a student by a professor from the University of British Columbia.[6] Using LexisNexis Quicklaw I noted up *Mahmoodi* to trace decisions in BC that explained, mentioned, or cited the decision. I came across 23

[5] *Zarankin v Johnstone c.o.b as Wessex Inn,* BC 1984, 5 CHRRD/2274.
[6] *Mahmoodi*, *supra* note 1.

cases. In reading these decisions, I was curious to learn how the legal test of unwelcomness would be applied in the context of employment in a sexualized workplace organization, such as the ones my informants described. This curiosity led me to *Kafer v Sleep Country*.[7] The *Kafer* decision took up that question and in this chapter I unpack its application of the unwelcomeness test.

2. The BC human rights landscape: individualizing the approach to human rights

Within Canada, legislation governing employment matters is constitutionally divided between federal and provincial governments.[8] Federal legislation concerning labour, including the *Canadian Human Rights Act*[9] applies to persons who work for the federal government or who work in federally regulated sectors such as banking, or in federally regulated undertakings such as transportation and communications industries that have an interprovincial reach. Provincial human rights legislation applies to persons who work in the provincial public service sector, and provincially regulated enterprises, which include most commercial enterprises, including restaurants.[10] Every jurisdiction has its own human rights legislation with quasi-constituational status that takes precedence over other statutes.[11] Although the key components of the legislation are similar, definitions that can determine scope, the specifics of the complaint process, and institutional support for administering human rights laws vary by jurisdiction.

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[7] *Kafer v Sleep Country Canada,* [2013] BCHRT No. 289.
[8] Sections 91 and 92 of Canada's Constitution Act of 1867 set out provincial and federal division of powers. (UK), 30-31 Vict., c 3 (RSC 1985, Appendix II, No 5).
[9] *Canadian Human Rights Act*, RSC 1985, c H-6.
[10] For a discussion on employment law and the constitutional division of powers see Glasbeek (2004).
[11] As the Supreme Court of Canada explained, "[l]egislation of this type is of a special nature, not quite constitutional but certainly more than ordinary—and it is for the courts to seek out its purpose and give it effect." *Ont. Human Rights Comm. v Simpsons-Sears*, [1985] 2 SCR 536 at 547.

As I described in chapter 2, nearly every jurisdiction in Canada has a human rights commission, an administrative body that is established by the authority of Parliament or provincial legislatures. Human rights commissions are independent agencies, and their responsibilities generally include: processing complaints, and researching and educating the public on human rights issues.[12] Human rights commissions in Canada actively educate the public on human rights; conduct research on emerging or systemic human rights issues; develop guidelines and policies, for instance to help employers put human rights law into practice, or to push for a broader interpretation of the law with the intention that this interpretation will be adopted by tribunals; conduct inquires into systemic human rights issues and act on their inquires by initiating complaints to human rights tribunals.

British Columbia is a province with a unique human rights system that is often neglected in research on human rights law in Canada.[13] In 2002, the BC government significantly changed the institutional structure of the province's human rights system. The government abolished the BC Human Rights Commission (the Commission) and

[12] In 2008 the function of the Ontario Human Rights Commission (OHRC) shifted (*Human Rights Code Amendment Act,* 2006, SO 2006, c 30). The OHRC no longer accepts and processes human rights complaints. The OHRC focuses on researching, monitoring, educating, and reporting on discrimination that impacts the public broadly, or, systemic discrimination. The OHRC can also conduct public interest inquires, initiate complaint applications to the Tribunal, or intervene in cases of public importance being the Human Rights Tribunal of Ontario. Section 29 of the Ontario *Human Rights Code* describes the functions of the commission as follows: "The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission's duty to protect the public interest, to identify and promote the elimination of discriminatory practices." *Human Rights Code*, RSO 1990 c H 19. The amended Code also created a Human Rights Legal Support Centre to help people file an application to the Tribunal. *Human Rights Code*, RSO 1990 c H 19, s 45.

[13] As Dominique Clement comments, "The current framework for human rights law in Canada was pioneered in Ontario, and most studies reflect this origin (2014: 15).

opted for a "direct-access" model, also called a "tribunal-only" model.[14] The purported reasons for eliminating the Commission were to address complaint delays and backlogs, and stop the "gate-keeper" role the Commission performed by rejecting complaints during intake screening and deciding which complaints, of those it accepted, to refer to the Tribunal and which complaints to dismiss after an investigation or mediation (Black 2002; Day 2002; Brodsky and Day 2014: 15). With this change, BC became the only province in Canada without a human rights commission; the only other jurisdiction in Canada that does not have a human rights Commission is the territory of Nunavut.[15] The loss of the Commission has led to significant changes in BC's human rights system and has caused "a gaping hole in the province's system of human rights protection" (Brodsky and Day 2014: 5).

In order to fully grasp the gravity of the 2002 amendments, it is important to explicate what BC's human rights regime looked like prior to the changes to the *Human Rights Code*. Before the amendments, the work of the Commission included, not just processing human rights complaints, but educating the public on their rights under human rights laws, conducting research on human rights issues, and participating in complaints before the Tribunal regarding issues of systemic discrimination that were of public importance (Black 2002).[16] The Commission also served an important independent

[14] Bill 64, *Human Rights Code Amendment Act*, 3d Sess., 37th ParI., 2002 (assented to 31 March 2003), SBC 2002 c62. The Commission in BC was first abolished in 1984, brought back in 1997, and abolished again in 2002. For this history see Clement (2010: 308-310), and Day and Brodsky (2014: 12-15).
[15] *Consolidation of Human Rights Act*, SNu, 2003, c 12.
[16] The work of the Commission was divided. A Commissioner of Investigation and Mediation, a position that was independent from the other commissions, would process complaints. The Chief Commissioner and Deputy Chief Commissioner were responsible for education and public consultations. In addition, the Deputy Chief Commissioner had the ability to file human rights complaints or join as a party to complaints filed by others, although as Black observed, this only happened in cases especially important to the public (2002: 1.1.04). In BC, unlike other jurisdictions in Canada, the Commission did not have carriage of complaints that went to the Tribunal.

"watchdog" function by reporting the activities of the Commission to the Legislative Assembly, along with reporting on any issues of discrimination in the province.[17] The element of independence the Commission had from government was especially salient given the fact that the BC government is the largest employer and provider of services in the province, and therefore, is a respondent to many human rights complaints (Black 2002: 1.1.06). Moreover, in addition to the Commission, British Columbia also had a Human Rights Advisory Council. The purpose of the Council was to create a space for community input on human rights issues and to advise the Commission on community concerns.

The changes to BC's human rights regime marked a serious shift in the function of the province's human rights legislation. William Black, a human rights scholar who conducted reviews of BC's human rights system (Black 1994), reflected that the amendments to the *Human Rights Code* in 2002, "substantially diminish, if they do not eliminate, the public interest component of human rights protection" (Black 2002: 1.1.04). Human rights research and education that was previously carried out by an independent Commission, comprised of people who specialized in the area of human rights, was reassigned to the Ministry of Justice—a large government department with many additional functions and tasks. The Human Rights Advisory Council, and the outlet it provided for public input on issues of discrimination in the province was also abolished. Moreover in abolishing the Commission, the power of a commissioner to file human rights complaints or join complaints of a systemic nature was eliminated. The

[17] For instance, two such reports include (1) the public reporting of the under representation of Aboriginal people, people with disabilities, and visible minorities in the public service: (2001) "Not Good Enough! Representation of Aboriginal People, People with Disabilities and Visible Minorities in the British Columbia Public Service." And (2), public reporting on the issue of pay equity: (2001) "Pay Equity in British Columbia: A Response to the Ministry of Attorney General's Discussion Paper."

processing of human rights complaints, previously the work of the Commission, was transferred to the BC Human Rights Tribunal. The work of the Tribunal, its staff, and its forming members[18] is strictly passive in the sense that it is focused on and driven by complaints *after* discrimination has already happened. Even though the Tribunal must file annual reports, these reports are only to describe the "activities of the tribunal," and are not concerned with reporting on matters regarding broader human rights issues in BC (Black 2002: 1.1.06-07).

With BC's direct-access model, the government has individualized the enforcement of the BC *Human Rights Code* and has made the administration of human rights a private, rather than public, responsibility. Individuals and private bodies are responsible for filling the gaps in BC's human rights regime. Human rights education amounts to information sheets on the Tribunal's website, with which the individual is to assess whether or not they have a legitimate complaint, and if so, how to go about navigating the complaint filing process.[19] This self-help approach is supplemented by a patchwork of non-governmental actors. Functions typically carried out by a human rights commission, including educating and helping people through the complaint process and providing legal representation at tribunal hearings, when one qualifies, are performed by non-profit organizations under contract with the BC Ministry of Justice or funded through other (tenuous) provincial grants.[20] Even further, the pressure individuals face in

[18] The Lieutenant Governor in Council appoints members of the tribunal for a five-year renewable term. Members mediate and adjudicate complaints, and one member, appointed as Chair, also manages the tribunal and organizes the work among members.

[19] BC Human Rights Tribunal (2017). *Tribunal Information Sheets and Guides*. Available at: http://www.bchrt.gov.bc.ca/guides-info-sheets/index.htm (Accessed 1 October 2015).

[20] Since 2002, the BC Ministry of Justice has funded the BC Human Rights Clinic (located in Vancouver), a program run by the Community Legal Assistance Society (a charitable non-profit), and the Law Centre Clinic, a clinical program with the University of Victoria law school. The BC Ministry of Finance also funds the Vancouver Island Human Rights Coalition (VIHRC), a small non-profit-organization located in

shouldering the responsibility for enforcing human rights protections is intensified by the fact that when the government abolished the Commission, the time limit for filing a human rights complaint was reduced from one year to six months. Essentially, by instituting the direct-access model "the human rights regime in British Columbia has been reduced to a structure for the efficient processing and settlement of private disputes" (Lessard 2007: 184).

While the tribunal is neutral in the handling of human rights complaints, it actively encourages parties down the path of mediation. As the most recent annual report reveals, front-line staff of the Tribunal are trained to *promote* mediation. The report reads: "In addition to the provision of training for front-line staff to enable them to promote the benefits of mediation in an informed manner, we continue to seek opportunities to involve them even more actively. This year, the Tribunal provided additional mediation training to staff" (BC Human Rights Tribunal 2015: 3). Mediation training to increase the amount of staff actively involved in the mediation process seems to be a priority for the Tribunal. The emphasis placed on mediation is a concern because settling human rights complaints via mediation can be at odds with challenging systemic discrimination. For one, the results of mediation, and the process itself, are given strict confidentiality. Consequently, workplaces and corporations that engage in discriminatory practices face no public accountability. Secondly, the settlement process itself can lead to employers offering large settlements to complainants, in order to avoid larger, and possibly more financially onerous, responses to address systemic discrimination in its operations (Black 1997). "Only the most altruistic complainants are likely to reject the personal settlement

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Victoria that helps people navigate the human rights system largely by assisting people through the complaints filing process. To be transparent, I have been a member of the VIHRC Board of Directors since 2014, and President of the Board of Directors since 2015.

and continue to seek broader systemic change" (Black 1997: 258). Without sexual harassment cases going forward to the Tribunal, ultimately, mediation "does not produce jurisprudence" (Benedet 2001: 844). Given these concerns with mediation, the BC Human Rights Tribunal's approach to handling complaints, an approach focused on mediation and the expedient settling of cases is cause for alarm.

Although it may be argued that a human rights tribunal serves a broader public interest through publically hearing and publishing the results of cases, few complaints actually go to a hearing. When taking a close look at the annual reports of the Tribunal, it becomes clear that the Tribunal is actually reporting on its efficiency. In the 2014/2015 fiscal year, of the 1,184 complaints filed to the Tribunal, the Tribunal only issued twenty-eight decisions, representing just two percent of the total complaints filed (BC Human Rights Tribunal 2015: 2-3). Moreover, the success rate of complaints that proceed to a Tribunal hearing is low; just seven out of the 28 complaints (or 25 percent) were successful and twenty-one complaints (or 75 percent) were dismissed. This raises the question: if so few cases are actually heard by Tribunal members what happens to the majority of complaints? In 2014/2015, 26 percent of complaints filed with the Tribunal were rejected by front-line-staff during intake and screening. Of those complaints that were accepted, an overwhelming majority was settled behind closed doors during a private mediation, and the results of which are confidential. In its 2014/2015 annual report, the BC Human Rights Tribunal boasted about having an 81 percent settlement rate breaking the historic 80 percent settlement rate from the previous year (BC Human Rights Tribunal 2015: 2). Moreover, the data raises an interesting point with respect to the government's concern over the gate-keeper role ostensibly addressed by eliminating

the human rights commission. As Brodsky and Day argue, "[T]he gate-keeper role was not really eliminated, nor can it be. It was transferred, in part, to the BC Human Rights Tribunal (BC Tribunal), where (often unrepresented) claimants now deal with the same gate-keeping issues through pre-hearing procedures, which respondents initiate" (2014: 9-10).

With the removal of a human rights commission in BC, the preventative features of the human rights regime—education, research, and advocacy—once fulfilled by an independent, publically funded and publically accountable body were reassigned or erased. With so few complaints proceeding to a tribunal hearing, combined with the confidentiality accorded to the results of mediation, the administration of human rights is a privatized practice. The direct-access model is a retroactive, passive, complaint-based approach. Providing isolated remedies after the fact does little to combat the systemic inequalities that make women vulnerable to sexual harassment (Sheppard 2010: 80-102). "Enforcement that starts with the filing of a complaint is not very effective in dealing with systemic discrimination, in part because systemic discrimination rarely results in a complaint" (Black 1997: 257). When the BC government eliminated the Commission, it eliminated the institutional means though which an independent, publically-funded body could serve the public by working towards addressing systemic discrimination.

Looking to other jurisdictions in Canada with active human rights commissions helps illustrate what BC's human rights regime is missing without a commission. Ontario is a great example of what could be; in Ontario, when it comes to sexual harassment and public education, the Ontario Human Rights Commission (OHRC) offers free seminars and webinars to employers, unions, and employees on sexual harassment and the law, has

held a sexual harassment awareness week, and has created a "Policy on preventing sexual and gender-based harassment" which is accessible for free on its website (Ontario Human Rights Commission 2013). More recently, the OHRC has engaged in human rights advocacy work very much on point with the topic of this dissertation. On March 8, 2016 (International Women's Day), the OHRC called for "an end to sexualized workplace dress codes that discriminate" (OHRC 2016a) and developed a policy position on gender specific dress codes (OHRC 2016b).[21] Their policy campaign targets dress codes that require wearing high heels, makeup, and low cut tops. Much of the OHRC policy against sexualized dress codes is even directed towards the restaurant and bar industry in Ontario, and, the OHRC used published work of this doctoral research (Matulewicz 2015) in drafting the policy. The policy reads:

> Sexualized and gender-specific dress codes are all too common in some restaurants and bars, and can be found in other services. Whether in formal policy or informal practice, they contribute to an unwelcome and discriminatory employment environment for women. Female employees may face scrutiny to make sure they are abiding by the dress code, and may experience employment-related consequences for failing to dress or wear their hair, make-up or jewelry in a particular way. Employees may feel pressured to agree to sexualized dress requirements to get a job or because they fear losing tips, shifts, or even their jobs. (OHRC 2016b)

The OHRC policy on gender specific dress codes, sexual harassment and sex discrimination at work reflects a systemic understanding of the connection between sexual harassment, precarious work and economic vulnerability, and gender discrimination:

[21] Their policy campaign targeting gender specific dress codes also includes material asking workers, "Does your dress code violate the human rights code?" (OHRC 2016c). The OHRC has also created a "Dress code checklist for employers" to "help organizations make sure their dress codes and uniform policies are consistent with Ontario's Human Rights Code protections relating to sex and gender" (OHRC 2016d).

> Women are more likely than men to hold precarious employment, such as low-wage and part-time jobs. Because of this, they may be more likely to be exposed to unwanted sexual advances and other forms of sexual harassment. Relying on tips may also increase the likelihood of sexual harassment. To attract customers and earn tips, female employees may be expected to put up with inappropriate sexual behaviour from customers. These economic factors can also make it harder for employees to complain about the behaviour and get help. (OHRC 2016b)

The Ontario Human Rights Commission, its policy position and campaign on sexual harassment, and dress codes specifically, is a concrete example of what is possible with an independent human rights commission with a mandate to identify and promote the elimination of discrimination.

3. The legal definition of sexual harassment

The focus in this section is on two key cases that established sexual harassment as a form of sex discrimination. In both cases the complaints arose from women working in the restaurant sector. The first, *Bell,* is celebrated as the first human rights case in Canada establishing sexual harassment as a prohibited form of discrimination based on sex. The second, *Janzen*, is the landmark Supreme Court of Canada case defining sexual harassment to be a form of sexual discrimination. These milestone cases were introduced in chapter 2 and will be looked at in greater depth in what follows.

The legal definition of "sexual harassment" varies by jurisdiction. In some jurisdictions in Canada, human rights legislation expressly prohibits "sexual harassment" or "harassment" based on enumerated grounds, including "sex."[22] However, four provinces, Alberta, Saskatchewan, Prince Edward Island, and British Columbia do not.

[22] Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Nova Scotia, Ontario, Québec, and Yukon.

The BC *Human Rights Code*[23] does not mention sexual harassment. Rather, the legal framework for sexual harassment in BC has evolved through case law and sexual harassment is covered by the BC *Code* because the Supreme Court of Canada has ruled that sexual harassment is a form of sex discrimination.

In 1980, *Bell v Ladas*[24] was the first sexual harassment case to be heard in Canada. Owen Shime, who constituted the one person Board of Inquiry in Ontario, decided the case. Since there were no laws expressly prohibiting "sexual harassment" at that time, the complaint was based on the prohibition against sex discrimination in employment. Cherie Bell and Anna Korczak worked as waitresses at The Flaming Steer Restaurant, owned by Ernest Ladas. In September of 1977, Cherie Bell began working as a waitress at Flaming Steer Restaurant on the weekends. It did not take long before Bell, who had a young baby, faced sexual advances from the restaurant owner, her boss, Ernest Ladas. When Bell went to pick up her first pay cheque, Ladas asked if she was on the birth control pill and propositioned her. On another day, when Bell arrived to work tired, Ladas suggested that the reason she was tired was because she "screwed too much." During another shift, Bell went to the bar to collect a drink ordered by a customer called, a "sloe screw." Ladas was working the bar and when Bell asked him for the drink he replied, he would give her a slow screw and a fast screw if she wanted it. About a week later, in mid October, when Bell called the restaurant to inquire about her work hours, she

[23] *Human Rights Code*, RSBC 1996, c 210. Section 13 pertains to discrimination in employment and reads: 13 (1) A person must not (a) refuse to employ or refuse to continue to employ a person, or (b) discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

[24] *Bell v The Flaming Steer Steak House Tavern Inc.* (Ont. 1980), 1 CHRR D/155 (Shime).

was fired over the phone. On November 1, Bell filed a sexual harassment complaint against Ladas with the Ontario Human Rights Commission.

Anna Korczak also worked at Flaming Steer Restaurant as a waitress. Like Bell, she was hired in September of 1977. While at work, Ladas slapped Korczak on her rear end on multiple times. Korczak was also questioned by Ladas about her personal life and "invited" out for drinks with him and asked to have sexual relations with him. In the middle of October she was fired. Korczak did not go to the Ontario Human Rights Commission with her story. Rather, the Commission went to her. Korczak filed a complaint in March of 1978, only after the Commission began investigating Bell's complaint and after she was introduced to the investigating officer. Roughly two and a half years later, the two complaints resulted in the first case in Canada to recognize sexual harassment as a form of sex discrimination at work and a violation of human rights legislation.

Bell and Korczak's complaints were heard together by Owen Shime, who made up the one-person Board of Inquiry. Shime was unequivocal in finding sexual harassment to be a prohibited form of sex discrimination under the legislation. As his decision reads:

> Clearly a person who is disadvantaged because of her sex is being discriminated against in her employment when employer conduct denies her financial rewards because of her sex, or extracts some form of sexual compliance to improve or maintain her existing benefits. The evil to be remedied is the utilization of economic power or authority so as to restrict a woman's guaranteed and equal access to the work-place, and all of its benefits, free from extraneous pressures having to do with the mere fact that she is a woman.[25]
>
> …
>
> The danger or evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in a loss of employment benefits. Such coercion or compulsion may be overt or subtle but if any feature of employment becomes reasonably dependent on reciprocating a social relationship

[25] *Ibid* at para 1388.

> proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory.[26]

Shime described a range of sexually harassing practices that could constitute sexual harassment, from "coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender-based insults and taunting."[27] However, Shime's decision also included a significant caveat relevant to the discussion in this chapter: "The prohibition of such conduct is not without its dangers." Shime warned, "One must be cautious that the law not inhibit normal social contact between management and employees or normal discussion between management and employees…An invitation to dinner is not an invitation to a complaint."[28]

Although *Bell* is celebrated as the first case to name sexual harassment as sex discrimination, ironically, Bell and Korczak's complaints failed. Shime did not find the complaints by Bell or Korczak to be "credible" and was not convinced by the evidence that Ladas had sexually harassed the two women. In response to the complaints, Ladas had denied all of the allegations against him. He insisted that he fired Bell and Korczak not for refusing his sexual advances but because they were not good employees and their performance was substandard. According to Ladas, Korczak did not have a "neat appearance" and was "rough with customers." Moreover, Ladas said he had suspicions that both women were stealing. Because the women bore the burden of proving they were harassed—a principle in sexual harassment law that I will discuss in the next section of this chapter—the case was dismissed. As Shime explained, "I am unable to conclude

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[26] *Ibid* at para 1390.
[27] *Ibid* at para 1389.
[28] *Ibid* at para 1390. This statement is often cited in sexual harassment cases. E.g. *Dupuis v British Columbia (Ministry of Forrest),* 1993 BCCHRD No. 43, at para 40.

that the position of one side should prevail over the position of the other side…I find that this case falls to be decided on the basis of which side has the onus of proof."[29]

After *Bell*, the human rights statute in Ontario was amended to specifically include harassment.[30] However, the *Bell* decision demonstrated some of the challenges associated with bringing a sexual harassment complaint when the burden of proof rests on the complainant and when sexually harassing practices happen in secrecy (Backhouse 1981: 149). (I will return to the issue of the burden of proof in the next section of the chapter.) Even though the women's complaints in *Bell* failed, the case paved the way for women in other provinces in Canada to bring forward sexual harassment complaints under their own human rights legislation through general provisions protecting against sex discrimination in employment (and 36 years later tribunals continue to reference Shime's explanation as to why sexual harassment constitutes discrimination based on sex). In the earlier cases following *Bell*, human rights tribunals and courts in Canada agreed that sexual harassment constituted sex discrimination.

In 1989, in *Janzen v Platy*,[31] the Supreme Court of Canada affirmed "sexual harassment is a form of sex discrimination." The case involved the complaints of Dianna Janzen and Tracy Govereau.[32] Janzen and Govereau had worked as waitresses at a restaurant called Pharos, in Winnipeg. Both women had experienced behaviour from Tommy Grammas, a cook, which included attempted kisses and grabbing of various body parts. In its decision the Court defined sexual harassment as, "unwelcome conduct of a

[29] *Bell, supra* note 23 at para 1441.
[30] The most current version of the Ontario human rights code reads, "Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee." *Human Rights Code,* RSO 1990, s 7(2).
[31] *Janzen*, supra note 2.
[32] Both complaints were successful.

sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment."[33] The Court elaborated in the following, frequently cited, paragraphs:

> 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.[34]

With its decision, the Court confirmed the decision from *Bell,* and those from other jurisdictions that followed *Bell*. With *Janzen*, "sex discrimination" provisions of human rights statutes in all jurisdictions were to be interpreted to include sexual harassment. The more challenging question for human rights tribunals and courts, however, was and continues to be, deciding whether the conduct being complained about is sexual harassment (Fudge 1996, Aggarwal and Gupta 2000). Central to this analysis is a focus on an objective assessment of unwelcomeness. Although the Court in *Janzen* firmly rejected the idea from the Manitoba Court of Appeal that sexual harassment was based on physical attraction, the following analysis in this chapter of tribunals' assessments of "unwelcomeness" in sexual harassment cases begs the question, has the law of sexual harassment truly done away with the association between sexually harassing practices and notions of courtship?

[33] *Janzen*, supra note 2 at 1254.
[34] *Ibid* at 1284 and 1283.

4. Putting law into practice: the reasonably objective standard for determining sexual harassment

Janzen is still a leading case in sexual harassment law today. The legal definition of "sexual harassment" provided by the Court is significant in BC because, as I have mentioned, the BC *Human Rights Code* does not expressly prohibit "sexual harassment" nor does it define "harassment." The definition sexual harassment in BC has evolved through case law. General human rights case law makes it clear that it is the responsibility of the complainant to establish a *prima facie* case of discrimination, including sexual harassment. [35] The Supreme Court of Canada made it clear that the issue in human rights complaints is not the intent of the respondent, but the effects on the complainant.[36] Unlike some other jurisdictions in which a human rights commission may take carriage of the complaint and thus take on the work of proving that sexual harassment took place, this is not the case in BC. [37] If a complainant establishes a *prima facie* case of discrimination,

[35] *Ont. Human Rights Commission and O'Malley v Simpsons-Sears Ltd*. [1985] 3 SCR 536.
[36] *Ibid.*
[37] According to the annual reports filed by the BC Human Rights Tribunal, more respondents have legal representation in hearings before the Tribunal than complainants. This is significant because, historically, there has typically been a correlation between legal representation and success for complainants before the Tribunal. For instance, in 2011-2012 complainants were represented by lawyers in 18 percent of cases, whereas respondents were represented by lawyers in 31 percent of cases. Complainants with legal representation succeeded in 56 percent of their cases; complainants without legal representation only succeeded in 31 percent of their cases (BC Human Rights Tribunal 2012: 11). In 2012-2013, complainants were represented by lawyers in 32 percent of cases, whereas respondents were represented by lawyers in 57 percent of cases (success rate for complainants with legal representation was 75 percent, and only 38 percent for complainants without legal representation (BC Human Rights Tribunal 2013: 9). In 2013-2014, complainants were represented by lawyers in 36 percent of cases, whereas respondents were represented by lawyers 73 in percent of cases. However, this year complainants that were self-represented were more likely to succeed than complainants with legal representation (succeeding in 50 percent of cases compared to 33) (BC Human Rights Tribunal 2013: 6). In 2014-2015, complainants were represented by lawyers in 41 percent of cases, and respondents were represented by lawyers in 78 percent of cases. In 2014-2015, complainants that were self-represented (36 percent) were slightly more likely to succeed than complainants with legal representation (19 percent) (BC Human Rights Tribunal 2014: 7). Nevertheless 2013-2014 and 2014-2015 were exceptions and the general trend is that legal representation for complainants impacts the success of their complaint. In 2015-2016, 60 percent of complainants that were successful after a hearing had a lawyer, whereas for complainants who had their complaint dismissed, only 30 percent had legal representation (BC Human Rights Tribunal 2017: 7).

the evidentiary burden shifts to the respondent to prove that either the conduct did not happen, or, that it does not amount to sex discrimination as the law defines it.[38] Once all the parties have made their arguments and given their evidence, the tribunal decides whether on the balance of probabilities there was harm, connected to a ground, and that it meets the legal definition of sexual harassment. As outlined above, the unwelcomness requirement is central to the legal definition of sexual harassment provided by the Supreme Court of Canada. Thus, whether or not a complaint of sexual harassment is successful or not depends upon whether or not the conduct in question was unwelcome. But what exactly does unwelcome mean? Unwelcome from whose point of view, and how is this assessment made? Answering these questions draws our attention to how the legal and the everyday coalesce.

In deciding whether or not conduct being complained of is to be considered a legally prohibited instance of sexual harassment, the following question 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?"[39] This test is referred to using different terminology, including "the reasonably objective standard," the "standard of reasonableness," and "the unwelcome standard" (I will refer to it as the reasonably objective standard). As one tribunal explained the test:

> The test for determining if conduct is unwelcome is objective. That is because what one person may find objectionable may not necessarily be objectionable to another, and people can only be expected to refrain from engaging in conduct which they could reasonably be expected to have known was unwelcome. The burden rests with a complainant to establish that the conduct was unwelcome.[40]

[38] *Mahmoodi, supra* note 1 at para 151.
[39] See for example, *Mahmoodi, supra* note 1 at para 140
[40] *De Leon v Tridim 2 Milwork*, [2006] BCHRTD No 6, para 16.

As the Tribunal described, the test used to determine if the behaviour in question is "unwelcome" is an objective test. In deciding whether or not something is sexual harassment, the test invokes the perspective of an objective "reasonable person." *Ought a reasonable person to have known that the behaviour was unwelcomed?* The application of the reasonably objective standard depends upon the behaviour in question and the nature of the workplace. Cases in which the behaviour is physical or especially egregious, usually—but not always—cross the line of what is socially acceptable conduct in a place of work.[41] In such situations it is more readily understood that a reasonable person should have known that the behaviour was not unwelcome, and discharging the burden of proof is easier.

In the following analysis, I focus on cases in which the reasonably objective standard is applied to conduct similar to the type of experiences my informants described encountering in restaurants (the accounts explored in chapters 5 and 6).[42] These include more "subtle" and cumulative behaviours, including, sexual comments, innuendo, and "jokes," rather than physical conduct. In these situations, when deciding whether or not a

[41] See for example the first case in BC which involved sexual harassment *Zarankin v Johnstone c.o.b as Wessex Inn,* BC 1984, 5 CHRRD/2274; *Fields v Willie's Rendezvous,* [1985] BCCHRD no. 18. Also see *Dupuis supra* note 28 at para 69 for a case involving sexual intercourse as sexual harassment, a situation in which the respondent should have "inferred" his behaviour was not welcomed.

[42] In exploring how law defines sexual harassment I am concerned with how law treats behaviour that has been described as more subtle (such as, sexual/sexist 'jokes,' 'banter,' 'horseplay.') Adjudicators in BC have held, ''express objection need not be shown to establish that the behaviour is unwelcome where a reasonable person knew or ought to have known that it is unwelcome.'' See McNulty v G.N.F holdings Ltd. (c.o.b ''A Flowers Touch'') [1992] BCCHRD no 3 at para 38. In McNulty, for example, a case involving verbal and physical sexually harassing behaviour, including the respondent grabbing the complainant's breasts from behind and saying, ''your tits would have looked better in the dress,'' the respondent's behaviour ''was of such an obviously degrading nature that he ought to have known they were not welcome'' (at para 38). It is also important to note that the legal approach to sexual harassment is different in other jurisdictions in Canada. For example, in Ontario, adjudicators have incorporated both the perspective of the respondent and applicant. ''The standard of what the perception of a 'reasonable person' would be, should consider the perspective of both a reasonable person in the applicant's position, and a reasonable person in the individual respondent's position'' De los Santos Sands v Moneta Marketing Solutions Inc. [2016] OHRTD no 262 at para 34.

reasonable person would consider the substance of the complaint "unwelcome," the context of the workplace environment is key to the tribunal's decision as to whether or not the behaviour in question constituted sexual harassment. I argue that the reasonably objective standard is not an "objective," or neutral test. The reasonably objective standard is a gendered practice that reflects how gender relations shape what comes to be known in law as sexual harassment, and how law shapes (and reinforces) gender relations in the workplace.

The use of the reasonably objective standard in BC as the test to determine whether or not conduct is un-welcome was influenced by an Ontario case called, *Aragona*.[43] Twenty-six-year old Grace Aragona worked as an artist for Elegant Lamp Co., a company that made lamps, jars, figurines, and other ceramics. After facing a number of problems with her boss, Fillipitto, she filed a sex discrimination complaint. Her written complaint read:

> On several occasions he said such things to me as 'he would like to get into my pants and that he would like to go fishing with me without his wife.' Furthermore, he would put his hands on my shoulders and tell me that I was it. In September and October of 1979, when he found out that I was getting married, he said that my husband was no good and low down. In early December of 1979, he told me that I had ruined everything and he wanted to know how we were going to go out for dinner.[44]

Fillipitto's comments made Aragona feel "uncomfortable" and "uneasy." She said that she never encouraged Fillipitto and told him that his remarks were not appreciated. In response, Fillipitto said that he thought she was joking.

In assessing Aragona's complaint to decide if it constituted sexual harassment, the Board of Inquiry, applied an objective standard. As the decision reads, "It is to be noted

[43] *Aragona v Elegant Lamp Co. Ltd*., [1982] HRTO/BOI 172.
[44] *Ibid* at 2-3.

that where conduct is of a more subtle nature, the issue is how it 'may reasonably be perceived.'[45] In other words, the conduct in question cannot be assessed only by the effect which it has upon a particular complainant…The objective standard must be met."[46] Testimony from other workers from the lamp company painted a picture of a work environment in which Fillipitto was constantly "joking." Fillipitto was known for telling his female employees "I love you" in Spanish and asking them to go fishing with him. Even the company president described a work environment with a lot of "banter" and "quips" and said it would not be surprising to hear a woman be told that she was "looking sexy." Testimony from other women who worked at the lamp company indicated that they accepted Fillipitto's behaviour as a joke, and in response, would tell him to "Shut Up." The Board described the attitude of one witness in particular, Mrs. Ognesis: "Mrs. Ognesis' demeanour on the stand clearly indicated that she enjoyed the joking with Mr. Fillipitto. She smiled broadly and with a 'twinkle in her eye' when she related how he would joke and how she would good-naturedly put him down."[47] Compared to this description of Ognesis's response, it appears that the Board disapproved of the response from Aragona. The Board found it "difficult to explain Mrs. Aragona's unique reaction,"[48] which it trivialized as an overreaction,[49] and called Aragona "sensitive."[50] The Board dismissed Aragona's complaint. In light of the general acceptance in the workplace of the boss's behaviour, Aragona could not prove that she had been sexually harassed. No *reasonable* person could have perceived the boss's

[45] *Aragona, supra* note 43 at 4.
[46] *Ibid* at 3.
[47] *Ibid* at 6.
[48] *Ibid* at 13.
[49] *Ibid* at 9.
[50] *Ibid* at 14.

behaviour to be unwelcome. The Board explained:

> [I]n the present case, the proven conduct was freely accepted and enjoyed by other employees. In the circumstances, it could not 'reasonably be perceived to create a negative psychological and emotional work environment.'[51]

In determining that the Fillipitto's behaviour did not amount to sexual harassment, the reactions of Aragona's co-workers, who accepted their boss's behaviour as jokes, were used to dismiss Aragona's complaint as an over-reaction.

Put into practice, the objective test means that the more common the conduct in question, the more it resembles "normal" social interaction in a workplace, the less likely a reasonable person will know their behaviour is unwelcome. In such circumstances, the onus is on the individual to "directly" and "unambiguously" object. The adjudicator in *Aragona* made this clear:

> Where there is a general acceptance but where an individual employee does not care to participate, that feeling should be expressed directly and unambiguously. The objective standard could then be applied to that individual in light of the additional fact of expressed disapproval.
>
> …
>
> 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. [52]

Therefore, not only must a person making a sexual harassment complaint prove, that, on a balance of probabilities, it is more likely than not that the discrimination happened. In addition, when sexual banter in a workplace is routine or accepted by other employees, it is the complainant's responsibility to make it known that the behaviour is unwelcome,

[51] *Ibid*.
[52] *Ibid*.

and only then, upon further experiencing the behaviour again, can she bring a complaint with some chance of success. In other words, the analysis of unwelcomeness in sexual harassment cases begins, albeit tacitly, from the position that the complainant welcomed (or invited) the behaviour (Benedet 1995:132). The requirement that the complainant let the respondent know that the conduct is unwelcome places the responsibility on the complainant to inform the respondent about what is appropriate conduct and, in effect, relieves the respondent from having to take the initiative to figure out what conduct is appropriate. In effect, it undermines the Supreme Court of Canada's clear statement that the effect of discrimination, not the intent of the respondent, is what is critical in a substantive approach to equality.[53] For women filing sexual harassment complaints regarding a workplace rife with a sexualized, discriminatory atmosphere, the formal requirement of establishing a *prima facie* case doubles the amount of harassment a woman must experience to be believed: she must endure harassing behaviour, explicitly resist or reject the behaviour, and then endure the harassment once again.

The reasonably objective standard set out in *Aragona* was subsequently used in BC. Janice Rack, who worked as a waitress at Playgirl Cabaret, filed a sexual harassment complaint against the owner, Van Den Oord, for his verbally abusive language. [54] Rack described having to work in an environment in which her boss would constantly swear. The crudeness and volume of his language would increase when he spoke to female employees when he was angry.[55] In deciding if Van Den Oord's behaviour constituted sexual harassment, the BC Council of Human Rights, as it was then called, cited *Aragona*: "Where there is a general acceptance but where an individual employee does

[53] *O'Malley, supra* note 35.
[54] *Rack v C. & J. Enterprises Ltd. (c.o.b. Playgirl Caberet and the Generator),* [1985] BCCHRD No 11.
[55] *Ibid* at para 11.

not care to participate, that feeling should be expressed directly and unambiguously. The objective standard could then be applied to that individual in light of the additional fact of expressed disapproval."[56] Applying this approach to Janice Rack's complaint, her experience was not considered to be sexual harassment because she did not object and the boss's behaviour was "accepted" by her co-workers:

> In this case, overwhelming evidence was presented to show that Van Den Oord's language was accepted, if not exactly enjoyed, certainly reciprocated by other employees. There was no evidence whatsoever that the Complainant expressed disapproval of the language used...On the evidence, I find that the type of language used by Van Den Oord could not be reasonable perceived [sic] to create a negative psychological and emotional environment.[57]

Not only were the reactions of other employees considered, but the culture of the workplace was also taken into account. As the member for the BC Human Rights Council described, "The fact that we are dealing here with three nightclubs where the audience is predominantly male, of a rather rowdy nature, and that the entertainment consists of rock n' roll bands, exotic dancers and strippers, must also be borne in mind when determining what would constitute 'ordinary banter.'"[58] The boss's behaviour was characterized as ordinary for this *type* of workplace. *Rack*, a case from 1985, was an early example of the application of the reasonably objective standard in BC.

In 1999, the legal principles of a sexual harassment complaint were discussed at length in *Mahmoodi v UBC*.[59] The *Mahmoodi* decision is still cited for providing a legal test for assessing whether conduct being complained of is "unwelcome."[60] Given its

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[56] *Ibid* at para 25.
[57] *Ibid* at para 26.
[58] *Ibid.*
[59] *Mahmoodi, supra* note 1 at paras 134-154.
[60] For instance, the following cases cited *Mahmoodi* for outlining the objective test for determining whether conduct being complained about is unwelcome: *Balikama v Khaira Enterprises Ltd.,* [2014] BCHRTD No 107; *MacDonald v Najafi,* [2013] BCHRTD No 13; *Hart v Howlett,* [2009] BCHRTD No 46; *Q v Wal*ker,

significance in influencing other sexual harassment cases in BC, it is important to consider the case in detail. Fariba Mahmoodi, a psychology student, filed a complaint against Donald Dutton, a UBC professor. Mahmoodi complained that Dutton created a sexualized environment in his home while she was there to discus his support for her to attend graduate school. The adjudicator agreed, in part, with the complainant that the environment was inappropriately sexualized with soft music, candles, a fire, dinner and wine; the environment was described as being more consistent with a date than with an academic meeting.[61] During the meeting Dutton told Mahmoodi that he found her attractive, and also spoke to her about his "physical needs" (explaining that he missed physical contact from his wife who was away).

The Tribunal explained the objective test for evaluating the unwelcomeness of a complaint:

> To establish that conduct constitutes sexual harassment, a complainant must establish that it was 'unsolicited' and 'unwelcome.' The test for determining whether conduct is unwelcome is an objective one: taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant? A complainant is not required to expressly object to the conduct unless the respondent would reasonably have no reason to suspect that it was unwelcome.[62]

In answering the question whether a reasonable person would have known that the conduct was unwelcome, the Tribunal considered Mahmoodi's behaviour and the overall context of the situation at hand. The Tribunal described Mahmoodi's response as "acquiescent" [63] and acknowledged the unequal professor-student relationship, a

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[2012] BCHRTD No 135; *McIntosh v metro aluminum products Ltd*., [2011] BCHRTD No 34; *Chan v Pryer,* [2008] No 441; *Andrews v Chili House Thai Bistro,* [2007] No 88.

[61] She also complained that Dutton had kissed and fondled her, however, the adjudicator determined that due to lack of evidence and Mahmoodi's "compromised credibility" the sexual touching could not have been found to have happened (at para 231).

[62] *Mahmoodi supra* note 1 at para 140.

[63] *Ibid* at para 237.

relationship in which the power relations were heightened since Mahmoodi was hoping Dutton would support her application to graduate school.

> The fact that a complainant submits to or tolerates sexual demands does not necessarily mean that they are welcome or solicited. Behaviour may be tolerated and yet unwelcome at the same time. The reasons for submitting to conduct may be closely related to the power differential between the parties and the implied understanding that lack of co-operation could result in some form of disadvantage.[64]

When analyzing whether a reasonable person should have known the behaviour was unwelcome, the Tribunal considered the power relations active in a professor-student relationship. As the Tribunal described, "Tolerance of a particular environment or course of conduct in order to obtain an academic objective or gain some advantage, does not necessarily mean that a sexual environment or conduct are welcome."[65] The Tribunal had "no difficulty finding that a reasonable person would have known that Mahmoodi's interest lay in her academic pursuits and that she was in a vulnerable position with respect to him."[66] He was her professor, and she his student, hoping to begin graduate studies with his help. Moreover, unusually strong evidence supported Mahmoodi's complaint. An audiotape, recorded by Dutton's stereo during the meeting, captured the music and part of the sexual conversation. The recording supported Mahmoodi's side of the story; without it, the case would have had to have been decided by weighing Mahmoodi's account of the events against Dutton's.[67] In addition to the unusually supportive evidence in the *Mahmoodi* case, another unique facet of the case is the fact that the sexually harassing behaviour was concentrated in two meetings (held closely

[64] *Ibid* at para 141.
[65] *Ibid* at para 237.
[66] *Ibid* at para 241.
[67] As the decision reads, "It is, however, the sexual innuendo and intimate nature of the conversation on the audio tape that most firmly supports the conclusion that the environment was sexualised." *Ibid* at para 225.

together) between the student and the professor. These characteristics of the case make it very different from workplace contexts in which there is a culture tolerant of sexualized behaviour, or hostile workplace harassment. These differences must be kept in mind when analyzing how the test from *Mahmoodi* has been applied to sexual harassment in the context of an employment situation in which a highly sexualized workplace culture is the norm.

The test from *Mahmoodi* was applied in a 2013 case dealing with sexual harassment in employment. *Kafer v Sleep Country*.[68] Adele Kafer worked as a sales associate at a Sleep Country store (a mattress retailer). She complained that her co-worker Arif Arjania had: (1) yelled, "[s]ee you later bitch," across the room to her; (2) made comments to her about the date rape drug roofalin, 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, sent her an email which read: "IM GAY AND GAY AND GAY AND STUPID AND WEIRD AND HORNY AND A LOSER HAHAHAHAHHA…I WISH I COULD HAVE ARIF HE IS THE ALL MIGHTY AND HAS THE BIGGEST PENIS!!!" Arjania admitted all these incidents occurred and that Kafer told him directly she did not appreciate incidents (1) and (3). Kafer and Arjunia disagreed on whether she objected to the roofie comment. According to Arjania and Sleep Country Canada, all of the sleep country stores Kafer had worked in, including her current location, had a workplace culture "whereby sexually explicit banter, jokes and innuendo were considered reasonable social interaction between employees and between employees and managers."[69] Kafer spoke about participating in this culture in order to "fit in." "There was talk about sexual subjects in the workplace

[68] *Kafer, supra* note 6.
[69] *Ibid* at para 8.

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."[70] Kafer's complaint was dismissed. The adjudicator did not believe she could prove the incidents were "unwelcome," because Kafer had previously been a part of sexual banter:

> 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 an objective person should have known that she found the matters she complains of unwelcome, given the degree of her participation in the sexualized workplace banter.[71]

This decision demonstrates that in work environments in which there is a "culture of sexualized joking and conduct," this very context is used to define normal social relations at work. Whether or not something becomes sexual harassment in law requires workers to draw the line. Even though *Kafer* cited the *Mahmoodi* decision as providing the legal test for sexual harassment, this analysis is one that resembles the reasoning of the Ontario Human Rights Tribunal in *Aragona*, which was decided 31 years earlier. The adjudicator expressed that when Kafer returns to work, "she can communicate directly, and through her conduct, that she does not welcome sexual banter in the workplace."[72] (Remarkably, filing a human rights complaint and proceeding to a tribunal hearing does not amount to direct communication). Rather than question the social context within which Kafer's experience took place, this decision maintains the status quo of a sexualized workplace and puts the responsibility of challenging such an environment on the complainant.

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[70] *Ibid* at para 28.
[71] I*bid* at para 39.
[72] *Ibid* at para 40.

When it comes to complaints of a more "subtle" nature, such as sexual "jokes" or remarks in the workplace, a complainant carries the burden of not only establishing a *prima facie* case of discrimination, but also the burden of showing that she explicitly made it clear that the behaviour was not welcome. The test used to distinguish between "normal" social interactions and those that cross the line and become what law considers sexual harassment is the reasonably objective test. Instead of evaluating the experience of the person who is complaining of the behaviour, which is called a subjective test, the law of sexual harassment asks, "taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant?" Under this framework, the perspective that is central to defining sexual harassment is not that of the person complaining, but actually that of a reasonable person in the position of the accused perpetrator. Such an approach is inconsistent with the substantive approach to equality adopted by the Supreme Court of Canada, an approach that shifts away from a focus on individual discriminatory attitudes of individuals, and their intentions to discriminate, towards an emphasis on the effects of discrimination.[73] As Colleen Sheppard has argued, "In the context of human rights law, which has endorsed the primacy of the effects of discriminatory practices on the victim regardless of the intent of the discriminator, it is inconsistent to revert to a perpetrator perspective upon entering the domain of sexual harassment law" (2010: 83).

As I have discussed in this section, what this approach means is that when the behaviour being complained of resembles ordinary behaviour for the workplace, for instance, when it is accepted by other employees, the responsibility is on the complainant to object. However, requiring women to expressly object to behaviour that is otherwise

[73] *O'Malley, supra* note 35.

characterized as "normal," assumes that what is normal is not sexual harassment. Law begins with the conjecture that the existing workplace norms, the dominant socially accepted practices, do not constitute sexually harassing practices. For behaviour to be legally named "sexual harassment," the complainant must object; she has the responsibility and the onus is on her to set the threshold and police the boundaries of others' behaviour. What is "normal" becomes sexual harassment only *after* she protests.

Given the emphasis in sexual harassment law on whether or not behaviour is welcomed, and the responsibility on complainants to object to behaviour they find unwelcome, what does it mean when uncomfortable or unwanted sexual interactions in a place of work—even behaviours those workers name "sexual harassment"—are accepted as normal? In the following section I draw on interviews with restaurant workers to show that given how sexualized interactions between restaurant workers and co-workers, managers, and customers are normalized, it would be difficult to argue that a reasonable person should have known these experiences were unwelcome. The focus on unwelcomeness in the legal definition of sexual harassment, in effect, protects and maintains the practices through which sexual harassment is constructed as normal.

5. Putting up or getting out: the normalizing sexual harassment

In chapters 4, 5, and 6 I described the complex picture of women's uncomfortable sexual experiences in the restaurant industry. I argued how the organization of restaurant work normalizes sexual harassment and uncomfortable/unwanted sexual interactions in the workplace between workers and their co-workers, managers, and customers. Features of restaurant work—the ways in which the work is constructed to be precarious, the wage-tip relation, the business emphasis on pleasing customers, and hiring and dressing

practices that stress women's looks and sexuality—shape how women workers take up, handle, and make sense of their experiences. Social practices, material conditions, and discourses that construct restaurant work are central to understanding how uncomfortable sexual experiences, including those workers name "sexual harassment," come to be a part of the work. As Jackie described in the quotations above, "if you don't accept that as normal, you're not going to make it." Restaurant workers learn to *put up, take, and deal with* sexual experiences at work as an ordinary feature of the work, or leave their job, or even get out of the industry. Acquiescence is socially enforced.

Formal talk of "sexual harassment," and the law and sexual harassment, was virtually absent from the workplaces of the women I interviewed. No one I interviewed used human rights law to complain about what they faced. Only a few women brought an incident to their managers' attention, and, these were the more egregious instances (e.g. a dishwasher grabbing a hostess's buttocks). Even in these examples, however, women did not make complaints of "sexual harassment."

Rather, there was a strong perception among the women I interviewed that they are expected to react to sexualized behaviour in a specific way. As Karen said, "I definitely felt that as someone working in a restaurant that it was kind of expected of you to put up with the flirtatious comments or the cat calling and that sort of behaviour that goes on." Roxy also spoke of expectations when talking about her relationship with her co-workers:

> There's definitely a specific way you're supposed to act. And I don't mean friendly and hard working it's more, it's more than that. I don't know. There's this expectation to goof around in this specific kind of way. [*I asked her for an example*.] I notice in restaurants, more than anywhere else, the types of jokes that people do and the types of things they talk about, like people are extremely racist and sexist in workplaces and it's just totally not even questioned…It's kind of

> shocking to hear some of the things people say. And then when they're trying to engage you in these kinds of ways that they're all joking around and then you're not engaging in it, you're kind of seen as a prude or something, you know? And it's not, I don't want to be, I don't feel like it's my responsibility to tell people why I'm not gonna joke around with them about that. Like I said, I just want to come and do my job and go home… I haven't really figured out a great way to—I usually just kind of shrug it off and keep doing what I'm doing. (Roxy)

If a person acts against this culture, Roxy explained, "they're just gonna think that you're stuck up, prude, and you're difficult to deal with and why don't you lighten up." Sexist and racist "jokes" are so common they can become associated with working in the restaurant industry. Roxy has worked in a couple of restaurants and shared, "I knew that's kind of what I have to expect going into that kind of job." Women who cannot "take a joke" are labelled "prudes" and sometimes women even question whether there is something wrong with them for getting upset by the behaviour in their workplace. When Carole reflected on her days working in restaurants she said, "I've often wondered. I thought, 'Okay. I'm too sensitive. I can't work in the industry. It's too stressful." Roxy also said something to indicate that she too has questioned her self in relation to the sexualized environment within which she works. At the end of our interview she remarked, "It helps to just talk about it and to be reminded that what I'm feeling isn't unjustified." She also shared that she was looking for a new job because while at work she needs to "completely re-compartmentalize" herself to be accepted. Compartmentalizing her self is a way Roxy handles the sexist and racist workplace practices of her co-workers.

Sexist talk in the restaurant industry is so normalized it has been given a name: it is "kitchen talk." As Emily explains, "There's a lot of sexual talk…they're swearing or they're talking about sex. That's just kind of the dynamic of how they work." Recall as

Jackie shared, “If you’re female in the industry you just accept what the guys do. Otherwise you don’t make it.” During my interview with Jackie, at the same time as she thought of her experiences as “sexual harassment,” she accepted them as normal and grew a thick skin to continue on in the industry. “[L]ike I say, it doesn’t faze me because it’s what I as a female accepted as normal. Because if you don’t accept that as normal, you’re not going to make it.” Out of her passion for working in restaurant kitchens, Jackie learned to accept the sexually harassing practices of her predominately male co-workers and eventually became “one of the guys.”

Similar to how the women I interviewed spoke about their interactions with co-workers, the idea that women are simply expected to put up, take, and deal with sexual remarks from customers was reflected in how women talked about their work. Below, women describe how they handle sexual talk from customers:

> I didn’t really answer it… I just dealt with it. That’s what you have to do when you’re in the restaurant industry as a female. You just have to, kind of deal with it and move on and just get through the night. (Tracey)

> 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. (Emily)

> 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, is that you’re gonna get hit on. (Amanda)

Underlying the ways in which these women talk about their experiences is an understanding that when working in the restaurant industry, sexual behaviour from customers is simply part of their job. Handling verbally harassing comments from customers is just something women working in the restaurant industry “have to do.” Going along with a customer’s sexual remarks is thought to be less challenging.

There are many reasons why the women do not object to sexual comments from customers. As I outlined in chapters 5 and 6, some women thought speaking back to a customer contrasted with what was expected of them as waitresses. Remember how Karen said she tries to be polite to customers who are inappropriate "because it's customer service" and she feels that if she were to "punish them" that would reflect poorly on her as a waitress. Objecting to a customer's sexual behaviour also means risking losing a good tip. Recall how Eve, a hostess, shared that when she stopped responding to "flirtation" from a customer the exchange went "sour." The customer's server later confronted her: "'Why didn't you keep him going? Why did he—he didn't leave a good tip.'" Eve felt blamed for the poor tip her co-worker received.

Keeping a customer going by listening and responding to comments about his sex, sexual innuendoes, and sexist jokes is part of the labour performed by front-of-house restaurant workers. In chapter 5 I argued how workers can learn early on that their sexuality is tied to their employment from picking up on implicit or explicit employer hiring practices emphasizing sexual attractiveness. As Karen said, her manager would not have hired someone "who he didn't see as being profitable because of how they look." Eve worked as a hostess where she was required to wear a short skirt and a low-cut top, and was asked repeatedly to show off her chest. She referred to these dress code requirements as a form of "sexual harassment" from management. However, rather than challenging the treatment she experienced, she quit after she had enough of "sexualization of the roles." Moreover, I argued how the precarious wage-tip relation and involvement of customers tipping workers—a practice chapter 4 showed is legitimized by minimum wage regulations—can shape and constrain how workers respond to sexual

behaviour from customers they are uncomfortable with. Sexual behaviour from customers can even be a "wanted" exchange when it is a way for workers to earn more in tips from customers. Tipping becomes an institutionalized form of *quid pro q*uo.

However, sexual harassment law has failed to recognize the customer's involvement in restaurant work via the wage-tip relation. As I explained in chapter 2 when reviewing landmark sexual harassment cases, human rights tribunals have interpreted employer liability for sexual harassment as incorporating sexual harassment by customers (*Lanteigne).*[74] However, even though the Tribunal ordered the restaurant employer to create a policy on sexual harassment from customers, the Tribunal failed to discuss the important part customers play in tipping workers and how this economic relationship fosters a work environment conducive to workers tolerating sexual harassment from customers in order to be tipped. Employer liability for third party harassment does not go far enough to challenge the unique economic ordering of restaurant work, or the focus in restaurant work on "pleasing customers."

6. Conclusion

The institutional framework through which women's experiences do or do not come to be known as "sexual harassment" in law privatize and individualize the issue of sexual harassment in the workplace. As I have argued, the absence of a public human rights commission in BC means that the administration of sexual harassment complaints is essentially a privatized practice. Without a commission tasked with educating the public on human rights and inquiring into issues of systemic discrimination, the onus is on the individual to educate themselves and navigate the process of launching a human

[74] *Lanteigne v Sam's Sports Bar Ltd.* (c.o.b. G.G.'s Sports Bar) [1998] BCHRTD No. 40.

rights complaint with the Tribunal. If they do not undertake these tasks, the status quo prevails.

Moreover, if a person does decide to use law to protest their experiences, and the complaint goes to a hearing, the analysis of sexual harassment is centered on an individualized assessment of wanted vs. unwanted behaviour. This focus displaces any questioning of how work organizations may be put together in such a way that "consent" to harassing practices is manufactured. Central to the legal definition of sexual harassment is the requirement that the conduct being disputed be "unwelcome." Human rights tribunals in BC have argued that in an environment in which sexual talk, "jokes," and comments are common, the complainant must demonstrate that she objected. This requirement is problematic. For as Farady has eloquently argued, "The onus on women to articulate their discomfort is also out of step with women's actual behaviour. Because of intimidation, shame, or economic vulnerability—the very feelings the practice of sexual harassment aims to reinforce—women do not complain. And this silence is later held to absolve harassers who claim they did not know that the woman objected" (Faraday 1994: 45). Requiring a complainant to protest against those who harass them illustrates "the paradox of complaining" (Quinn 2000). Writing about sexual harassment law in the United States, Quinn points out, "[t]o establish a believable claim, a woman must make a showing of her dis-empowerment. Simultaneously, the law requires great acts of power from this woman by requiring her to speak out against the very people who are harassing her" (Quinn 2000: 1171).

The unwelcome standard as a test for determining when conduct is to be considered sexual harassment is an example of how gender appears in and shapes legal

analysis of uncomfortable, or unwanted sexual experiences in the workplace. Put into practice, the unwanted standard as a legal schema for conceptualizing and addressing the problem of unwelcome sexual conduct leads to replicating the dominant gender subtext of a workplace. Problematically, when the conduct being disputed resembles the social norms of a workplace, deeper questions about how such experiences are organized *to become* normal are left unexamined. Law fails to sufficiently engage with the social practices, material conditions, and discourses structuring work and shaping women's experiences.

Chapter 8

Conclusion

1. Introduction

In this dissertation I have examined how the problem of sexual harassment is both a legally prohibited form of sex discrimination and simultaneously a very real part of the everyday experiences of the women restaurant workers I spoke with. I undertook an institutional ethnography, using a feminist research strategy, to learn from restaurant workers how unwanted or uncomfortable sexual behaviour at work—behaviour they may or may not name "sexual harassment" happens. I interviewed both current and former restaurant workers to learn about the sexualized interactions and sexual behaviour faced from managers, co-workers, and customers. The central message that emerged from the interviews I conducted with restaurant workers is that the context surrounding their experiences is pivotal to understanding how uncomfortable sexual instances and sexual harassment in restaurants occurs, how it is handled, and subsequently talked about. The stories women share in the pages of this dissertation are not isolated instances about the inappropriate behaviour of one "aberrant individual" (Sheppard 2010: 84). Rather, they speak to a pattern. The accumulation of sexual remarks, sexual innuendo, sexist "jokes," and "cat calling" is endemic. Using the experiential accounts from informants as my compass I have analyzed how unwanted or uncomfortable sexual behaviour or sexual harassment becomes a normalized feature of restaurant work. In what follows I will review my main arguments and the key themes that connect chapters. In addition to reviewing what has been learned from this research, I will discuss resistance to sexual

harassment in the restaurant industry in Canada, and possibilities for future study and action.

2. The construction of sexual harassment as normal

In chapter 2 I reviewed the evolution of sexual harassment from the women's movement and the practice of consciousness raising to its legal prohibition as a form of sex discrimination. I surveyed the feminist literature on sexual harassment law in Canada for an understanding of how feminists have understood the limits of sexual harassment law in addressing women's experiences in paid work. Feminist legal scholars were quick to question the "unwelcome" element of the legal definition of sexual harassment and argued that law's apparent objectivity was in practice a male norm. (A criticism chapter 7 showed still holds true with sexual harassment case law from BC.) However, as I highlighted in chapter 2, legal reforms preoccupied with doctrinal definitions and tests fall short of questioning and examining *how* gendered practices and expectations concerning sexual harassment are constructed and maintained within workplaces. In light of ongoing limitations with sexual harassment law, Sheppard (1996, 2010) has called for an investigation into the institutional contexts within which sexual harassment happens—an investigation that starts with the experiential knowledge of those who live sexual harassment. In chapter 2 I also discussed empirical socio-legal research that has wrestled with the illegality of sexual harassment and women's experiences of sexual harassment in paid work. Although a few socio-legal researchers (Quinn 2000; Marshall 2003, 2005a, 2005b) have explored the topic of women's experiences of sexual harassment, within the context of work in the US, these projects emphasize law's instrumental property and

argue that sexual harassment law is halted or made idle by gender relations or organizational practices. In contrast, I have argued that labour law and anti-discrimination law both reflect and reinforce gender relations in restaurants as work organizations and are not made inactive *by* gender relations. I attribute this insight to my research approach, institutional ethnography, and beginning with and being guided by the experiences of women full-service restaurant workers.

I outlined my institutional ethnographic approach in chapter 3. As I explained, I was initially drawn to institutional ethnography by the parallels between Smith's protesting of positivist sociology and legal feminists' protesting of law's apparent gender neutrality. Developed by sociologist Dorothy E. Smith (1987, 2005, 2006), institutional ethnography is a research strategy rooted in a challenge of dominant forms of knowledge created from the male perspective—it is a research approach critical of the façade of the "objective" construction of knowledge. As such, institutional ethnography often begins in experience and maps out and analyzes how social relations shape experience. What I learned from interviewing women restaurant workers informed my legal analysis throughout the ethnography. In the tradition of feminist research on sexual harassment that began with women sharing their experiences of paid work, my ethnography builds on the experiential knowledge of workers by explicating the ingrained ways through which sexual harassment is maintained by elements structuring work that are often invisible in restaurants.

In chapter 4, I examined the world of full-service restaurant work through the experiences of my informants. The stories that comprise the chapter come from dozens of restaurants and although the restaurants themselves differ in many ways—from the hours

they are open, price range of menus, style of restaurant, etc.—one commonality connects the working experiences of informants: precarious working conditions. The precariousness of working conditions reflects the coming together of many factors: a highly competitive industry with high turnover rates (of both employees and restaurants themselves) and little unionization; the involvement of customers in restaurant work relations; the reliance on low and inadequate employment standards laws to provide a basic floor of labour rights; and illegal, but common, workplace practices that undercut the minimum protections afforded to workers under employment standards laws (e.g. industry standards of sending workers home early without paying them the minimum daily pay of two hours and not providing breaks). All of these factors make for uncertain work conditions. Unpacking how restaurant work comes to be precarious matters because the reliance on tipping and uncertain conditions of work overall not only make complaining of sexual harassment difficult, but overtime, normalize the problem. As I showed in chapter 4, the connection between workplace sexual harassment and precarious working conditions is underexplored in scholarly research. My doctoral research contributes to the few studies that have started to explore the association between precarious labour conditions and sexual harassment (Rogers and Henson 1997; LaMontagne et al. 2009). Moreover, my research has moved the discussion on sexual harassment and precarious work along by showing how labour law, including anti-discrimination law, is implicated in creating the problem.

Labour law allows insecure working conditions in restaurants to thrive. The scheduling of labour in restaurants reflects the eating patterns of customers. The schedules are therefore in flux and dependent upon the presence of customers in the

restaurant. As I showed in chapter 4, employment standards legislation in BC allows for "flexible" labour conditions in restaurants that favour restaurant employers. The BC *Employment Standards Act* allows for open-ended, on-call, split, and short shifts, and allows employers to post schedules with less than 24-hours notice to employees and to change posted schedules without notice. Because the working schedules of restaurant workers are, to recall the words of Janet, a server, "up in the air" or "loose," their income is uncertain as well. The employment standards legislation also allows for a minimum wage rate that is far below a living wage. According to the Living Wage for Families Campaign, the living wage is $20.02 in Victoria and $20.64 in Vancouver, compared to the $10.85 regular minimum wage and $9.60 liquor server minimum wage.[1] Permitting a lower minimum wage for workers who serve alcohol is a *de facto* recognition of the practice of tipping and the involvement of customers in a wage-tip relation.

Unpacking the precarious characteristics of restaurant work is significant because, as I have argued, the job insecurity felt by workers constrains workers' responses to the unwanted or uncomfortable sexual interactions with co-workers, managers, and customers that they find unacceptable. My dissertation contributes to scholarly research on work and sexual harassment by examining the wage-tip relation and its connection to sexual harassment or uncomfortable sexualized interactions faced by the women I interviewed. The wage-tip relation disproportionality impacts women workers, as 81 percent of food and beverage servers in BC are women. Income earned through tips is highly unpredictable and there is no legislation in BC regulating an employer's collection

[1] A living wage is an hourly wage needed to sustain a two-parent family with two children when both parents are working for wages. Living wage calculations vary by city and represent the hourly wage needed to cover basic costs of living: food, rent, clothing, transportation, childcare, and a small amount of savings to cover emergencies or illness (Living Wage for Families Campaign 2016).

and redistribution of tips using tip pools. Chapter 5 argued that the involvement of customers in tipping workers is a form of institutionalized *quid pro quo*. Workers learn to put up with behaviour from customers they are not okay with in order to receive a tip, and if they object to or do not go along with the behaviour there can be economic consequences.

Chapter 5 also analyzed the ways through which restaurant work is gendered and feminized. Occupations within full-service restaurants are horizontally segregated on the basis of sex. Recall a server explaining, "We're just like a typical restaurant. We have girls in the front and guys in the back." Because restaurant occupations are also vertically segregated by sex—58 percent of management and 73 percent of senior management are men (Statistics Canada 2006a)—the ones doing the hiring and firing are more likely to be men. On top of the sex-segregated workplace, many of the women interviewed spoke about the hiring practices of their male managers that involved placing emphasis on women's bodies and looks. For some workers the connection between their employment and the presentation of their bodies for (heterosexual) male customers was made clear and women were told to wear revealing, tight, or gender specific clothing, do their hair and make-up, and wear high-heeled shoes. Moreover, some women learned after being hired that their own appearance played a part in their manager's decision to hire them.

In chapter 6, I examined how women's unwanted or uncomfortable sexual experiences at work are taken up, handled, and subsequently talked about. In stressful, fast-paced work environments rife with violations of even the most basic of labour rights, such as unpaid meal breaks, workers learn to grow a "thick skin" and "tough out" the challenges of grueling working conditions to make it through a shift. Similarly, women

restaurant workers learn to deal with and laugh off situations at work that make them feel uncomfortable. They learn to not take things "too personally," for if they do they may run up against discourses that identify them as "prudes," as Roxy explained. In challenging sexualized behaviour of customers, co-workers, or managers (even if only during the interview for this doctoral research) women confront a discourse that frames the behaviour as "guys being guys" or joking around. The idea that women who complain of sexual harassment simply cannot "take a joke" is a longstanding myth about sexual harassment (Backhouse and Cohen 1978) that still resonates. Laughing off, walking away, and ignoring sexist remarks, sexual innuendo, cat calling, and so on are the common ways women working in restaurants I interviewed respond to behaviour at work from managers, co-workers, and customers. Sometimes, although very rarely, the women I interviewed shared an instance in which they talked back to customers. Even when managers had been made aware of the sexual behaviour from co-workers or customers that workers were not okay with, managers did not take these instances seriously. The women restaurant workers I interviewed were left to navigate inappropriate interactions with co-workers, customers, and managers on their own. A common coping mechanism is to share stories with co-workers. In doing so, women break the silence that surrounds their experiences, for none of the women I interviewed could recall any talk in restaurants about the issue of sexual harassment or unwanted sexualized interactions at work more generally—sexual harassment policies or training sessions were non-existent, a phenomena that is a reflection of the reactive human rights framework in BC.

The association between a sexualized and feminized presentation of self and the work of women servers, bartender, and even hosts, is reinforced by the practice of tipping

and the need to please customers in order to be tipped. Wearing makeup to work or dressing in a specific way, and behaving and responding to sexualized interactions from customers can become part of the sexual labour women learn to carry out in order to earn a living. The institutionalization of this labour is evidenced in the way in which sexual attention from male customers is described as being a "wanted" exchange in order to earn higher tips. However, there can be concrete economic consequences when women resist the expectation to be subjected to sexual advances or remarks from customers, and also co-workers and managers as part of their work. Consequences such as the loss of a tip or the loss of a job—the latter of which usually took the form of women quitting when they had enough—are a strong reminder that women's uncomfortable sexual interactions and sexually harassing practices occur within the unequal context of employment, and, employment that is especially precarious.

In chapter 7 I argued that the legal regulation of sexual harassment in BC, while at the same time constituting "sexual harassment" as sex discrimination, embodies and recreates the gendered subtext of the workplace. Thus, law is simultaneously enabling and constraining (Chunn and Lacombe 2000). The burden for addressing discrimination rests on the shoulders of workers. The individualized human rights system in BC is entirely reactive. BC is the only province with a tribunal-only model, a model that relies on people filing sexual harassment complaints to the human rights tribunal. Unlike other jurisdictions in Canada, there is no human rights commission in BC responsible for educating the public about their rights under the BC *Human Rights Code*, or conducting research into issues of systemic discrimination on behalf of the public. It is not surprising that the restaurants within which my informants worked did not have sexual harassment

policies because the *Human Rights Code* does not require employers to create sexual harassment policies or internal complaint procedures. Nor is there a human rights commission in the province to create sexual harassment policy guidelines for employers or educate employers on their responsibilities to employees under the *Human Rights Code*.

In chapter 7 I also examined the legal definition of sexual harassment and the substantive requirements of bringing a successful claim in BC, particularly in the context of a work environment in which the conduct being complained of, be it "joking" or sexual talk, is common or even considered normal. The objective legal test, used to determine whether or not behaviour being complained of is "unwelcome," I have argued, is far from objective. Rather, it is a practice that reflects how gender relations shape what comes to be known through law as sexual harassment. It also demonstrates how law shapes (and reinforces) gendered relations in employment. Requiring women who complain of sexual harassment to first make it known to the harasser that their behaviour is unwelcome, when the behaviour represents sexual interaction that is routine and accepted by other workers, places the responsibility on women to police the behaviour in the workplace. In the context of BC, law's analysis of sexual harassment that focuses on whether or not behaviour is wanted or unwanted fails to consider how work can be structured in a manner such that "consent" to sexually harassing practices is illusive. In defining sexual harassment, the law erases workplace context; context that the experiences of the women restaurant workers I interviewed showed is absolutely critical. Conceptualizing sexual harassment using the welcome/unwelcome framing, and requiring that a "reasonable person" ought to have known that the conduct in question

was unwelcome, is irrelevant in the context of a workplace in which sexual harassment is constructed to be an ordinary part of the job. My dissertation has demonstrated the need to question how workplaces, and the broader labour market, are structured such that women's uncomfortable sexual experiences at work become standard.

The puzzle I posed in chapter 1 positioned the illegality of sexual harassment and women's ongoing experiences of sexual harassment in restaurants as being in tension with one another. And, my research is part of a larger project of examining the disconnection between women's lives and the law. However, the tension between the experiences of the women I interviewed and sexual harassment as a legally prohibited form of sex discrimination fades when viewing law as being gendered, as the feminist legal researchers reviewed in chapter 2 have done. In this dissertation I have shown the complex and contradictory ways in which law relates to the uncomfortable sexual experiences of women restaurant workers. On the one hand, with the hard work of feminist activists—including MacKinnon, and Backhouse and Cohen—human rights law has recognized sexual harassment as a prohibited form of sex discrimination and a human rights harm. Yet at the same time, the law reinforces gendered sexual power relations of inequality. Employment standards law contributes to creating a precarious and highly gendered work environment. Human rights law in BC, both the institutional architecture of the human rights system which is retroactive and individualistic and the legal definitions and tests of sexual harassment (re)create the gendered subtext of the workplace and contribute to the normalization of sexual harassment. Through the work in this dissertation I have shown recognition of law as complex and contradictory. I have explored the ways in which human rights law can facilitate the patterns of discriminatory

behaviour it simultaneously prohibits. This complexity highlights the need for a more multi-pronged and nuanced approach to embedded inequalities. Recent efforts in Ontario to engage with the issue of dress code discrimination and provide worker training on sexualized violence demonstrate, at least in part, the beginning of an approach that targets structural dimensions of sexual harassment.

3. Resistance and re-visioning restaurant work

During the writing of this dissertation, restaurant workers in Alberta and Ontario have spoke against the sexism, sexual harassment, and discrimination in the restaurant industry. In 2015, a few students from the University of Alberta who had experience in the restaurant industry created a website called F.E.D.-U.P., standing for Feminist Eatery Database Undercover Project (CBC News 2015). The project came out of a women's studies course that took up the subject of gender inequality in the workplace. The website serves as a platform for servers and customers to share their experiences of sexism in the restaurant industry. The website is attempting to put pressure on restaurants to stop discriminatory treatments of staff. The website describes the F.E.D.-U.P. project as, "A feminist approach to eating out that seeks to highlight prominent issues regarding sex, gender, and race in the service industry. We aim to provide a comprehensive and accessible database of restaurant, cafe, and eatery reviews based off of a thorough checklist that anyone can bring along on an outing if they wish." Front-of-house restaurant workers are not alone in challenging sexism in the restaurant industry. In the fall of 2015, in response to a high profile sexual harassment cases involving a kitchen worker, a group of restaurant workers in Toronto organized a conference titled, "Kitchen

Bitches: Smashing the Patriarchy one Plate at a Time" to discuss the problem of sexual harassment and discrimination in restaurant kitchens (Henry 2015).

The problem of sexual harassment and sex discrimination in the restaurant industry in Canada has been receiving increasing media attention that has sparked legal and policy action. In March 2016, the CBC's Marketplace television news program broadcasted an investigation into restaurant dress code requirements for women servers and bartenders in Canada's restaurant industry (Sample 2016). In response to the concerns about sexualized dress codes in restaurants stemming from the CBC coverage, the Ontario Human Rights Commission (OHRC) released its campaign to end sexualized dress codes that are discriminatory, a campaign that specifically targeted restaurants and bars. The OHRC re-stated its long-standing position on dress requirements that sexualize worker's bodies: "Even though they may be commonplace and normalized across the restaurant industry, sexualized dress codes reinforce stereotypical and sexist notions about women. Human rights decisions dating back to the 1980s have found these to be a violation of human rights laws. Yet they continue in 2016" (OHRC 2016a). The OHRC campaign to end sexualized dress codes includes an "OHRC policy position on sexualized and gender-specific dress codes" that was made public on International Women's Day (OHRC 2016b). Even further, the OHRC created and published a Dress Code checklist for employers. According to the OHRC's website, the checklist was created to "help organizations make sure that their dress codes and uniform policies are consistent with Ontario's *Human Rights Code* protections relating to sex and gender, as set out in the OHRC's Policy position on sexualized and gender-specific dress codes" (OHRC 2016c). As mentioned in chapter 7, the OHRC's campaign to end discriminatory

dress codes and its policy position on sexualized and gender-specific dress codes used published research emanating from this doctoral research (Matulewicz 2015). The action taken by the OHRC is an example of a response to systemic discrimination capable with a provincial human rights system that includes a public human rights commission.

In addition, in September 2016, the province of Ontario announced its plan to train bartenders, servers, and managers in the hospitality sector (including full-service restaurants) "to identify and intervene in instances of sexual violence and harassment among employees and patrons" (Women's Directorate 2016). The training is part of the *Sexual Violence and Harassment Action Plan Act* (Supporting Survivors and Challenging Sexual Violence and Harassment) and the province's corresponding "Action Plan to stop sexual violence and harassment." The news of the training program to help combat sexualized violence came at the same time as the Ontario Ministry of Labour announced that it is launching a pilot project to prevent worker abuse in the industry when it comes to employment standards violations (Mojtehedzadeh 2016). Labour groups in the province have recognized the restaurant industry as one of the worst employment standards violators. The sexualized violence training for hospitality workers, the campaign to end sexualized dress codes, the Ministry of Labour's pilot program (and the relationship between all three) are worthy of future study.

Yet even with sexual harassment training and policies against sexist dress requirements, a key feature of restaurant work that contributes to worker vulnerability to sexual harassment remains untouched: the wage-tip relation and the involvement of customers in restaurant work. Future research should, in collaboration with restaurant workers, examine ways of restructuring restaurant work such that front-of-house

restaurant workers who interact with customers as part of their job are provided with job security and given more control over their labour. One suggestion would be to eliminate the economic insecurity of restaurant work caused by the practice of voluntary tipping. A growing no-tipping movement coming from the US has the interest of some restaurateurs in Canada (Mintz 2016). In May 2014, the first no-tipping restaurant, Smoke 'N Water, opened in BC and was the first of its kind in Canada. I spoke with the owner as part of this research. He informed me that he eradicated tipping and raised menu prices by 18 percent in an effort to pay all employees a higher hourly wage. Unfortunately, less than three months after the restaurant opened, the owner ended the no tipping policy. The owner explained that as the only restaurant in the area with the no-tipping business model it was difficult to compete with surrounding restaurants that had significantly lower menu prices. A no-tipping model was also attempted by a restaurant in Vancouver called "Ritual" (Verenca 2016). The owner of Ritual was dedicated to paying staff a living wage of $21 an hour plus benefits; however, again roughly three months after opening, Ritual abandoned its no-tipping policy because, as the owner described, it was "unsustainable" (CTV News 2016). In July 2016, Earls Restaurants announced it would test a no-tipping model at an "Earls 67" location in downtown Calgary. Rather than the model of voluntary tipping, customers' bills at Earls 67 include a 16 percent "hospitality charge" (Klingbeil 2016). Vice President of Operations for Earls Restaurants explained that the new compensation system would allow the restaurant to divide the hospitality charge more evenly among all hourly paid staff: "We believe a cook who makes a burger for a guest is as equally important in the experience as the server delivering the burger" (as cited by Klingbeil 2016). Earls 67 may have better luck with the unorthodox business model than

the other restaurants that have attempted to do away with tipping since Earls is already a popular restaurant chain, and because by including a "hospitality charge" added to the customer's bill, the restaurant can maintain competitive menu prices. One challenge faced by restaurants that attempt to eliminate conventional tipping is the public. According to an Angus Reid Institute Poll conducted in May/June 2016, 46 percent Canadians still prefer the traditional tipping model, 40 percent prefer a service included model with higher base wages, and 13 percent have no preference (Angus Reid Institute 2016). Tipping is ingrained in the Canadian restaurant culture, for both workers and consumers. It is unlikely that an alternative model will be successful unless the move to eliminate tipping is an industry-wide shift.

Even though some restaurateurs are experimenting with alternative no-tipping business models, absent from the conversation on alternative forms of organizing restaurant work is the connection between tipping and sex discrimination and sexual harassment in the restaurant industry. Those in favour of eliminating the voluntary tip generally cite the wage disparity between the earnings of front-of-house workers (especially servers and bartenders) and back-of-house workers in the kitchen (McAdams 2014, Mintz 2016). In the US, however, worker advocacy groups are making the association between tipping and sex discrimination clear. The Restaurant Opportunities Centers United (ROC-UNITED) has launched a "One Fair Wage" campaign that advocates for legal reform of minimum wage laws at the municipal, state, and federal level. In fighting to eliminate tipped minimum wages, the campaign uses a human rights framework and brings attention to the connection between the tipped minimum wage for

restaurant workers (a wage that is just $2.13 at the federal level) and sexual harassment. The campaign website reads:

> By allowing the restaurant industry to pay a subminimum wage to women — who make up 70% of servers — one of the largest industries in the country teaches countless millions of women, many of whom find their first job in the industry, that their worth is intrinsically linked to enduring forms of harassment and being objectified. (ROC-United 2015)

The message from ROC's One Fair Wage campaign highlights the magnitude of the problem of sexual harassment in restaurants and raises an important question. In an industry in which many people have their first experience of paid work, what does the normalization of sexual harassment on the job mean for these workers throughout the rest of their working lives?

Reforms to the practice of tipping—either through automatic service charges on all bills or higher menu prices that compensate for a no-tipping policy—could remove some of the economic pressure workers feel to present themselves in a sexualized way or endure sexually harassing behaviour to secure better tips. Future law and policy reform to respond to sexual harassment in restaurant must be multi-faceted. It must understand law in its institutional and social context if it is to change the experiences of women who are sexually harassed and face unwanted or uncomfortable sexual interactions at work as a normal "hazard" of the job.

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Appendix A

Letter of Information and Consent

You are invited to participate in a study entitled "Women and restaurant work: exploring the experiences of women working in the BC restaurant industry" that is being conducted by myself, Kaitlyn Matulewicz.

I am a PhD student in the Law and Society program at the University of Victoria. You may contact me if you have further questions by phone at 250-418-5082 or by email at kaitm@uvic.ca. My research is being supervised by Professor Judy Fudge and you can contact her at jafudge@uvic.ca.

My research is being funded by the University of Victoria, the Social Sciences and Humanities Research Council of Canada (SSHRC), and the Interuniversity Research Centre on Globalization and Work (CRIMT).

Purpose and Objectives:

The purpose of my research is to (a) learn about the experiences of women working in restaurants, particularly experiences of a sexual kind (for instance this may include, flirtation, sexual innuendo and comments, sexual behavior and advances, sexual dress codes, etc.); (b) understand these experiences within the context of restaurant work; and (c) understand how experiences of sexual interaction in restaurants relate to legal discourse that names and defines 'sexual harassment'.

Importance of this Research:

This research is important because little is known about restaurant workers' experiences of sexual interaction at work, especially in Canada. This is significant since Canada's restaurants provide the greatest proportion of entry-level jobs in the country. Furthermore, 43% of employees are between 15 and 24-years old (Statistics Canada, 2006).

Participants Selection:

You are being asked to participate in this study because of your experience working in a restaurant.

What is Involved:

If you agree to voluntarily participate in this research, your participation will include an in person interview lasting approximately 1 to 2 hours in length. The time and location of the interview will be arranged at a mutually convenient time and place. With your consent, I will make an audio-recording and transcribe the interview.

Risks:

Possible risks to you by participating in this research include feeling emotional discomfort or embarrassment as a result of recalling experiences of a sexual nature that were unwanted or offended you.

Benefits:

As a participant, you will have a chance to talk about your work. If you wish, you will receive a copy of my dissertation and/or any article published in relation to this research. There is no research from Canada that explores the restaurant workplace and the sexual experiences of female restaurant workers. Your participation in this research will contribute to a better understanding of those experiences, how they arise, and how they are approached within the distinctive environment of restaurant work.

Voluntary Participation:

Your participation in this research is completely voluntary. If you decide to participate, you may withdraw at any time without any consequences or any explanation. If you withdraw from the study your data will not be used, unless you would like me to use it and give me permission to do so.

Anonymity and Confidentiality:

I will take steps to protect your confidentiality. In research notes, transcripts, my dissertation, and any published articles or monograph, your name and place of work will be kept confidential. If I draw on information from your interview a lot, I will use a fictional name.

There are, however, limits to full confidentiality. Under the Child, Family and Community Service Act, I have a legal duty to report suspected child abuse (of an individual under the age of 19) to a child welfare worker.

Dissemination of Results:

It is anticipated that the results of this study will be shared with others in the following ways: dissertation and/or published articles or a published monograph, and presentations at scholarly meetings.

Storage and Disposal of Data:

Data from this study will be stored in a locked filing cabinet in my home. I will also use password-protected computer files on my personal computer to store electronic notes, interview transcripts, and audio files.

I will dispose of data by erasing electronic files containing interview recordings, transcriptions and notes and shredding all paper copies. I will keep data for up to 5 years

after completing my PhD, or 10 years after completing my PhD, with the permission of participants.

Contacts:

Individuals who may be contacted regarding this study include myself, Kaitlyn Matulewicz, and my supervisor Judy Fudge. Please refer to the contact information listed at the beginning of this consent form. In addition, you may verify the ethical approval of this study, or raise any concerns you might have by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

_____ _____ _____

Name of Participant Signature Date

Request to be contacted in the future for the purpose of being invited to participate in a small focus group: During my research I will also be conducting small focus group sessions with 2-3 restaurant workers at a time. If you would like to be invited to participate in a focus group session please initial below. Note: your initials will not represent your consent to participate in the focus group. A different consent form would be used at that time.

_____ (Yes, please invite me to participate in a focus group session).

Request for the future use of data:

Given the richness of the interview data that will be gathered during this study, I may want to re-visit the data at some point in the future. I would anticipate that future analysis would focus on the same topic, experiences of sexual interaction and legal discourses concerning 'sexual harassment'.

Please select a statement:

Yes, I agree to the use of my data in future research: _____ (Participant to initial).

No, I do not agree to the use of my data in future research: _____ (Participant to initial).

A copy of this consent will be left with you, and a copy will be taken by the researcher.