



# Sexual Harassment and Precarious Workplaces

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"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.**"

(Janzen, Supreme Court of Canada, 1989)

"In a restaurant, particularly when I'm bartending, there's a lot of bending over... 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...That doesn't even—that's nothing to me."

(Emily, server/bartender)

## Presentation outline

- Workplace sexual harassment
- Case study: restaurant work in BC and women's experiences of sexual harassment
  - Background, research approach, purpose, methods, BC context
- Precarious work, human rights, and sexual harassment
- Organization of restaurant work and institutionalized sexual harassment
- Projects of resistance
- Closing remarks/ questions

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## Sexual harassment

- Naming "sexual harassment" using consciousness raising
- Pioneering work: Backhouse & Cohen (1979); MacKinnon (1979); Farley (1978); Crenshaw (1991)
- Before it was named, "sexual harassment was literally unspeakable" (MacKinnon 1979:27)
- Sexual harassment as a systemic problem constructed by patriarchal and gendered power relations



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## Sexual harassment and law

- 1980 *Bell v Ladas* first sh case accepted by a human rights tribunal (restaurant workplace)
- 1987 *Robichaud v Canada* SCC finding employer liability for sh
- 1989 *Janzen v Platy* SCC defining sexual harassment as a form of sex discrimination (restaurant workplace)
- *Mottu v Macleod* (2004) sexualized dress codes as sex discrimination (restaurant workplace)



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## What's happened?

- 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?
- 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.

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## Restaurant work in BC and sexual harassment

- Background
- Research approach: Institutional ethnography (Dorothy Smith)
- Socio-legal approach

"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)

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## Key arguments

- Full-service restaurants is organized in a manner that normalizes unwanted or uncomfortable sexual interactions at work with managers, customers, and co-workers.
- Inadequate employment standards laws construct precarious working conditions. Workers have little economic or job security and rely on customers for tips.
- Restaurant work is highly feminized. Gendered social relations are reflected in managerial hiring practices and restaurant dress codes.
- "Dealing" and "putting up" with sexualized behaviour at work becomes a part of the labour process.

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## Precarious work

- No single definition and definitions vary internationally
- Often defined by what it is not (Standard Employment Relationship)
- Vosko's definition "forms of work involving limited social benefits and statutory entitlements, job insecurity, low wages, and high risks of ill-health" (Vosko 2006: 3)
- Can be shaped by employment status, form of employment, unionization level, income level.
- Social location
- Precariousness as a continuum (Vosko, MacDonald, Campbell 2009)
- Social organization of employment

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## Precarious work and sexual harassment

- Quantitative survey of workers in Australia (LaMontagne et al 2009)
  - Casual full-time and fixed term contract employment associated with unwanted sexual attention
- Temporary clerical workers in US (Rogers & Henson 1997)
  - Sexual harassment a "routine part of being a temporary worker"

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## Precarious work and human rights

- Mental health
  - Precarious work affects well being; higher reports of anxiety (Pepso, McMaster, United Way, 2013)
- Employment discrimination (race, age, gender).
- Racialized workers more likely to be in precarious work and more likely to experience discrimination (ibid. 2015)

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## Portrait of full-service restaurant work

- Who works in restaurants?
- Low unionization rates
- Reliance on employment standards (ES)
- Low wages
- Insecure scheduling practices
- TIPS
- Occupational segregation
- Overall job insecurity
- Industry commonly a ESviolator



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## Permanently (temporary) bad jobs

"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)

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

"The word career and the restaurant industry does *not* compute for me. It's a job. It is a job...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)

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### Getting in: hiring and occupational organization

- “We’re like a typical restaurant. We have girls in the front and guys in the back.” (Jill, server)
- “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.” (Karen)
- Hiring practices gendered and racialized
- “Restaurant managers reserve their highest-paying, most visible positions for white people, and workers of color are relegated to lower-paying, invisible positions in the back.” (Jayaraman 2013:117)

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### Working a shift & ‘flexible’ scheduling

- “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)
- “You never know when you’re done.” (Eve, hostess)
- Shifts are typically open-ended, schedules posted without much notice, split shifts, on-call shifts
- Minimum daily pay protections weak and violated

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## Working under the floor

- “I always got cut after 45 minutes and that’s not legal at all. But, I don’t know, if you don’t work, you don’t work.” (Eve, hostess)
- “if I were to try and challenge that and say legally you have to give me two hours pay...they’d probably fire me.” (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)
- Employers subvert the (low) minimum protections provided under the employment standards legislation.
  - Strong workplace culture: *this is just the way things are in the restaurant industry*

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## Earning an income: the wage-tip relation

- “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 know exactly when payday is because they rely on—that’s their income, whereas I’ll forget to cash a cheque for weeks.” (Emily, a server and bartender)
- “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.” (Jill, server)
- “My tips are, you know, that’s how food gets on the table and how I pay all my other bills.” (Michelle, server)

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## Tips

- Unpredictable, voluntary payment
- In BC tips and tip-pooling practices are unregulated
  - Ontario, Quebec, PEI have legal regulations for tipping
- BC has “liquor servers” minimum wage
  - \$10.10 for liquor servers, \$11.35 reg. Min wage
- Involving customer in employer function (Albin 2011)



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## Tipping and sexual harassment

“[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.” (Eve, hostess)

“Everybody knows that if you show a little more cleavage and you lean a little closer—to some people who are 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.” (Roxy, server)

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"I knew that if I acted in a certain way or did certain things that I was probably going to make more money. And so, you know, when you go into this industry, and I'm not saying that sexual behavior is a wanted thing, necessarily at all. But when you go into this industry, you generally know that it is definitely going to be part of your job description, is that you're gonna get hit on"  
(Amanda)

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### Providing "customer service"

"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"

"[I]f I didn't do my job to try to make them happy I wouldn't have that job."  
(Jenna)

"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." (Karen)

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## Dressing for work

"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)

"[T]here is definitely that pressure to like, wear shorter skirts lower tops and like be flirtatious...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.'" (Karen)

"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." (Eve)

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## "Kitchen talk"

"In restaurants there's something known as 'kitchen talk.' Lots of vulgar jokes. And you're talking most about vulgar sex and that." (Eve, hostess)

"[The kitchen staff] would be talking about the waitresses and how they would want to take them home." (Karen, former server)

"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)

"If you're female in the industry you just accept what the guys do. Otherwise you don't make it. You drop out." (Jackie, former chef)

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# Projects of resistance

F.E.D.-UP "Feminist Eatery Database Undercover Project"



Restaurant Opportunities Centres-United (ROC)



Retail Action Network



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Thank you!

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Questions?