



**CUSTOMERS, TIPS, AND LAW:
GENDER AND THE PRECARIOUSNESS OF WORK IN BC RESTAURANTS**

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Customers, tips, and law: gender and the precariousness of work in BC
restaurants

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In the quotations below,

in neglecting the involvement of customers in employment relations in restaurants, especially the practice of customers tipping employees, restaurant workers who rely on tips as a substantial portion of their income are left outside of the scope of labour law.

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

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Unlike the term "wages", the term "gratuities" defined in the Act. It can be concluded that the definition of the term "wages" however, that gratuities are to be distinguished from money which is paid or payable for work and also money which is paid or payable as an incentive and relates to hours of work, production or efficiency. It follows that it is unimportant that an employer may call a payment a gratuity. What is said to be a gratuity is money paid or payable for work, or money paid or payable as an incentive to work and relates to hours of work, production or efficiency, the amount paid or payable is to be treated as wages¹⁹ (emphasis added)

The adjudicator found the money paid to employees by the employer, which originated from an automatic service charge added to a customer bill to be wages. In defining gratuities the adjudicator wrote: "I find that gratuities are payments for service that are discretionary and not related to an employee's hours of work, production or efficiency but qualitative or intangible aspects of the service. My reading of the definition of wages is that a payment that is by the employer and discretionary is to be considered wages unless it is not related to hours of work, production or efficiency in any way."²⁰

for this pool to be shared with those employees who work in positions otherwise have no access to tips (Go 2013). While this statement may be an accurate reflection of Faux, it does not reflect the more complicated and diverse legal treatment of tip pools from Marcello Pizzeria and Restaurant

Tips, the Employment Insurance Act (EIA),²⁶ and the construction of insurable earnings

The employment insurance (EI) system, formally the employment insurance system, provides some form of income security to people who are absent from paid work. Employers and employees fund the EI system by paying EI premiums. This includes regular benefits (for people who lose their job), benefits for unemployed fishers, and special benefits (maternity, parental, sickness, or compassionate care benefits). In the EI system there are different modes of coverage: those based on eligibility which determine who must contribute to EI and who qualifies for EI benefits; and forms of coverage related to the adequacy of coverage which determine the duration and level of benefits (Vosko 2012: 61). However, as Vosko (2009) has argued, there is a disjuncture between the EI system and labour market realities, and distinctions between different types of work for remuneration (self or paid employment) and among forms of paid employment (part-time or full-time, temporary or permanent) operate to fully or

on whether the tips are considered to have been paid by the employer (controlled tips) or whether they are considered to have been paid by the client (direct tips) or whether they are declared tips in the province of Québec. Controlled tips are defined by the CRA as gratuities that are controlled by the employer, and are considered to have been paid by the employer. Whereas tips that are paid directly by a customer and are not at all controlled by an employer, are called direct tips (Canada Revenue Agency 2012).

point out the prevalence of part-time work in restaurants. According to 2006 census data, 68 per cent of full-service restaurant workers in BC worked part time or part year.³⁰ Moreover, 61 per cent of part time/part year workers were women compared to 45 per cent of full year full time workers who are women.³¹ Statistics Canada (2006a).

Importantly, the disadvantaged position that tipped workers, such as servers, are put in by excluding direct tips from insurable earnings is not an insurmountable problem.

In the province of Québec there is no direct/controlled tip distinction in determining whether or not tips are insurable earnings for the purpose of EI. In the 1997-1998 Québec budget speech, under the heading "Rectify the situation of tip employees and improve their social protection," the budget speech read "we will ensure that restaurant and hotel workers enjoy the same fringe benefits as other workers. To this end, our government will require that a written agreement, negotiated between the employer and employees in each establishment, be an integral part of the employees' work contract" (Québec 1997: 3435). Since January 1, 1998, under the Québec Taxation Act employees in regulated establishments have been required to declare to their employers tips received directly from customers, tips received from employee and employer run tip pools, and tips paid into tip pools (s. 42.8). Employment insurance premiums are paid on the amount of declared tips, and therefore the tips are included as insurable earnings for the purpose of calculating the EI premiums paid by employers and employees. Without eliminating the direct/controlled tip distinction, workers who receive direct tips will continue to have a lesser level of protection under the EI program than other workers.

Part II

The insertion of customer-work relations troubles our understanding of the employment relationship and makes it difficult to regulate their involvement. Part one of this paper described the introduction of the liquor server minimum wage, a rate that pays alcohol servers below the regular minimum wage because of the assumption that these workers are earning tips. Part one also documented the complicated treatment of gratuities and tip pools under the ESA. Trying to fit tips and tip pool practices into a law that governs relations between employers and employees is messy, because essentially, gratuities are paid by customers. Similarly, determining whether or not tips are insurable earnings for the purpose of paying EI premiums (an obligation of the employee and the employer) is difficult because gratuities originate from customers. And, with the exception of Québec, workers who earn direct tips are provided with a lower income replacement rate under EI than other workers. Overall, customers are actively involved in employment relations.

describe the tipping of workers by customers and the customer service focus of restaurant work and how these two elements relate to unwanted sexual experiences that some women in restaurants are experiencing.

Precarious Income

The liquor server minimum wage, a wage that is lower than

drastically increase her sales, and in turn, her tips. In addition, Janet does not keep all of her tips, and unlike other servers, her income ~~tips~~ does not seem to fluctuate. Her employer pays her a flat six dollars an hour in tips

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can be influenced through the practice of tip pooling, in a subtle way. The labour performed in a restaurant is integrated. Providing a meal and an enjoyable service experience to a customer requires collaboration among members of employees including, hosts, servers, bartenders, food runners, kitchen staff, and managers. If a customer is disappointed at any point during their dining experience, this could lead to a lower tip when they pay their bill. Emily describes a tip pool system in a former place of work: They had a really weird system where people tipped out the bartender directly. And the bartender there was kind of this unspoken policy that you always gave them like five or ten extra dollars. And new people that didn't know, they'd get their drinks made last. In this example, Emily believes that the practice of sharing tips combined with an unspoken rule about how much bartenders should be tipped out by employees, impacted the work practices of the bartender. The tipping system gave the bartender power over other employees for the bartender slowed down the production of drinks for servers who did not tip out the bar the extra five or ten dollars. However, the power that the bartender has depends on the uncertainty of the tip from a customer, and ultimately, the power that a customer has in determining a server's income through the provision of tips.

Power, tips, and customer harassment at work

It's sad to say that a lot of times, like for example this weekend, there was a huge hockey event 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 and this is awful but this is how I make money. I served a large party of men and they were being really inappropriate. Their bill was a \$1000. And, I

work.

Providing good customer service

With the presence of customers in restaurants, comes the requirement that employees provide good customer service. In some instances, though, the need to give customers good service can restrict how a worker acts in response to an unwanted experience at work. Recall the comment made by Karen that was on page 18. Karen said that she tries to politely shrug off c

The notion of customer service can be made observable by inquiring into customer service work. When discussing her work, Jenna, a server, referred to customers as "the priority." When asked to elaborate on how customers are the priority provided this description of customer service:

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

The last line from Jenna's quotation illustrates the importance of ensuring that the customer is happy, for Jenna believes that if she did not do her job to make customer happy, she would no longer have that job. Similarly, Jill's explanation of customer service, provided below, shows how restaurant work is centered on customers and making their dining or drinking experience "the best it can be":

Well to me just because it's customer service it kind of speaks for itself. My attitude towards it has always kind of been like it doesn't really matter what they ask for, you're going to do your 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 and 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 cigarette 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 sports fans and another end, and you have to be able to balance that and also keep them in check so that they're not disturbing other guests as well. But yeah, so just try to make it the best it can be.

The requirement to please customers and be "nice," while also establishing boundaries can be a challenging aspect of restaurant work.

There's sort of tables that I've had come in and I'm just like, really? You're actually saying that to me right now. And I can't even remember exactly what it was, but it was a big group of guys and they're like, "So, what are you doing afterwards?" "Nothing you're going to be involved in." So there is that interaction as well, which is encouraged by some restaurants and discouraged by

after for a drink no matter how many times you say you will, you're not going to. It's almost like a PG rated strip club, is what it is.

But the customer service ideology is not necessarily always followed. As one woman described: "I've worked as a server and in bars well for like six years. I've been nineteen and how I've grown in telling people to fuck off would not have happened when I was 19 or 20. Over time, and with experience in the industry, she's learned how to handle rude or inappropriate customers. She elaborated:

I've really understood now that if someone's being rude or inappropriate, you can tell them that they are. But when I was 19 or 20 I was, I was nervous. I laughed off everything and um sort of 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, I'm like, "Yeah, hey'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 put it into, into kind of a right framework for them where they were like "This is really inappropriate." But that I would not have done that when I was 19 or 20. So I think, you learn to do those things.

Sometimes customer service ideology can be particularly noticeable when the ideology is not adhered to. Emily describes what can happen when a server or bartender cut off a customer's alcohol consumption when they have drunk to excess:

When you cut someone off you are guaranteed to tip. People get really mad that's a really embarrassing thing to get cut off. I've been sworn at, like the most horrible thing you fucking bitch. It sucks because 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.

When the idea that the customer is always right deviated from, in addition to deciding to not leave a tip, an angry customer can ask for a different server. This also has economic

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