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**Official Report
of Debates
(Hansard)**

Wednesday 27 November 2013

**Journal
des débats
(Hansard)**

Mercredi 27 novembre 2013

**Standing Committee on
the Legislative Assembly**

Protecting Employees'
Tips Act, 2013

**Comité permanent de
l'Assemblée législative**

Loi de 2013 sur la protection
du pourboire des employés

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Wednesday 27 November 2013

Mercredi 27 novembre 2013

The committee met at 1204 in committee room 1.

**PROTECTING EMPLOYEES'
TIPS ACT, 2013**

**LOI DE 2013 SUR LA PROTECTION
DU POURBOIRE DES EMPLOYÉS**

Consideration of the following bill:

Bill 49, An Act to amend the Employment Standards Act, 2000 with respect to tips and other gratuities / *Projet de loi 49, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne les pourboires et autres gratifications.*

The Vice-Chair (Ms. Lisa MacLeod): Good afternoon, everyone. Lisa MacLeod is my name. I am the Vice-Chair of the committee. Mr. Dunlop will be out for the next hour.

My colleagues from the House have just arrived. To the members of the audience, I do apologize, but they have just broken from a vote. They will be having their lunch during the break, so please excuse that.

Each deputant is able to have a five-minute statement, and each political party will have three minutes to question them.

MR. BRUCE KATKIN

The Vice-Chair (Ms. Lisa MacLeod): Our first presenter, beginning at 12:05, is Bruce Katkin. Is Bruce here? Please come. You have five minutes to make your deputation, time starting now.

Mr. Bruce Katkin: Thank you, members of the committee. My name is Bruce Katkin. I have been in the restaurant industry since 1979, mainly in a management function. I am here to support Bill 49 for the following reasons.

Serving staff in restaurants, service employees in the accommodation sector and staff in the banquet sector rely mainly on the minimum wage or close to the minimum wage of \$8.75 an hour, the exception being in certain situations, such as unionized locations, where the practice of tip distribution is built into the contract.

Serving can be very stressful and sometimes comes with berating by customers.

Customers usually leave tips based on their satisfaction with the service and product, and customers leave the tip with the understanding that the employees receive the full amount.

As a manager or owner, it is part of the job description that they step in where and when it is needed. Some people are saying, "Well, a small business owner should be advantaged." Define a small business owner. An owner of a franchise is a small business owner. Many have stated that if the owner is working, such as a chef, they should be entitled to the same tips as the staff. There are two thoughts on this. One is, yes, because they are working as an employee or as a chef, they should get similar tips. The other one would be no, because as owners, they have a fixed salary, usually higher than what the employees are making; they have the profits of the business; and they have tax advantages, such as car expenses or any other expenses they want to write off.

The customer is not aware that in many instances, management and/or owners take a part of the tip under the following reasons or guises: dish breakage; covering the cost of credit card charges—now, I agree that business owners should be able to take the tip portion. In other words, if a \$100 bill has a \$20 tip on it, the business owner—let's say at 3%—should get 60 cents, but most of them are asking for \$3, \$4 or \$5, the amount of the whole credit card bill; uniform charges—many locations charge more than the actual cost of a uniform, making themselves a profit on the side. They use it to supplement the manager's wages so as to lower management costs. Some of them go under the guise of saving for a staff party or such event, yet the full amount of the money is not available when it comes time for that party. Some have been so blatant as to say that they need the money to help run the business. If that is the case, maybe the business should be closed or they should have outside management come in and run it properly.

I'll give you a couple of examples. In 2001, I was down here reorganizing a Denny's restaurant with the potential of buying it. After four weeks, I involved myself in the distribution of tip-outs to the back-of-the-house staff. This worked out to \$1.05 an hour for each employee working in the back of the house and the hostess staff. Staff commented that I must have made a mistake as they normally receive only 40 cents an hour. Two cycles later, when I was out of town, tips to the staff went back down to 40 cents an hour. It became clear that the manager, unbeknownst to the owner, was putting money into her pocket.

That being said, the owner insisted that 30% of the tip money be kept on the side for dish breakage. It's not the

employee's business to worry about dish breakage. They don't drop them; it's not their money to replace them.

When I owned a franchise and when I ran restaurants, I ensured the employees got the full amount of money anytime they asked what the total tip-outs were, and they could figure it out for themselves. They were told what the distribution of the money was to each employee.

As an owner and as a manager, many times I've had to step in and do dishes or help serve tables. I never took money as part of the tip-out or money from the serving staff. As management, that's my job: to help out as needed to run the business properly.

The majority of chains—there's one major Canadian chain that charges 2.5% tip-out to their employees. I've talked to three or four employees. They're pretty sure all the money goes to the staff, except they aren't 100%. There's another chain where I've talked to servers at three locations only, but they all say the same thing: It's a 5% tip-out they're advised to give, and this chain does more than \$60,000 a week per unit. So you're looking at \$3,000 a week being accumulated for tip-out, and they know that the staff are not getting all the money.

I've added a letter in the package, and I'm just going to quickly go over it. This is a letter from a former employee of mine at East Side Mario's. When I sold the business, the new owner started taking the tip money from the employees. Basically, it says, "When Ramon took charge of this task, we went from getting approximately \$1.15 ... per hour to approximately six cents per hour." Now, we know this owner was buying a plasma TV for the store on the backs of the employees. He was using it to basically fund his restaurant.

1210

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Katkin. That was your five minutes. I do apologize. We do have a lot of presenters.

Mr. Bruce Katkin: Okay. No problem.

The Vice-Chair (Ms. Lisa MacLeod): We will start questioning off with three minutes for MPP Toby Barrett from the PC Party.

Mr. Toby Barrett: Is that three minutes per party?

The Vice-Chair (Ms. Lisa MacLeod): Yes.

Mr. Toby Barrett: Thank you for your presentation. I'm just trying to get up to speed here. You indicated that tips should not be used to supplement a manager's wages. I'm just thinking that, in the restaurant trade, the tips are obviously used to supplement servers' wages. They're ideally shared with kitchen staff.

Mr. Bruce Katkin: Right.

Mr. Toby Barrett: So, they're used to supplement kitchen staff wages, wages that in many cases are below the minimum wage.

Mr. Bruce Katkin: No. In most cases I've seen, kitchen staff are above minimum wage. In the restaurant that I owned, and one of the restaurants that I managed with full service, the kitchen staff were about \$1.80 to \$2.75 above minimum wage.

Mr. Toby Barrett: Okay. Is that in the city? I'm out in a rural area.

Mr. Bruce Katkin: Oh, sorry. One was in the GTA and one was in Ottawa.

Mr. Toby Barrett: This is with a chain?

Mr. Bruce Katkin: One was independent. One was with a chain.

Mr. Toby Barrett: I guess I'm under the impression that many people in the restaurant trade—it's legal—work below minimum wage, and they're supposed to make up the money with tips, which doesn't—

Mr. Bruce Katkin: Well, "below minimum wage"—\$8.75 is the minimum wage for serving, so we can't say it's below minimum wage. That's the legal minimum wage for serving.

Mr. Toby Barrett: Yes. Minimum wage is what, \$10.25?

Mr. Bruce Katkin: It's \$10.25.

Mr. Toby Barrett: And we've got this double standard where in certain jobs you make below \$10.25.

Mr. Bruce Katkin: That's right.

Mr. Toby Barrett: I don't know whether that's a good idea or not. I guess I don't know whether using tips to supplement that is appropriate or not.

Mr. Bruce Katkin: I know that other provinces run the same way. Serving staff in licensed establishments make less money than non-licensed establishments.

Mr. Toby Barrett: Yes. Again, I represent a rural area. I think of a number of very small restaurants. For example, a lady opens a restaurant and hires part-time staff, but she does the cooking. Should she get some of the tip money?

Mr. Bruce Katkin: But she also has the tax advantage of getting all the profits from the restaurant. She can write off her car on the restaurant. There are two schools of thought. She can either get it or not, but if I, as the owner or manager of a business, am making \$30,000, \$40,000 or \$50,000 and I'm writing off my car and my gas expenses, I don't think the employees should have to supplement that.

Mr. Toby Barrett: Okay, then.

The Vice-Chair (Ms. Lisa MacLeod): Thanks very much. Mr. Prue?

Mr. Michael Prue: I have a couple of questions, and I admire your expertise here in terms of actually running the businesses. Can you tell us, in your opinion, what percentage of restaurant owners are taking a portion or a tip-out from their employees? Could you give us a guesstimate of how widespread this is?

Mr. Bruce Katkin: I would say at least 50%, and when we say owners of restaurants, we're talking about owners of franchises, also. The franchisor has no control over it legally, because it's an independent business, but I would say at least 50%.

Mr. Michael Prue: Now, there seems to be some confusion out there. I read the letter from CFIB talking about how it's normal and natural to share tips with other staff. My bill doesn't say anything about that.

Mr. Bruce Katkin: Well—

Mr. Michael Prue: Okay. Is there confusion, in your opinion, in the restaurant industry about the difference between a tip-out and tip-sharing?

Mr. Bruce Katkin: Yes. I think the idea is that the serving staff pool their tips, and then it's redistributed to the people like the back of house and the hostesses. That's what we call tip-out and tip-sharing. The management shouldn't be accessing any of that.

Mr. Michael Prue: All right. So you don't have any objection whatsoever to a bill that would stop the owner taking a tip as a percentage in order to pad their profits?

Mr. Bruce Katkin: Not a problem.

Mr. Michael Prue: This has already been done in New Brunswick, Prince Edward Island, New York state and many other places. Do you have any information about whether that has harmed the restaurant industries in those places?

Mr. Bruce Katkin: In the package that I distributed, there is a printout of the law from the Quebec province, where it specifically says management cannot touch employees' tips, and if the employees want to have tip-sharing, it's voluntary within the group at the beginning and then, if it's accepted, everybody who is hired is on the condition that they tip out.

And I put in the forms a form they can fill out and everything else to make everything legal.

Mr. Michael Prue: Okay, but in Quebec they will not allow the management or the owners—

Mr. Bruce Katkin: No. That's written in the law.

Mr. Michael Prue: Okay.

The Vice-Chair (Ms. Lisa MacLeod): You have one minute left.

Mr. Michael Prue: I have one minute. Okay.

You have a franchise in Ottawa and one here in the GTA. The employees in those places: What is their general reaction to this? Do they think that they should be allowed to keep their tips?

Mr. Bruce Katkin: Well, all the ones that I've talked to—I've walked into different restaurants, eaten in them and asked employees questions, and they all say the same thing: that the management has no business having the tips. The tips are for—they are doing it for their own staff, their own back of house. In the letter that I've added, the gentleman who made the complaint, when they decided they weren't going to tip out anymore so the owner couldn't get the money, he threatened them with lawsuits and firing them. That was the reaction they got.

Mr. Michael Prue: I thank you, then.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Prue. MPP Dhillon?

Mr. Vic Dhillon: Thank you. Thank you very much for appearing before the committee. I don't know if you remember me.

Mr. Bruce Katkin: Sure. I remember you very well.

Mr. Vic Dhillon: I remember you. I've been to the East Side Mario's that you're referring to a few times, and it's really sad that the new owner was in this sort of practice, if in fact he was.

Can you tell the committee how prevalent this sort of problem is, and if you can identify which types of restaurants it is more prevalent in, whether in the sort of privately owned or the franchised ones? And what

support—does the franchise head office care about this? Do they give a heck as to what's happening in each one of their franchised restaurants?

Mr. Bruce Katkin: I think it's prevalent in both independent and chain restaurants. Chain restaurants, by design, probably have more in sales than some of the independent restaurants. But as a franchise, the owner, the head office, yes, are aware of it. I have in some cases known where the head office has been aware of it and they are very worried about it, but legally they have no standing to stop it because it is an individual business, his own corporation, and since it's not protected by the labour code, they basically can do whatever they want. The only way the head office can step in is if he's violating the franchise agreement through some other thing. Otherwise, they can't step in, and, yes, they are kind of worried because they lose good staff. Their reputation is ruined because people are going around saying, "Oh, don't get hired by such and such a company at that place because they take all your tip money."

Mr. Vic Dhillon: So you're very supportive of this and feel that this would help?

Mr. Bruce Katkin: I'm supportive of this bill. I'm not against owners making their money, but they shouldn't be making it on the backs of the employees.

Mr. Vic Dhillon: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): You have a minute left. Anybody else?

Mr. Vic Dhillon: That's fine.

The Vice-Chair (Ms. Lisa MacLeod): Okay. Thank you very much, Mr. Katkin. It's very generous of you to come here today to join us at our committee. Thank you for your deputation.

CANADIAN RESTAURANT AND FOODSERVICES ASSOCIATION

The Vice-Chair (Ms. Lisa MacLeod): I'd like to now call on the Canadian Restaurant and Foodservices Association: James Rilett, vice-president. Mr. Rilett, you will have five minutes to state your case, and each political party, starting with the New Democrats, will have a three-minute opportunity to pose questions. Could you please identify yourself, and you're welcome to start.

Mr. James Rilett: Excellent, thanks. My name is James Rilett. I'm the vice-president, Ontario, of the Canadian Restaurant and Foodservices Association. I want to thank the Clerk's office and the committee members for allowing me to present today.

As a preamble to my presentation, I'd just like to make a couple of statements about the industry.

Our industry is a \$25-billion hit to the Ontario economy. We employ 425,000 people directly and 90,000 indirectly.

One of the unfortunate consequences of this bill is the negative impression the debate has left about restaurant owners and operators. We think that's unfortunate, to lump everybody in the same boat. Restaurant owners are hard-working, they are community-minded, and they

work in the industry for the love of what they do. Profit margins hover around 3%, so no one goes into this industry thinking they're going to get rich. There are many cases where the employees are making more than the owners. So I just want to start out by saying that the negative impression of owners is an unfortunate by-product of this debate.

The government is continually adding more layers of regulation and bureaucracy onto the complicated web of concerns that the owners face daily. It's with this in mind that we first approached this bill. We understand it's well intentioned, but it just adds another layer of complexity.

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So what we'd like to do is raise three areas we think could improve the legislation, if it's passed, and lessen the possible unintended consequences of the bill. We'd like to make sure the definition of "employer" that is used—that they use the Ministry of Labour definition, so that people who are acting as shift managers—staff that happen to be managers are usually staff that are shift managers—aren't unfortunately brought into this legislation. The problem with that is, is if that's the case, then you'll have many staff not wanting to become shift—

Interjection.

Mr. James Rilett: I'm sorry?

The Vice-Chair (Ms. Lisa MacLeod): Keep going.

Mr. James Rilett: We want to make sure that there's still the ability to use a tip-sharing pool to split tips among staff members. We just want that clarified, that those pools are still allowed. We do think it's important that owners who work as dishwashers, work as serving staff, work as cooks, are still able to share in the tips, if applicable. Many don't, but there are some—I'm sure you can look at any street in rural Ontario or downtown Toronto. They have two or three family members who are running the restaurant, and if they then have to share the tips with the single person who's not, then it puts a big dent into what they make in a day.

So, basically, we think this bill can be improved. We want to be careful of the unintended consequences, and we hope we can improve this bill before it's passed.

The Vice-Chair (Ms. Lisa MacLeod): Are you finished?

Mr. James Rilett: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Okay. Thank you very much. We will now start questioning with our wonderful colleague Mr. Prue. Mr. Prue, you have three minutes.

Mr. Michael Prue: Yes, I have a couple of, first of all, statements. You say that you're worried about the government layering bureaucracy. The bill is one line long. It says that no employer may take any portion of an employee's tips or gratuities. What bureaucracy do you think is going to come out of this?

Mr. James Rilett: It is one line long, and because it's so simplistic, what they often worry about is, what are the unintended consequences? What if an employee—what are all the unintended consequences that could go into this? What about tip pools? What about other things?

We just don't want to have to—businesses are structured in a myriad of different ways, and if a one-line bill is interpreted in different ways, they might have to totally restructure how they do their business.

Mr. Michael Prue: Well, statements have been made in the Legislature by me and, in fact, by all parties that this is not intended in any way to stop tip-pooling or sharing. Statements have also been made about who the employer is, because it's under the Employment Standards Act, the same definition, which you've asked for. Seeing that your two criteria have been met, what other objections could you possibly have?

Mr. James Rilett: I didn't say we were objecting. I was saying that we want those put into the legislation so that it's clear, so that there aren't—I know you say people have said in statements in the House and publicly that those are the intentions, but legislation and intentions are often not the same thing. So we would request that they be put in the legislation so that it's clear.

Mr. Michael Prue: Okay. That's fair enough. You said that this bill was putting employers in the same boat. You heard the previous deputant, I trust, say that in his estimate, and this is my own estimate, too—I think it's even maybe a little higher—more than 50% of the restaurateurs are taking the tips from their employees, or a percentage of their tips. I'm just wondering, do you agree that that's happening out there?

Mr. James Rilett: I blatantly disagree with that.

Mr. Michael Prue: What percentage do you think are taking tips from their employees? And even if the percentage is 10%, even if it's as low as that, is that fair?

Mr. James Rilett: I can't give you a number. I think you're intentionally making the problem seem a lot worse than it is. I'm sure there are people out there. We surveyed our members. Almost none said they took the tips. They did talk about participating in tip-sharing pools. They did talk about single owners, family-run restaurants, but we didn't see a prevalence of managers and owners taking tips.

Mr. Michael Prue: Okay. I thank you very much.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Prue. We will go to the Liberal caucus: Mr. Dhillon.

Mr. Vic Dhillon: Thank you. You mentioned that this bill can be improved. Can you elaborate on that a bit?

Mr. James Rilett: As I said, we want some of the intentions that were mentioned before to be included in the bill, if there can be amendments to include that tip-sharing pools are allowed. As well, we want to make sure that the employment standards' definition of "owners" is included.

We do think it's important that family-run restaurants—that those owners are able to participate. They are often immigrants who come and put all their life savings into a restaurant. They are often making less than the employees. So if they're serving and they're doing the washing and dishes and bussing the tables, there's no reason why they shouldn't participate in the tip, because tips are about the entire experience of a restaurant.

They're not just about who brings the food to the table. It's, "Is the food good? Are the plates clean? Is the ambiance good?" It's the whole experience of a restaurant that goes into the tip. It's not just about who brings the food to the table.

Mr. Vic Dhillon: Does your organization get any complaints from employees who have been stiffed by their bosses of their tips?

Mr. James Rilett: Not that I've encountered. No, we have not. But to be fair, we mainly hear from the owners, our members. But I have not encountered that from the people who work there.

Mr. Vic Dhillon: Thank you. Did you have a question?

The Vice-Chair (Ms. Lisa MacLeod): A further question by Ms. Mangat?

Mrs. Amrit Mangat: Thank you, Chair. Thanks, James, for your presentation.

In your presentation, you spoke about some unintended consequences. Can you throw some light on that, what that could be, and how this bill would impact the stakeholders?

Mr. James Rilett: I think there have been a lot of opportunities where people attack owners of restaurants. I think most owners of restaurants in the industry do it because they love the job. It's not to get rich. It's not a high-return business. They're the first people who are turned to when community initiatives come forward. They're the first ones who sponsor sports teams. They're the first ones to provide donations to school events. These people are community-minded. They're doing a good job, and they're doing it for the love of the industry.

Mrs. Amrit Mangat: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. We'll now go to the Ontario PC caucus. Mr. Barrett, you have three minutes.

Mr. Toby Barrett: Thank you, Chair. Thank you for the presentation.

We do hear of, like, a very small coffee shop where the only person pouring the coffee in the morning is the person who owns it, and it might be a lunch counter-style place. So you leave a tip, and I guess the question is, well, where does that money go if there's nobody else there except the owner? I know restaurant after restaurant—they all have different policies on this.

I guess the question is, do we need government that would standardize it for the large chain restaurants and have exactly the same rules as, say, a very small—almost a shack that serves coffee?

Mr. James Rilett: That's a good point. There are 40,000 restaurants, and there are probably 40,000 ways that they do business. Almost every restaurant structures it differently. The concern whenever you bring in legislation, as I mentioned earlier, is how does it affect what you've done over the years and how you've built up your business?

Yes, we always have concerns when there's a blanket statement that covers the entire industry when it's such a complex industry. So that's a concern. We just try and make it work as best we can.

Mr. Toby Barrett: And I do talk to people who work very hard—they're in the back kitchen—and the justification for them not being paid minimum wage is that they get a share of the tips. Many of these people don't like to be in the position of begging for tips. We have this two-tiered wage structure. Certain employment groups are paid less than the minimum wage, and the justification is, well, the customer makes up for it in tips. How fair is that? Any comments on that?

1230

Mr. James Rilett: First of all, it's only the wait staff who—

Mr. Toby Barrett: Sorry?

Mr. James Rilett: It's only the wait staff who have a different wage level.

Mr. Toby Barrett: The servers, did you say?

Mr. James Rilett: Only the servers. It's called the minimum wage for servers.

Mr. Toby Barrett: Okay. Not kitchen staff or other—

Mr. James Rilett: No, it's only servers, and the—

Mr. Toby Barrett: What about other industries, like taxi drivers? It only applies to waiters and waitresses?

Mr. James Rilett: I only know about our industry. In our industry, it's only wait staff, and the intention is that it'll be easily made up by tips. It's not a huge difference, and it's easily made up by tips.

Mr. Toby Barrett: The difference is \$10.25 an hour versus what?

Mr. James Rilett: It's \$8.75, I believe.

Mr. Toby Barrett: That's pretty significant for somebody working at that hourly rate, I think.

The Vice-Chair (Ms. Lisa MacLeod): Thanks very much, Mr. Barrett. Thank you very much, Mr. Rilett.

Mr. James Rilett: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): I appreciate you attending committee today. On behalf of the committee, we thank you.

MR. GREG LEMAY

The Vice-Chair (Ms. Lisa MacLeod): I'd like to call up Greg Lemay. As I do that, I would like to notify all members of the committee that there is the potential that we will go into clause-by-clause today. I just want you to be prepared in the event that that happens.

Mr. Toby Barrett: A point of order, Chair.

The Vice-Chair (Ms. Lisa MacLeod): Yes?

Mr. Toby Barrett: I know the official opposition—I mean, I'm not the labour critic, but we just found out about this now. We weren't prepared for that. We would actually be caught quite flat-footed to have legislation go through without any opportunity to draft amendments, let alone discuss amendments.

Mr. Michael Prue: Madam Chair, if I could—

The Vice-Chair (Ms. Lisa MacLeod): Just a moment.

I've been notified by the Clerk that the committee is doing clause-by-clause next week, and the Clerk was wondering if we would like to start clause-by-clause as early as today.

Mr. Toby Barrett: We appreciate the suggestion, but I'm afraid we haven't prepared amendments.

The Vice-Chair (Ms. Lisa MacLeod): Sure. Is that the consensus here of the committee?

Mr. Michael Prue: Chair, if I could jump in, I think it's only fair—I know my bill is only one sentence long; I do anticipate a number of amendments, and I would welcome some of the amendments I've heard, because I think there needs to be clarity around the mom-and-pop shop.

Just to assuage my friend Mr. Barrett's fears here, if the server is one person and he's the owner, of course he's the server. Of course he would keep his or her tip.

But I anticipate that there are going to be a number, and I think it's only fair that we have a chance to read what's going to be put in in advance, so I would not like to go ahead today.

The Vice-Chair (Ms. Lisa MacLeod): Okay. That's the consensus, I guess, of all three political parties. I just wanted to clarify, on behalf of the Clerk. He just wanted to be prepared, in the event that there was consensus, to proceed. My mistake there, but I just wanted to raise that.

Mr. Lemay, you have five minutes. You will be questioned by each of the three caucuses for three minutes apiece. Please start now, and you may identify yourself, please.

Mr. Greg Lemay: Good afternoon, committee. Thanks for allowing me the opportunity to speak. My name is Greg Lemay. I am a paralegal from Windsor, Ontario and a member of the Law Society of Upper Canada. I stand before you today to share my thoughts on Mr. Prue's Bill 49, known as tipping out.

I was first introduced to Bill 49 through a local newspaper, and was amazed at what I was reading. Within minutes, I contacted Mr. Prue's campaign and asked if my assistance was required in Windsor-Essex. I collected between 500 and 1,000 signatures visiting local establishments, and at a few petitions at other businesses.

It should be stated that I have not worked in the service industry, and this in no way benefits me. I've always been respectful of my peers and thought of myself as an advocate or representative voice for those who don't have one, perceived or not.

I'm going to start off here with a case. It's *Barnes et al. v. Krisbair Tavern Ltd.* I think everyone has a copy of it. It's going back to the early 1980s. In that case, the court was asked to determine whether the practice of two managers—not owners—of a restaurant requiring the waiters or waitresses to share 1% of gross sales constituted a violation of the Employment Standards Act, 1980. The court found that, unless it was shown that the practice resulted in waiters' or waitresses' wage falling below the tipped minimum wage, it was not contrary to the standards act, so basically it was dismissed at the Ontario Court of Appeal.

Increasingly, we are working in a service economy. With the decline of manufacturing, the service sector of our economy has been growing. If we want our economy to succeed, we need to ensure that we have the necessary legislation to protect and ensure that workers receive the

living wages that enable them to thrive in the province, as the middle class is once again exiting. This is proven by a study done at Harvard University, which holds the position that as we eliminate unions, we eliminate the middle class.

In Ontario, the minimum wage for tipped employees in a liquor-licensed restaurant is \$8.90 an hour, far below the actual minimum wage of \$10.25. Why is it permissible to have a lower minimum wage for service workers? Because it was understood by legislators that this reduced minimum would be supplemented by the gratuities that arose from the aforementioned social understanding.

It is understood traditionally that a socially acceptable tip is typically between 10% and 15% of a bill of sale. It is generally understood that this extra 10% to 15% is paid to the server in an effort to supplement their abnormally low hourly wage of \$8.90.

Owners are expropriating the tips of servers in a manipulation of the expectation of the customer. It seems to me that legislators underestimated the predatory nature of a fair number of owners in our service economy, and essentially what we're asking for you to do is to close the loophole to ensure that these workers receive the living wages that they would require and have worked for.

I remember a time when Ontario was the engine of the Canadian economy. We have continued to slip below that of our counterparts. Examples: Ontario's unemployment rate is 7.3%, which is higher than Manitoba's at 5.5% and Saskatchewan and Alberta's at 4.3%. Ontario's minimum wage is \$10.25 an hour, less than Manitoba's at \$10.45 and Yukon's at \$10.54.

In Quebec, and I also heard today New Brunswick, this practice of tipping out isn't condoned, as they do not allow managers and owners to receive a portion of tips. Ontario was once the model of our evolving economy. Why are we playing second fiddle? Other jurisdictions are superior to Ontario, again once the provincial model that others followed.

Although Ontario is a manufacturing powerhouse, the services sector is the largest part of Ontario's economy. It employs 79%, or 5.3 million people, in the province and it makes up 76.9% of the province's economy. Examples of Ontario's major services sectors include business and financial service, professional and scientific-technical services, and arts and culture. There were 30,000 more people employed in accommodation and food services in October, bringing employment gains to the industry to 78,000, or plus 7.2% since October 2012, according to StatsCan.

Ontario's employment increased mostly in the service-providing sector. In May 2013, the services-producing sector led employment growth in Ontario, measured both on a month-to-month—41,200—and a year-to-year basis—176,100. That being said, Canada's unemployment rate was highest for women aged 15 to 24; that rate in May 2012—

The Vice-Chair (Ms. Lisa MacLeod): You have one minute.

Mr. Greg Lemay:—was 15.6%. Canada's youth unemployment rate from 1977 to 2012 was 14.3% compared to 6% for core-aged adults aged 25 to 54.

The practice of tipping out for managers and servers needs to cease immediately. Owners taking servers' tips is no different than you or I taking a purse from an elderly woman. It constitutes theft under the Criminal Code of Canada. This may lead one to conclude that the parties involved require engagement and corrective counselling under supervision.

We need to take a stand. We need to work together. We need to do what is right and what is fair. What is clearly required is—I read you a case dating back to the 1980s, that's two years before I was born, to put that in perspective of how long this has been occurring in Ontario. Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. I will now begin with the Liberal caucus. You have three minutes, Mr. Dhillon.

Mr. Vic Dhillon: How rampant is this problem in the industry, do you feel?

Mr. Greg Lemay: As far as I know—I have a lot of friends that work in the business industry in Windsor and Essex, and basically what I get from them is that a large portion of them do take it. A couple of my buddies—I'm not going to mention where—are managers and owners. An example he gave me was, let's say they got \$300 for tips for the night.

Mr. Vic Dhillon: For one person?

Mr. Greg Lemay: Yes, one person. A bartender, let's say. He would take \$50 to \$60, sometimes \$100, of that right off the top.

Mr. Vic Dhillon: Without any—

Mr. Greg Lemay: Not even a percentage; he would just take 100 bucks of that.

Mr. Vic Dhillon: Without any explanation?

Mr. Greg Lemay: No. It's somehow understood that that sharing is okay; I don't understand.

Mr. Vic Dhillon: You've gathered a lot of signatures on a petition.

Mr. Greg Lemay: Yes.

Mr. Vic Dhillon: In which types of restaurants do you feel this is more sort of widespread, in the mom-and-pop type restaurant or the bigger national franchises?

Mr. Greg Lemay: I would say the bigger franchises, and I would also say more restaurants and bars where, for example, you go in to have a burger and fries and a beer. I would say it happens in those a lot, from what I've gathered in going to—

Mr. Vic Dhillon: And have the people you've been in contact with, have they ever tried to make a complaint about this?

Mr. Greg Lemay: As far as I know, yes, some have tried to make a complaint. I know a couple that actually were fired, so—

Mr. Vic Dhillon: Because of that?

Mr. Greg Lemay: Yes, they were let go, and obviously for different reasons, right?

Mr. Vic Dhillon: Okay, thank you.

The Vice-Chair (Ms. Lisa MacLeod): Any other questions from the NDP caucus? Ms. Mangat.

Mrs. Amrit Mangat: So what do you recommend? How can we get rid of this problem?

Mr. Greg Lemay: Like I said, having legislation, obviously. With having legislation, if, for example, a worker needed to complain or wanted to solve the problem or—you know what I'm saying? Then they would have some type of legal leg to stand on, if they were fired.

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Mrs. Amrit Mangat: So what kinds of problems do you hear when people come and complain to you?

Mr. Greg Lemay: Sorry, say that again?

Mrs. Amrit Mangat: What types of problems do you hear when people complain to you, who are working over there?

Mr. Greg Lemay: What I'm hearing is that, for example, they'll make a certain amount of tips, and then the owners will take that. Let's say they're making \$8.90 an hour and they're working a six-hour shift, which is approximately \$50; that would be somewhat around their take-home. If they're taking 5%—let's say they sold \$1,000 worth of food and booze and they took 5%. Well, they worked for free.

Mrs. Amrit Mangat: So are you in favour of tip-sharing? That's what you're saying?

Mr. Greg Lemay: No. I'm not in favour of tip-sharing. It depends on who it is. For example, if you're a waitress and you have to tip-out the bartender because that person made your drinks, I don't see an issue with that. But the owners and managers taking it? I don't see why that—

Mrs. Amrit Mangat: Okay, just to clarify—

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. That concludes your time, Ms. Mangat. I apologize.

Mr. Barrett, you have three minutes.

Mr. Toby Barrett: I'm just still trying to clarify this in my mind. We know this legislation reads, "An employer shall not take any portion of an employee's tips or ... gratuities." I think of a small restaurant down my way in Haldimand-Norfolk that's part of a bed and breakfast. The owners, husband and wife, live there. Sometimes their daughter helps. On occasion, they do have other staff, maybe on a Saturday, one other person. When you read the menu, at the bottom it says a 15% gratuity—whatever it is—is added to your bill, so you don't leave cash on the table or anything like that. I go there fairly regularly. They're usually the only people there. Sometimes, there is someone helping. With this legislation, are we going to see more of that on menus, where the owner would take more control and put this on the bottom? I think many restaurants have that arrangement anyway; I don't know.

Mr. Greg Lemay: I don't know if you'd see more of it. Even with that on there, really, what would that matter? I think with this legislation, you're giving that portion of that tip directly to that server or waitress. Even

if they took 15% or it was added on automatically, that would still go back to the waitress or server, the way I understand it.

Mr. Toby Barrett: Yes, I see.

I don't have any more questions.

The Vice-Chair (Ms. Lisa MacLeod): You're all finished? Okay, that's great.

We have a final set of questions from Mr. Prue.

Mr. Michael Prue: First of all, thank you for coming all the way from Windsor and for taking this up, particularly since you are not a person whom I would ordinarily expect to get tips. Did you take this beyond the restaurant experience? Because there are also cab drivers, estheticians, hairdressers, car jockeys at the Windsor casino—all of whom get tips too, and many of whom have their tips taken off by employers.

Mr. Greg Lemay: I have not.

Mr. Michael Prue: You have not. Okay. The premise of the bill, as you correctly stated, is that an employer shall not take a portion. The bill is very silent—and I want my Liberal colleagues to understand—on tip-pooling, where this is given to serving staff, to the bartenders, sometimes to the cooking staff and other people in the restaurant who make for the whole experience. Have you uncovered any servers in the province who don't want to tip-pool?

Mr. Greg Lemay: No.

Mr. Michael Prue: No, I haven't either; I haven't. I don't know whether there are going to be amendments to this or if it needs to be clarified, but certainly, there is no intent whatsoever to stop tip-pooling. You have to remember, we're New Democrats. We like to share, but what we don't like is employers—now, you said you knew people who were fired. Is this because they complained?

Mr. Greg Lemay: They complained, yes.

Mr. Michael Prue: Okay.

Mr. Greg Lemay: And then, obviously, they were fired for a different reason, right? You're not fired for that reason; you did something else.

Mr. Michael Prue: You did something else. You were late or you sassed the boss or something.

Mr. Greg Lemay: Absolutely.

Mr. Michael Prue: Absolutely. In the Employment Standards Act, it is against the law for an employer to take any portion of an employee's wages as a condition of employment, but it is not against the law to take the tips. Why do you think that was done? Or do you have any idea about that?

Mr. Greg Lemay: I think it was done, like I said, to basically supplement the \$8.90. If they're taking that money from the \$8.90, then how are you paying them less than minimum wage? I think that is the reason why they were supplemented—that they would assume that all that tip money would be going to them to supplement their low wage.

Mr. Michael Prue: Okay. I think you've answered everything I need to ask. Thank you for coming all the way from Windsor.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much, Mr. Lemay. It's very nice of you to join us. Thank you very much, Mr. Prue.

I'd like to now call our next deputant, Heather Thomson, if she could join us. Is Heather Thomson here?

TOURISM INDUSTRY ASSOCIATION OF ONTARIO

The Vice-Chair (Ms. Lisa MacLeod): Next is the Tourism Industry Association of Ontario: Beth Potter, president and CEO. You have five minutes for your deputation. Each political party, starting with the Ontario Progressive Conservatives, will ask you questions. Please state your name, and you're welcome to your presentation.

Ms. Beth Potter: Thank you for having me here today. My name is Beth Potter. I'm the president and CEO of the Tourism Industry Association of Ontario.

TIAO is the recognized umbrella association that advocates on behalf of the tourism industry. Our industry represents more than 149,000 businesses, more than 305,000 employees, and brings in \$23.6 billion a year in receipts. Our industry is larger than the agriculture, forestry and mining industries combined, and we are the largest employer of youth.

Today I'd like to speak with you about Bill 49, An Act to amend the Employment Standards Act, 2000 with respect to tips and other gratuities.

"Gratuity" is defined as a tip or money that has been paid or given to or left for an employee by a guest of a business over and above the actual amount due for services rendered or for goods, food, drink, articles sold or served to guests.

As you are aware, Ontario's tourism and hospitality industry is vast and varied, and operational practices are designed to meet the needs of the specific establishment. Our industry includes festivals, events, attractions, accommodations, recreational activities, camping, culinary and more, each potentially employing staff that could earn tips or gratuities from guests. Bill 49 fails to consider the vast array of operational differences throughout the industry, and because of these differences, we believe that the issue of tipping is best left to owners and their staff to determine.

Commentary on Bill 49 seems to be focused solely on restaurants, yet the bill is a proposed amendment to the Employment Standards Act and would therefore impact every business where gratuities are left—for example, taxi drivers, hairstylists, spa workers and delivery staff, to name but a few. If the bill becomes law, it will add to the regulatory burden of an industry that is already heavily regulated in many areas.

Currently, gratuities form a portion of the wages-and-benefits discussion between staff and management during the employment process. In some cases, gratuities are also negotiated as part of the collective bargaining process in Ontario.

Gratuities are pooled and shared in many hospitality establishments. Employers remit payroll taxes on controlled tips, as defined by the Canada Revenue Agency.

Tip-sharing is when directly tipped employees share their tips with other workers who provide direct customer service. Tip-pooling is when directly tipped employees pool their tips and redistribute them among directly and indirectly tipped employees.

To date, the current option of pooling tips in Ontario is one that our industry supports. In fact, it is a key component of the employee-employer relationship, and provides an opportunity for all to benefit from the investments made in this highly regulated and competitive industry.

Another consideration that needs to be understood is that small business owners often do the work themselves and should be allowed to collect tips or share in tip-pooling or tip-sharing, if appropriate. For example, if Joe owns Joe's Restaurant and works as a host or buses tables or works in the kitchen or as wait staff, then Joe should be allowed to share in the tips for the work he does. Similarly, if Sarah is the manager of Joe's Restaurant and works as a hostess, buses tables, works in the kitchen or as wait staff—all functions that normally would share in tip-pooling—then Sarah should be allowed to also share in the tips for the work that she does.

Automatic gratuity charges are commonly added to large groups, banquets, meetings and convention services. These automatic gratuity charges often cover more than just tips and gratuities, with a portion being returned to the house in the form of a service charge. Bill 49 does not address the automatic gratuity charges.

Many guests pay their invoice by credit card or debit card. The business owner is charged a processing fee, one that varies by card and by type of card. These fees can form a large portion of a business owner's operating expenses. As guests often add their tip to the credit or debit transaction, there is an associated cost of processing that tip.

With respect to Bill 49 proceeding, we suggest the following amendments:

—that the practice of tip-pooling or tip-sharing be allowed for the purpose of redistribution of tips;

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—that employers and managers be allowed to share in the tip pool if they regularly participate in a job function that would earn tips;

—that automatic gratuity charges placed on bills by banquet and hotels be distributed and/or shared with the house as long as they are called a “facility charge” and are clearly identified on the guest's invoice;

—that, at the employer's discretion, the employer can keep the cost portion of the tip to cover the cost of the credit or debit card processing fee for the tip; and

—that tips should be included in situations covered by the Income Tax Act or by court order, for example, for the purpose of garnishing wages.

There is no one-size-fits-all solution for tips and gratuities. Within the tourism industry, we firmly believe

that this issue of tips and gratuities would best be left to individual business owners and their staff to determine the best and most fair way to handle tips and gratuities for that establishment.

On behalf of the Tourism Industry Association of Ontario and our members, I thank you for your time this afternoon.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. We'll now go to Mr. Barrett and the Ontario PC caucus.

Mr. Toby Barrett: Thank you very much to the Tourism Industry Association of Ontario.

You have a list of amendments here at the end—if we could take a look at those. Apparently, from what we hear—and I don't hear of these situations locally, but there are some of these terrible situations, so we're told, where owners are dipping into the tip jar, for example. It's probably just one example of a very poor relationship with their staff, who aren't making much money, especially in small towns. There aren't any other jobs. Is there anything that your association or a restaurant association could do on a voluntary basis, through information, to deal with this? Because it's bad public relations; one bad apple spoils the barrel.

Ms. Beth Potter: Absolutely.

Mr. Toby Barrett: Or do we need a law with all of these amendments? Do we need to open it up and then who knows what kinds of regulations come along? Normally, elected people don't have any say in the regulation. Do you see any alternatives beyond passing yet another law and more regulation?

Ms. Beth Potter: We could certainly work with the industry to develop a series of best practices and communicate those and educate business owners within the tourism industry on best practices that would dissuade people from doing the kind of activity that you're talking about.

But for the most part, business owners understand that tips are part of the wage and benefit conversation, and that folks, when they work in positions that earn tips, earn a slightly lower minimum wage because of that.

Mr. Toby Barrett: I'm sorry; do you see any problem with the fact that people work for minimum wage, but then there's this other category of people who work below the minimum wage, supposedly supplemented by tips?

Ms. Beth Potter: They are supplemented by tips—

Mr. Toby Barrett: If they're lucky, yes. Not everybody tips, especially in low-income areas where people work below minimum wage, like in these jobs.

Ms. Beth Potter: I've spent a lot of time over the past number of weeks speaking with people about minimum wage. I sit on the minimum wage advisory panel for the Minister of Labour, and I can tell you that tipping is absolutely a part of that wage category across the province.

Mr. Toby Barrett: It just seems unfortunate. Many of these people would rather at least get minimum wage and not have to beg for tips. That's what they tell me.

Ms. Beth Potter: And I've heard examples of folks who don't want to give up their tip-related job because they don't want to move into a management position.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. We're going to have to go to Mr. Prue.

Mr. Michael Prue: Quebec, New Brunswick, Prince Edward Island and the neighbouring state of New York all have laws against owners dipping into the pool. Has that decreased their tourism in any way?

Ms. Beth Potter: In Ontario, we feel that it's best left to the—

Mr. Michael Prue: No. My question is, has it decreased—you're putting up a fear here—tourism to Quebec, New Brunswick, Prince Edward Island or New York state?

Ms. Beth Potter: I can't answer that question.

Mr. Michael Prue: Okay. I didn't think so, because I don't think it has.

The next thing you said is that tipping is best left to owners and their staff to determine. All of the power rests with the owner, unless the place is unionized and has a collective agreement. If the server objects to the owner taking a portion of their tips to pad their profit, usually they get fired, demoted, given lousy hours, told to look elsewhere or any other number of things. Is that not true?

Ms. Beth Potter: The businesses that we deal with, the members of our association, work in a fair and honest environment. Those kinds of practices are not—

Mr. Michael Prue: Those that don't work in a fair and honest environment, what should the Legislature do? Turn a blind eye?

Ms. Beth Potter: Because of the proposed legislation, we have said, "If the Legislature's going to go forward, here's what we think should be in place."

Mr. Michael Prue: Okay.

Ms. Beth Potter: These are the amendments that we would see would be fair.

Mr. Michael Prue: Fair enough. I would agree with some of the things you have here, and I'm sure some of my colleagues in the Liberal Party will be putting in some amendments to clarify.

We think that an owner who buses tables should get a percentage. We think that gratuity charges put on by a banquet should not be gratuity charges: If that is a service charge, then it should be labelled as such, because, in their son's or daughter's wedding, people mistakenly think the 18% is going to the servers, whereas, in fact, the servers in many cases get absolutely nothing. So why is that a fair practice?

Ms. Beth Potter: As we've stated in our deputation today, if it's not a gratuity, it should be labelled as such and be clear and transparent to the guest paying the invoice.

Mr. Michael Prue: And why should servers pay a portion, or all, of the Visa charges when a Visa is used? Why should the servers have to pay that?

Ms. Beth Potter: I'm not suggesting that they do. I'm suggesting that the employer—

Mr. Michael Prue: Have that discretion to leave it there.

Ms. Beth Potter: The employer, if they choose to eat the cost, can. But they should be able to deduct that because it is a cost of doing business.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. I appreciate that.

We'll now go to the Liberal caucus. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Ms. Potter, for being here today. With respect to what Mr. Barrett was saying in regard to the family that owns the restaurant, do you think the family should not be able to receive any of the tips that are received?

Ms. Beth Potter: I'm sorry; can you repeat the question?

Mr. Vic Dhillon: In a family-owned restaurant, what's your opinion on whether the owner should be able to get some of the tips?

Ms. Beth Potter: As we've stated, if the owner is doing some of the work that would generally receive tips, then the owner should be allowed to share in those tips. If the owner is cooking, if the owner is waiting tables, if the owner is busing tables or if the owner is acting as the host or hostess in the restaurant, then the owner should be allowed to share in the tips.

Mr. Vic Dhillon: Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Any other questions from the Liberal caucus? Go ahead, Ms. Mangat.

Mrs. Amrit Mangat: At the present time, among your stakeholders, does tip-holding occur?

Ms. Beth Potter: Yes.

Mrs. Amrit Mangat: Who administers it?

Ms. Beth Potter: The business owner or the manager.

Mrs. Amrit Mangat: Okay.

Ms. Beth Potter: It's up to each individual business to determine that practice.

Mrs. Amrit Mangat: Okay. Thank you.

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. That concludes your time; we really appreciate you coming to join our committee today.

Ms. Beth Potter: Great, thank you for having me.

The Vice-Chair (Ms. Lisa MacLeod): Our next deputant is—well, we'll call out for Heather Thomson. Is Heather Thomson here? This is your last call. She's not here. Soedi Antonelli? Soedi Antonelli? Last call.

MR. JULIUS VARGA

The Vice-Chair (Ms. Lisa MacLeod): We'll go to Julius Varga. Julius, please be seated. You have five minutes to make your case. There will be a three-minute rotation for each political party, starting with the NDP. You're welcome to start your presentation, and please state your name.

Mr. Julius Varga: First off, thank you for the opportunity to be part of seeing this Bill 49 go through, and I'd like to thank Mr. Prue here for his persistence. I came to know this bill as Bill 114 just four or five years ago, and

then, since it was dropped, I'm very happy that it's back on the table.

Today I'm here to support Bill 49. I believe that every relationship is either strengthened or weakened by our regard for each other. Sadly, I don't think our laws provide adequate protection for the employees of hospitality, not only the workers, in terms of the work environment, but the fact that their dignity is stripped away every day.

My current position is as a manager. For the last five years, I've seen too much of the cruelty that takes place in this business, and that's why I'm here today. I'm here with good intentions, to help expose these patterns. I'm not here to point fingers at any restaurant or spell out the name of any person, but rather to identify the patterns that should be expunged or find a solution to prevent them.

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I believe that our society has to do a better job of guarding the ambassador hospitality, considering that every skill in human interaction is what we perform in a restaurant. In my opinion, every business interaction is about making each other feel they got more than they paid for, and the platform is the restaurant.

Before I go further, I'd like to make a couple of distinctions here considering the earlier speakers. There's a big difference between restaurants and banquet facilities. You see, in restaurants you primarily earn the tips, while in banquet facilities, the tips are charged on a given amount. So the performance of the staff is different. I could see how a banquet facility that charges \$180 a plate may be considering utilizing the tips towards the rest of the staff, but it's very different in a restaurant.

Also, I'd like to make a distinction between a pub and a fine-dining restaurant or a steak house. The same way we have a Kia for \$10,000 and a Land Rover for \$70,000, the only way you sell the Land Rover is if there is craftsmanship on the floor. Earlier, a speaker was mentioning that owners should be part of the pool; I think by qualification only. It's very important that owners or any managers that expect their staff to perform first walk the talk. To earn that \$50 dollar a plate is very different than in an eatery where it is \$10. In eateries, you only fulfill nutritional fulfilment. Anything higher, if anybody cares to—in the Abraham Maslow theory, the fourth and fifth are a sense of belonging and of self-actualization. That takes craft, and that's what I'm here to do today, to mainly speak for that because that's the level of restaurant I'm in.

I know that I had submitted a little more than I should have—the 8-page email—but if you care to listen to it, just to indicate how severe this problem is and the reprisals. I have written a letter to the labour board in defence of one of the employees who walked out because not only were there issues with the tips, but there were hours and so many unfair deductions. So the tip to me is barely the tip of the iceberg. There are so many other issues in this restaurant business, and again, that's because of the opportunistic management and of the owners.

Again, I'd like to say that people don't understand that the legs of the operation are the service. That is the glue that makes people stick. Then I think we'll never have good restaurant service. I don't know if anybody cares to listen to the pitch, should I bother with that? Mr. Prue?

The Vice-Chair (Ms. Lisa MacLeod): You have about 10 seconds left. You're more than welcome to.

Mr. Julius Varga: This was a letter that I wrote in defence of this lady who was, again, taken advantage of over and over again. This is what I said in it. I'd rather not call out the name of the person. The complaint was to the restaurant I work at right now, and I want to confirm not only her professional character but the patterns of abuse I had witnessed her to be subjected to. In fact, I myself endured sessions of intimidation, being screamed at for long periods of time, over many occasions, sometimes with other staff members witnessing but mostly in isolation, when speaking up for the employee rights. My efforts were aimed to address the simultaneous complaints of the missing hours, no vacation pay, no statutory pay, sexual harassment and verbal assaults. On one occasion, I had to contact the police—

The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. We'll now go to questioning.

Mr. Michael Prue: I've got a couple of questions. You have witnessed this. How many years have you been in the restaurant business?

Mr. Julius Varga: I was in New York; I returned in 2004, so you could say nine years here in Ontario.

Mr. Michael Prue: Nine years. Do they have the law in New York that owners couldn't take when you were there?

Mr. Julius Varga: Well, I can't say what the law is because the places I worked at were all high-end steak houses and nobody ever touched the tips. There was an understanding that the happier the staff, the higher the morale and the more they perform. So there was this palpable respect between management, owners and the staff.

Mr. Michael Prue: Okay, because New York, I would trust, had that law, but you just maybe weren't aware of it. You've been here for nine years in the restaurant industry.

Mr. Julius Varga: Yes.

Mr. Michael Prue: Have you worked in places that did take the tips or portions of the tips from their employees?

Mr. Julius Varga: Absolutely. What I see is general. Again, there is no justification for it many times. There is no support staff. There is no busser, food runner or hostess, and most places will take 3% or 4% arbitrarily.

Mr. Michael Prue: All right. I understand that many of the more expensive restaurants take 3%, 4% or 5% of gross. Whether you get a tip or not, you have to pay them.

Mr. Julius Varga: That's correct.

Mr. Michael Prue: Yes. Just so the members might understand this, on a \$100 bill, you pay \$5 to the management before you get a tip. So if you don't get a tip,

then you paid for working. Is this common, that kind of thing?

Mr. Julius Varga: Very common. In fact, it's so common that when I lost my job for speaking up, I went into many restaurants. I always want to get a feel of the abuse. The first day I was there, people—adults, these were adult people—cried for my help to help them get out of the restaurant. The degree of stripping people's dignity is just egregious. I don't think we actually touched upon how bad it is.

Mr. Michael Prue: Please tell them. You've got a minute. Please tell them how bad it is.

Mr. Julius Varga: Well, as I mentioned—again, the intimidation factor, right? Most of the time, your security is not based on performance. It's based on how well you fit under the thumb. Everywhere you go, in a lot of places, they start by cutting your hours. It's probably everywhere. You can go to work, and five hours are missing or 10 hours are missing—a week. The less you speak up, the more likely they are to keep you. The more you speak up, the sooner you are out. So you haven't even gotten to the tip situation.

Tips—very common, even in the place I am right now; I made some changes. I'm very grateful for that because the owner's son and I are the same age, and I think he understands that it's in his best interest. For the record, I thank him. But tips are usually taken away, and there is no record. They come back the next week, or the week after in envelopes. There is never a record. If you did ask for a record, or if you speak up about the \$50 missing, you're out.

The Vice-Chair (Ms. Lisa MacLeod): We'll now go to the Liberal caucus. Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation and sharing your story. How widespread is this problem in the industry?

Mr. Julius Varga: Well, sir, I can only—

Mr. Vic Dhillon: You personally obviously have some experiences, but in terms of the ground, how widespread do you feel this problem is?

Mr. Julius Varga: Again, I can only speak of the places that I know of and the network of servers. I have a network of servers. I used to manage the Rosewater Supper Club downtown. At that point—this was five or six years ago—I knew every restaurant in the area: Harbour Sixty and all that. It's everywhere.

But now I'm up in Barrie. Again, I don't know too many restaurants in the Barrie area, so I can only speak from my experience, but I have seen it in every restaurant.

Mr. Vic Dhillon: With respect to tip pooling, can you explain? It's supposed to happen in theory. Does it actually happen?

Mr. Julius Varga: Well, let me tell you this: Every server I've ever worked with was more than willing to share the tips with the support staff. You have to understand that you get subminimum wage, right? So there is this stipulation that you will get tips. That's very different than working in a kitchen for \$15 an hour, and you

expect your tips. Sometimes you have no business, or, as Mr. Prue mentioned, there is a dash-and-dine. They walk out, and you're still responsible for the tips that you never even earned.

So the tip-pooling, again, I think is a wonderful, wonderful idea because you want to promote cohesion, not division, so I'm all for it. But, again, you have to chip in; you have to contribute. The tip cannot be taken arbitrarily. This is the problem. I would say, in the majority of the cases, that's the case. There is no justification to take in the tip. So the servers—as I said, I have never met a dishonest server who wanted to stiff the busboy or the food runner.

Mr. Vic Dhillon: What do you think this bill would mean to the industry and to the workers?

Mr. Julius Varga: I think this would be a platform. This would be a stepping stone. This would be an encouragement. Also, this would be a wonderful deterrent to stop those practices.

I think people, again, enact patterns. So if people know that there is a consequence, which we don't have right now, even the very businesses that commit these—I call them violations—would probably think twice.

Also, what I'd really like to see is—again, this should be a dignified profession. If you aspire to serve the public, there should be a welcoming industry where you come in. But right now there isn't. You can go to work and go home and share that disappointment with your family, and the next thing you know, you lose your faith in humanity, with your neighbour. It's everywhere. It's not the 1,000 people that it affects in a certain industry; it goes far beyond that. This bill, to me, is the first step towards a good solution.

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The Vice-Chair (Ms. Lisa MacLeod): Thank you very much. Mr. Barrett, you now have three minutes to question the witness.

Mr. Toby Barrett: It is disturbing to hear some of these terrible stories of owners that don't know how to deal with staff or that are ethically challenged, or maybe they're just incompetent. Traditionally, and again I represent a rural area, word gets around in small towns and rural areas: Somebody's daughter is being abused in a restaurant. After a while, that restaurant closes; people don't go there. However, in downtown Toronto, with large chains and people jumping from restaurant to restaurant, they have no idea of the real reputation of that restaurant, beyond the taste of the food, perhaps.

This legislation isn't going to cover a lot of that. I like to think there are other laws and recourses under labour legislation, for example, that people can turn to, but I don't know whether this is the platform to handle all of that.

Just going back to the intent of this bill, which again is one sentence, that the employer cannot receive a tip, we do hear from facilities where it's a husband-and-wife team, and maybe their daughter works there, or perhaps they have someone part-time. This means that for tip money that comes in for those owners or family who are

doing a lot of the same work—they're cooking or what have you—the law would say they can't accept that money or it has to go to the employee that maybe didn't show up that day. How do we get around that?

Mr. Julius Varga: Thank you so much for bringing up that point of the owners. From my experience, let me tell you, most of the time they can't get employees. That's why the owners serve those tables, because their reputation is so bad. I can tell you—

Mr. Toby Barrett: Oh, they cannot get employees, did you say?

Mr. Julius Varga: That's correct, because the employees are not respected. I can tell you about restaurants that can't get chefs anymore, and they import them from other countries, like Italy or whatever. Then they put them in the corner. I can tell you about restaurants.

Again, I guess you have to know what level of restaurant you're talking about. I can't speak for every level of restaurant, but I can tell you from experience that there's so many restaurants that nobody wants to work for because their reputation is so bad. You may come in as a diner and say, "Oh, we've got a lovely owner here and the wife and everybody serving us." There's a reason why.

Mr. Toby Barrett: So many of us don't live in small towns anymore, but I like to think that through social media and through networks—bartender networks, kitchen staff networks—the word gets out, that if the law is not there or not adequately protecting them, there are other ways—and the industry itself policing itself.

The Vice-Chair (Ms. Lisa MacLeod): I'm sorry; there's no more time. Thank you, Mr. Varga. It was very generous of you to spend some time here with us today.

MS. HEATHER THOMSON

The Vice-Chair (Ms. Lisa MacLeod): I'd like to actually go back to call Heather Thomson; I think she arrived just after. Heather, please be seated. You have five minutes to make your deputation. You will then be greeted in rotation by the political parties for three minutes apiece. You may now start your deputation. Please identify yourself.

Ms. Heather Thomson: Perfect. My name is Heather Thomson. I've been working in the restaurant industry for 12 years, since I turned 18. I came here today to share some of my experiences both receiving tip-out and having to tip out, as I've worked both front of the house and back of the house. I've managed back of the house and I've managed front of the house in my experiences.

Right now I am currently employed at a restaurant called Symposium Café. It's a chain restaurant, a new chain. Their policy is a 4% tip-out on your gross sales. So whenever I go into work, every shift I work, I must tip out 4% of my gross sales of the day, regardless of what I make, regardless of what business is—no matter what.

I'll give you yesterday as an example. I sold \$800, and my tip-out was 30-something dollars. Also, every day, every shift, you're required to pay a \$2 breakage fee:

\$520 a year, five shifts a week, I pay to break their dishes or not break their dishes. Every staff pays.

As we tip out, we have a host staff, we have a dessert staff, we have a cook staff and we have a bartending staff that receive tip-out. The person who handles the tip-out: The management collects it, and it's given to our franchisees' mother. We have two brothers that own our restaurant, and their mother who helps manage it. There is no accountability as to where that money goes, who splits it up, who gets what.

As both a receiver and a payee in many different restaurants getting and receiving tip-out, you always feel like you're being taken for granted, like your money is being robbed from you. There's never any documentation as to who gets that money. There's never any documentation who receives that money. There's never any documentation as to what portion the house keeps of that money.

In a staff meeting we had last week, we were told that it is not mandatory for the guests to tip you, and it isn't. We give good service, and if the guest feels that we've given good service, they tip you. But it is still mandatory for us to tip out. If we refuse to tip out, we lose our hours, and we lose our job; they find some way to get rid of us. That's why I hope this law is passed.

Another experience I've had with tip-out is at Hockley Valley Resort in Orangeville; maybe some of you are familiar with it. Their tip pool program was different because most of the tips given in the restaurant, as a banquet facility, are done by either contract, credit card or room charge. You very rarely see cash in a resort because you can just sign the bill way. Their process was that they collected all the tips, and it was split amongst the staff that were working that evening—again, no accountability, no documentation.

I worked there for a year before, finally, the owner of the restaurant and her daughter, who also helped manage it, sat everyone down and explained it to us. "If your guest tips you 15%," which is usually what they added to any kind of contract or business dinners we had out there, "we keep 5%." So 33% of the tips—our tips, that are given to us for our service—is kept by the hotel. The kitchen staff did not receive anything. The support staff received a certain percentage of the tips, and we received a certain percentage of the tips. But they made it very clear that they kept 33.3% of all of our tips.

Where was that money going? Why didn't we receive it? They gave a reason that it was to cover Visa and MasterCard charges and other incidentals. I don't understand why. When a guest comes to a restaurant, and they give us a gratuity, they expect that we get it. Most of the populace doesn't know that we have to give it to the owners for any reason, and they're using our tips to subsidize their labour costs, their breakage costs. These are the costs of doing business. Do you make your personal assistants pay for their office supplies? It's really something that I find to be quite atrocious in all the years I've been working in the restaurant industry.

If it was posted, if we saw where our money was going, if we knew—I'm sure, somewhere, back in the

day, this started as a server who went, “Hey, you did a really good job with my food tonight; here’s some money.” Now it’s been made mandatory. It’s been taken out of our hands as a social gesture of goodwill in between staff, and the owners of all these businesses are profiting—

The Chair (Mr. Garfield Dunlop): You have 30 seconds, ma’am.

Ms. Heather Thomson: Sorry? Thirty seconds?

The Chair (Mr. Garfield Dunlop): Yes.

Ms. Heather Thomson:—profiting off the generosity of the guests that come in that we serve.

I live in a small community in Bolton. Most of the people that come in every day know me. They know all of our staff. They’re friendly. We know them all by name. They gratuity us, not knowing that my managers, who are the owners, receive a portion of tip-out because they’re on the floor.

The Chair (Mr. Garfield Dunlop): That’s your time for your presentation. We’ll now go to the government members. You have three minutes for questions and answers.

Mr. Vic Dhillon: Again, how widespread is this? Obviously, you’ve experienced this in quite—

Ms. Heather Thomson: I’ve worked in many chain restaurants. I’ve worked at East Side Mario’s, Boston Pizza, Montana’s, Casey’s, and I’m sure a few more—oh, the Keg. Everywhere you go, a minimum of 2% to 5% goes to the house. The kitchen usually receives a portion. You never know how it’s divvied up. It’s always out of the staff’s hands. Usually a franchisee or someone takes care of that. Everybody’s left with the feeling of “Where did that money go? Why is my tip-out so small? I worked so many hours.”

Mr. Vic Dhillon: Is there a high turnover in the restaurant industry?

Ms. Heather Thomson: Every restaurant has a high turnover. Every one.

Mr. Vic Dhillon: Do you feel problems such as this make for that high rate of turnover?

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Ms. Heather Thomson: Absolutely. In the small restaurant that I’m in, which is an average-cost restaurant—I’ve been there a year. I’ll probably go find another job next year, because if I work a seven-hour day, and I sell \$1,000, I have to pay \$40 to the house. What was my wage for that day for, that seven hours at \$8.90? I just paid for half my wage. What’s the point of going to work if I’m paying my own wages?

Mr. Vic Dhillon: What would this bill mean to you?

Ms. Heather Thomson: To me, the bill would mean that tip-out would no longer be mandatory, that it would be taken back out of the owner’s hands and put into the staff’s hands. If I want to tip out my busperson, my hostess or my cook, I should be able to do so without having the owner’s hands in the pot. They shouldn’t be there. These are the costs of doing business. You shouldn’t be subsidizing your business costs with my gratuities. I earn those. I get subminimum wage because I

earn those. Then you’re going to take them? What’s fair about that?

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much to the government members. Now to the official opposition. Mr. Barrett.

Mr. Toby Barrett: An excellent presentation. It’s mostly with some of these large chains that were listed in one of your responses where they take a percentage of the gross tips that come in?

Ms. Heather Thomson: Yes. Every day you work, you must pay a percentage—in the restaurant I’m in currently, it’s 4%—of whatever your gross sales are that day. If I sell \$200, I’ve got to pay 4%. If I sell \$1,000, it’s \$40 I pay them.

Mr. Toby Barrett: Yes. Then that, theoretically, gets divvied up by everybody, and in some cases, the owner, as you’re suggesting.

Ms. Heather Thomson: All five managers who work in my restaurant collect tip-out. That is why the tip-out is so high in my restaurant. If it was only 2%, and they were all collecting tip-out because they worked the most hours—because it’s usually divvied up based on how many hours you work—there would be nothing to go to the rest of the staff. They’d get the most of the tip-out because they work the most hours. But they’re salaried managers.

Mr. Toby Barrett: So it goes to the managers and the kitchen staff, as you said, but not the owner?

Ms. Heather Thomson: The owner is the manager.

Mr. Toby Barrett: Of a very large chain?

Ms. Heather Thomson: It’s a 14-store chain right now. He’s the franchisee. There are two franchisees, and they collect tip-out because they manage the restaurant.

Mr. Toby Barrett: I see. Yes. Okay, then. Does this occur in many other restaurants that you’re aware of, or is it mainly in the chains?

Ms. Heather Thomson: Hockley Valley is not a chain, and they just take. They don’t divvy to the kitchen staff or anything like that. It’s not a tip-sharing process that they have at Hockley Valley; they just take 33% and say, “Tough. This is how it is if you want to work here.” Of the other chains that I’ve worked at, this is the first chain that I’ve worked at where managers collect a tip-out. I find it to be quite ridiculous.

Mr. Toby Barrett: This additional income that comes in to the franchise owner, does he pay tax on that? Have you heard anything on that?

Ms. Heather Thomson: I would assume not. It’s cash; why would you?

Mr. Toby Barrett: I would assume not, yes. Okay.

Ms. Heather Thomson: I claim 15% to 20% of my income extra as tips. I kind of eyeball it, because it’s so much cash that you can’t keep track of—or my bank statements. But if you’re an owner taking the tips, why would you claim that you’re taking that?

Mr. Toby Barrett: When you fill out an income tax form, you have to identify tips on that?

Ms. Heather Thomson: Yes. We have to identify what we receive as extra income. We could be audited, and they go through all your bank statements and say, “Where did all this cash come from?” It’s income, so I must claim it or be in trouble.

Mr. Toby Barrett: So I suppose, depending on the corporate structure, the owner maybe has to answer that question too, but maybe not. I don’t know.

Ms. Heather Thomson: I would assume; I’m not privy to their taxes.

I worked at one East Side Mario’s where they were audited by, I guess, Revenue Canada or something like that. Then the tip-out program was passed on to the staff. The managers collected it, and one of the staff members was elected to distribute it—because they were collecting that money but not paying tax.

Mr. Toby Barrett: So they went to pooling, without the percentage.

Ms. Heather Thomson: Yes. We were still tipping out, but we elected a member of our own staff every year to divvy up the money. All they did was throw it in a bucket.

The Chair (Mr. Garfield Dunlop): Thank you very much to the official opposition. Now the third party. Mr. Mantha.

Mr. Michael Mantha: I just want to say how much I admire your passion for this. I would love to be your customer. I can just imagine. I see your face and your smile, and it would be really an enjoyable morning coffee that I would have with you. I’m sure we would be on a first-name basis on a quick basis.

I’ve got one question for you. The broken dishes fee: If at the end of the year, you break no dishes, no cups, no saucers, no plates, no nothing, does that get returned to you?

Ms. Heather Thomson: It does not.

Mr. Michael Mantha: And that’s a significant amount.

Ms. Heather Thomson: It is. I calculated it. If I work five shifts for 50 weeks, it is \$520 that I pay every year for broken dishes, whether I break them or not. Every staff member pays it, every shift, regardless; you must pay the \$2.

Mr. Michael Mantha: Previously, my colleague from the Conservatives asked a question. Could you clarify the 4%, how that is being deducted and who exactly it goes to?

Ms. Heather Thomson: Okay. At the end of my shift, I get an itemized read that says what I sold so that I can pay the restaurant all the money that I’ve collected in the evening. My sales will be gross and net. Gross is before tax, isn’t it? I’ll have to pay 4% of whatever I sold. If I sold \$695, I’ll calculate, on my little calculator, 4% plus \$2. It’s included in my cash-out, and they collect it. Then every few weeks, we get an envelope with some cash in it.

I’m a bartender; I also collect tip-out, and I give tip-out. The kitchen staff, the host staff—we all just get an envelope that says your name and some money. You

don’t know how much money. You don’t know how many hours it’s based on. You don’t know if it’s short or if it’s right. We missed a couple of weeks of tip-out because the owner didn’t get around to doing it, yet it was still the same amount. Everybody’s always left with the feeling of, “How did that money get distributed? Why can’t we know? Why is it such a big secret?”

Mr. Michael Mantha: I look forward to the day we have a cup of coffee.

I’ll let my friend Michael ask questions.

Mr. Michael Prue: Yes. I’ve only got a little bit of time here, but the management, when they ask for 4%, that’s 4% of gross. I want everybody here in the room to understand that. On \$1,000 of sales, you pay \$40 to the management, and then you also have to give a certain percentage on top of that if you’re tip-pooling with the buspeople or the bartender—

Ms. Heather Thomson: No; the 4% is the tip pool, but the management also collect a portion of the tip pool. When I get my envelopes and the kitchen gets their envelopes every two weeks, so does the management. They get an envelope. Their mom divvies it up to them.

Mr. Michael Prue: Now, the question about income taxes is a really important one. You have to claim that. Do you know of anything in the law that requires an owner who is taking cash to have to claim that?

Ms. Heather Thomson: To my knowledge, no, but I would imagine a business would be the same as personal. If you’re earning income, cash or otherwise, you have to claim it.

Mr. Michael Prue: Well, okay. All right. I think that’s a little naive.

In any event, have you seen employees get fired or demoted or get worse hours if they complain?

Ms. Heather Thomson: Not in my current position, but in other restaurants, yes, I have. You’ll lose hours. Your hours are cut. If you don’t want to tip out, if you complain about tip-out or if you have an issue with it, you just get less work until they don’t need you anymore, and they just stop scheduling you. In a business like this, there’s no severance, no contracts, no nothing. They give you two weeks’ termination, and you’re gone.

The Chair (Mr. Garfield Dunlop): That concludes your time. Thank you very much to the third party.

Ms. Heather Thomson: Thank you, everyone.

The Chair (Mr. Garfield Dunlop): Thank you very much, Ms. Thomson.

MS. SOEDI ANTONELLI

The Chair (Mr. Garfield Dunlop): We’ll now go to the next presenter, Soedi Antonelli. Good afternoon. Welcome to Queen’s Park. You have five minutes for your presentation.

Ms. Soedi Antonelli: I’m sorry; I don’t have paperwork to show you.

The Chair (Mr. Garfield Dunlop): That’s okay.

Ms. Soedi Antonelli: I’m going to try to explain what’s happened to me and my experience. I’m a little nervous.

The Chair (Mr. Garfield Dunlop): That's okay. I'll just cut you off at five minutes, though.

Ms. Soedi Antonelli: And my English is not at 100%. I hope you guys understand what I want to say.

The Chair (Mr. Garfield Dunlop): Yes. Go ahead.

Ms. Soedi Antonelli: I have been working for the Pantages Hotel for the last 10 years, and we have 55% or sometimes 65% or 68% of our grats going to the hotel and to the managers. We get our payment biweekly.

Sometimes we don't have functions, because it's not a restaurant. We work on the third floor, and we have meetings. We serve coffee, and we fix lunch and dinners for them. The grats go in our cheques. At the end of the two weeks, they divide it, and a part of the grats goes to the managers, 25% to the hotel and another 3% to the hotel.

They say that money should be because of when you break stuff and to replenish the cutlery, but they never replenish anything. We have more work to do, because sometimes we have 100 people, and you don't have enough coffee cups to serve them. We need to go faster to clean, wash and put it back out to them, so that means they don't replenish anything.

My concern is that I don't think it's fair. They take 55% of our grats. Sometimes, like the last payment, we had \$16,000 for grats, and they took \$9,203; for us, just \$7,000 to divide with all the staff. So it's totally unfair, and we complain about it, but there's nothing you can do, right? Even if we have two days off, there is no function at all, they still charge eight hours each manager for our grats. So at the end, we have almost nothing. The managers got more grats than us because they are always there even if they don't have anything. They're still in their offices sitting down and get their money.

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So all my colleagues, we are really sad. But there's nothing we can do. That's why I came here. I try to fight a little bit for us because it's totally unfair. We have a union, but there's nothing they can do for us as well. We are fighting and fighting for nothing.

Six months ago, one of the managers went for a vacation, and they still got the grats. So I got this money back. Unfortunately, it was unbelievable.

They divide the grats even for two chefs in the kitchen and two managers of the floor. Some of them, they come just after lunch, so we're already tired from work, and the guy is coming just to show up for one hour, and he still got eight hours from our grats.

I swear I was praying for you guys to get that law to get the grats for us because it's not fair at all. You are doing the hard work, and they already got their portion, right? The grats are supposed to be for the waitress, not the manager or the hotel because they already got their big part. So I hope you guys could do something for us.

The Chair (Mr. Garfield Dunlop): Have you anything else to add?

Ms. Soedi Antonelli: I think I'm okay. I can give you some material after. I'm sorry; I just worked until 12.

The Chair (Mr. Garfield Dunlop): That's fine. We're now going to go to the official opposition. They'll start questioning, and they have three minutes, okay?

Ms. Soedi Antonelli: Sure.

The Chair (Mr. Garfield Dunlop): Mr. Barrett.

Mr. Toby Barrett: Thank you for talking about these grats. That refers to a gratuity charge that is charged to the person that rents the hall or the floor or whatever?

Ms. Soedi Antonelli: Yes.

Mr. Toby Barrett: Do you know, does it say on their bill how much it is? Like 15% or—

Ms. Soedi Antonelli: Yes, sometimes they're 55% of the grats.

Mr. Toby Barrett: It's 55%?

Ms. Soedi Antonelli: It's 58%, 64% and 65%—

Mr. Michael Prue: I think his question is, how much does the hotel charge for the gratuity?

Ms. Soedi Antonelli: Oh, 14%.

Mr. Toby Barrett: It's 14% to the customer?

Ms. Soedi Antonelli: Yes. Sorry.

Mr. Toby Barrett: Then on the bill, does it tell the customer what that extra money is for, why they're paying that extra money?

Ms. Soedi Antonelli: Not at all.

Mr. Toby Barrett: It doesn't say—

Ms. Soedi Antonelli: The bill says it's a grat for the staff, for the servers.

Mr. Toby Barrett: I see. This particular bill doesn't particularly address these kinds of gratuity charges, so that might require an amendment or a change to include that in there. I would think, at minimum, the bill should say exactly what the customer is paying for and why they're paying this extra money which, perhaps, would help people like yourself who are working in the industry. Would that help to have an amendment like that to make it more clear where this money is going?

Ms. Soedi Antonelli: Yes, they know. Usually, they never give any cash grats to us because that 14% already goes to the bill.

Mr. Toby Barrett: Goes to the what?

Ms. Soedi Antonelli: When they pay for it. They stay in the hotel, and everything was inclusive: their cost for the room, the food and the servers. They know they're going to charge 14% for the grats.

Mr. Toby Barrett: Yes. Just to clarify, how much of that money goes to people like yourself for tips?

Ms. Soedi Antonelli: Like I told you, it depends. It depends how many functions you have every week. The last payment, we had \$16,000 in grats, and \$6,000 went to the hotel. That means 25% plus another 3% to the hotel, plus \$2,900 goes to the managers. For the staff like me, the workers. We just got \$7,000 to divide each way for the whole two weeks.

Mr. Toby Barrett: All right, thank you.

The Chair (Mr. Garfield Dunlop): Thank you to the official opposition. We'll now go to Mr. Prue, of the third party.

Mr. Michael Prue: Thank you. I just want to clarify this because this is very common in banquet hotels:

There's a gratuity at the bottom, but most of the gratuity does not go to the servers. That's correct?

Ms. Soedi Antonelli: Yes.

Mr. Michael Prue: And in your case, it appears that about 60% went to the hotel or the managers and only about 40% went to the servers themselves?

Ms. Soedi Antonelli: Exactly.

Mr. Michael Prue: You work in a hotel that's unionized.

Ms. Soedi Antonelli: Yes.

Mr. Michael Prue: So you have some protection. I suppose that's why you're here speaking today.

Ms. Soedi Antonelli: Exactly.

Mr. Michael Prue: Okay. If you didn't have a union, would you be here? Would you be able to show up, or would you be afraid of being fired for saying what you're saying?

Ms. Soedi Antonelli: Not at all. I'd come.

Mr. Michael Prue: You'd come anyway?

Ms. Soedi Antonelli: I don't know. I don't think they know about us here. I've been there for 10 years.

Mr. Michael Prue: You're a brave woman, I have to say that.

The employees who share the 40%, the \$6,000, how many would that involve in the hotel? How many people share this \$6,000?

Ms. Soedi Antonelli: Something like 15 or 16 people.

Mr. Michael Prue: That's still \$400 a month.

Ms. Soedi Antonelli: Yes, biweekly, two weeks. Yes, but let's say—I'm the one full-timer. I've got more hours. But I can show you. I was working really hard to get this. I worked 87 hours, and in my last payment I got \$1,336 as grats, but I was working really hard for 87 hours. My managers got the same amount as me, and sometimes we don't even see them around the day, on the floor. That means the four of them got \$1,000 each just to show their faces for one hour.

Mr. Michael Prue: Why does the hotel think that they should get such a large amount for gratuity? What did the hotel do for the gratuity?

Ms. Soedi Antonelli: I swear I just talked to accounting last week. My concern is they get so much money, and they don't give anything in return to us. Like I told you, sometimes, we are rushing. We don't have glasses; we don't have coffee cups. I know it's a little boring, the conversation, but it's part of our job to have tools to work, to do better work. Sometimes it's a little hard for us to fix stuff because we don't have enough tools. They don't replenish. I think part of this money should be to replenish the material we need. We never got anything, and they don't say anything about it.

The Chair (Mr. Garfield Dunlop): Okay, that pretty well concludes your time. Thank you, Mr. Prue. Thank you so much for your time this afternoon.

Mr. Vic Dhillon: What about us?

The Chair (Mr. Garfield Dunlop): I'm so sorry; I apologize.

Mr. Vic Dhillon: It's okay, Chair.

The Chair (Mr. Garfield Dunlop): Go ahead. To the government members; sorry.

Mr. Vic Dhillon: Thank you very much for coming before the committee and sharing your experiences.

Ms. Soedi Antonelli: I thank you guys.

Mr. Vic Dhillon: You may have friends who work in a similar sort of setting in other places.

Ms. Soedi Antonelli: Yes, everywhere.

Mr. Vic Dhillon: Everywhere, okay. Is this problem everywhere?

Ms. Soedi Antonelli: Yes, is it. A friend of mine is working in two or three other places because they don't have enough hours at that one, at Pantages. It's almost the same thing. They don't know how they divide the grats. Some of them—like the Liberty Grand—pay you \$12 an hour, and the grats go to the managers. I don't know what they do with the grats. They just pay you \$12 and nothing else.

Mr. Vic Dhillon: And there's no sharing?

Ms. Soedi Antonelli: No sharing or anything, but they charge grats in their bills. When they charge the guest, they charge grats, but they don't pass this money to the servers.

Mr. Vic Dhillon: What do your customers think? I sometimes—maybe some of my other colleagues—I feel that servers, waiters, waitresses work very hard, and I know that it's not a high-paying job.

Ms. Soedi Antonelli: I believe they don't know.

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Mr. Vic Dhillon: Yes, and I always ask—not always, but a lot of times when I kind of get the feeling, “Will you be getting the tip?” Because if I'm going to pay on the credit card, I will give them a tip in cash. But do you feel that your customers know where the tip money is going? Do you think they have any—

Ms. Soedi Antonelli: No idea.

Mr. Vic Dhillon: So it's just a routine thing to fill out their charge slip?

Ms. Soedi Antonelli: Yes. They have no idea, because when the bill comes to them, they expect that 15% goes to the waitress, to the servers. But they have no idea the manager got her grats. Sometimes we have some customers that always come for the meetings, so you become like friends, like family sometimes. I know their kids; they show pictures; I never met them personally. But they share their stuff with us. But they have no idea. Sometimes they give me cash, but it's really unfair, even for them, because they already paid grats in the bill. But because sometimes they really love us, they give us some money, they put some money in an envelope and they give it to us. But it's fair, because they already know the grats go on the bill.

Mr. Vic Dhillon: Thank you very much. Unless—

The Chair (Mr. Garfield Dunlop): A quick question. You've got about 30 seconds.

Mr. Bas Balkissoon: You did mention about the managers being almost like permanent employees, and you touched on the staff in the kitchen, but you didn't

complete the sentence. In the place that you work, is the kitchen staff there full time?

Ms. Soedi Antonelli: We have two managers. One is the chef. One is a head chef. They control the food. So both of them get part of the grats, and another two managers, as the banquet managers, get the grats.

Mr. Bas Balkissoon: Okay, but the chefs are there full time. They work full-time hours.

Ms. Soedi Antonelli: Yes. One of them works there eight hours a day, but the other one, the big one, the big manager in the kitchen, they never show up. He even controls his schedule, because we are in a fight with the union because—

Mr. Bas Balkissoon: So do you have any idea—

The Chair (Mr. Garfield Dunlop): That concludes your time. You're quite a bit over.

Ms. Antonelli, thank you so much for your presentation today.

Ms. Soedi Antonelli: Thank you. I appreciate it.

PARKDALE COMMUNITY LEGAL SERVICES

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter, Parkdale Community Legal Services, Darcel Bullen. Ms. Bullen, welcome to Queen's Park, and you have five minutes for your presentation.

Ms. Darcel Bullen: Thank you for having me. I'm here today as a law student on behalf of Parkdale Community Legal Services and the Workers' Action Centre. I'm also here today as a worker born in Ontario who has previously received tips and gratuities in both the greater Toronto area as well as Whitby during the summer months in between my school year.

We know that work is leaving all too many workers and their families struggling with job insecurity and poverty. More people are working part-time or in unstable jobs offered in industries like the service industry, often juggling two or three jobs. We know that the majority of Ontario's more than six million workers in over 370,000 workplaces rely on employment standards, and only 28% of Ontario workers are unionized.

Employment standards set minimum terms and conditions of work such as wages, hours, vacations, and these standards reflect societal norms about what should be met in our job and labour market. Such norms include the ability to earn wages that are sufficient to live on and decent conditions of work that allow a person to balance work and family life.

The Employment Standards Act dictates that servers of alcohol are to be paid less than minimum wage based on the expectation that servers have guaranteed entitlement to their tips. Servers of alcohol in Ontario currently are entitled to at least \$8.90 per hour, which is \$1.35 less than the minimum wage in Ontario.

Thinking about servers of alcohol in light of Bill 49 and tipped workers reveals that the Employment Standards Act actually assumes that servers will receive tips that they earn, as demonstrated by their reduced hourly

wage. Bill 49 addresses this assumption that these tips will not be garnished by employers for their benefit alone, because tips are understood to be earned by the workers who earn them themselves. However, tipped workers only receive tips if their employers voluntarily comply with the intent of the Employment Standards Act. We believe that there should be no tipped wage at a lower rate than general minimum wage.

I just wanted to note that the Canadian Restaurant and Foodservices Association, in 2010, described that food service provides many Canadians with their first job and, "For 22% of Canadians, their first job was in the restaurant industry."

Many young people like myself, when I was 20 years old, started their working lives in a tip service job and perhaps, as a result of inexperience or power dynamics, are less equipped to assert their rights.

As a young person who has worked as both a bartender and a server, the majority of my coworkers were always under 25 years of age. Protecting the rights of young workers is specifically pertinent, considering that young workers aged 15 to 24 are currently experiencing higher unemployment rates than older workers, and this is demonstrated by a variety of research that we have included in our submission here today—by Statistics Canada.

The garnishment of tips results in an unjust payment system for service industry workers, many of whom are young, vulnerable workers, and it is clear to see why workers would be intimidated to ask their employers for the tips that they earn. Most workers are exposed to the risk of losing their only means of income if their employer decides to punish them for asserting their rights to asking for the moneys that they earn.

Right now, the tips that workers earn are currently slipping through the Employment Standards Act, which is a piece of legislation we want to be proud of as Ontarians. The language of Bill 49 allows for tips to be shared amongst workers entitled to them through tip-pooling, including dishwashers, servers and line cooks.

Not all restaurant owners and employers of tipped workers garnish tips. However, this fact alone is not a good enough reason to object to Bill 49 before you. Bill 49 will only affect those employers who are not acting in accordance with the spirit of the Employment Standards Act: to provide tipped workers with the moneys that they earn while working.

If the laws protecting the basic rights of workers in Ontario are dependent on the fact that tipped workers should get the money they earn, then it is also necessary for there to be parallel laws that set out these guarantees.

Tipped workers need laws that protect them and a ministry that workers can rely on. We need it for fairness, and we also need the government to make sure that employers don't just pocket tipped moneys from employees and then end up not paying taxes on them, because that, too, is unfair.

Tipped workers in Ontario and the families that rely on them for these wages should not live in fear. Ontario

is a great place to live, if you can afford to live here. We should value the hard work of people in Ontario by ensuring that all workers get a wage that they can live on. Thank you.

The Chair (Mr. Garfield Dunlop): Thank you very much for your presentation, Ms. Bullen. We'll now go to the third party. Mr. Prue, you have three minutes.

Mr. Michael Prue: I just want to ask you a question because there has been a little bit of confusion, I think, around the issue. When an employer takes a portion of the employee's tips—like they put their hand in the jar, as simple as that, and take \$100 cash out of a bartender's tip; we heard that today—is it your experience or knowledge that those generally are not claimed on income tax?

Ms. Darcel Bullen: Of course. I think one of the difficulties is that any moneys that employers garnish from their tipped workers are not claimed, so we're losing that revenue as a government. Employees are not able to claim that, then, in their pensions. There really are detrimental effects to this non-taxable money that is almost disappearing without any regulation.

Mr. Michael Prue: Okay, so we know that employees, people who wait on tables and taxi drivers—if they get tips, they have to claim that on their income tax, and there's a whole formula based on around 10% of sales. They have to pay that. You are telling us that, in your experience and your knowledge, the people who reach into the jar and take the money, particularly if it's in cash, are not compelled to, nor do they generally claim it.

Ms. Darcel Bullen: I think that's the common understanding. I've never had an employer describe it differently. They feel like this is house money that they can distribute in a way that they see fit, rather than employers having earned it themselves. I've actually never worked in a tipped service position where part of my tips were not garnished. And as a young employee, to be honest, I just thought that was normal practice. It wasn't until I actually went to Osgoode Hall Law School and started working in labour and employment that I realized the severity of this problem, particularly for the sector, which is primarily made out of precarious jobs and young workers.

Mr. Michael Prue: Now, you work at Parkdale Community Legal Services, which does a lot of work with new immigrants and people just getting established in Canada. Would you think that this problem is severe amongst those 20% or 22% of young people who were not born in Canada, who might be taken advantage of in situations like this?

Ms. Darcel Bullen: Unfortunately, yes. The risk of reprisal is incredibly high when someone is asserting their rights to their employer and when their employment is their only means of income, not only for them but the families that rely on them. I think that some of the statistics we've included from the Canadian Restaurant and Foodservices Association—that 22% of Canadians describe their first job as in the restaurant industry—demonstrate how important it is to ensure that tips are

actually included in the moneys that tipped workers earn, because so many individuals are involved in industries that are tipped.

1350

Mr. Michael Prue: There are a number of other people who have been here today and are suggesting that it's okay for owners of restaurants, franchisee owners, to charge their employees the money that is paid to Visa for the use of Visa cards. Any suggestions on whether you think this is a legal practice, requiring the employees to pay the costs of doing business? I can't imagine if I worked in a factory, for instance, the employer coming along and saying, "You know, I had a big Visa bill this month, and I want you to pay the charges off it" or anything like that, but this happens all the time. Is this a fair practice?

Ms. Darcel Bullen: It seems unfair, and I think that the Ministry of Labour has clearly laid out in the Employment Standards Act that employers are not allowed to garnish wages for amounts that are not as a direct result of employee misconduct. Obviously, the cost of doing business is not misconduct, and an employee should not be unfairly punished for making their employer money.

The Chair (Mr. Garfield Dunlop): Thank you very much. That's your time for the third party.

Now to the government members: Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Ms. Bullen, for appearing before the committee today. Can you tell us how rampant this problem is in your community?

Ms. Darcel Bullen: It's incredibly rampant. Almost all the workers we see at Parkdale Community Legal Services are in precarious employment. They are working multiple jobs. They are working on contract. The service industry is notoriously precarious in that it's not full-time employment. Your job is never guaranteed. Industries are often rapidly changing, so this is a very important problem. It's not just in the service industry in terms of restaurants, but also across things like bartending and salons, which have been acknowledged by the Ministry of Labour to be vulnerable worker sectors.

Mr. Vic Dhillon: Do you receive complaints with respect to this specific issue, and if so, what's the frequency?

Ms. Darcel Bullen: We in the workers' division do Ministry of Labour claims. It's part of the issue that we address. We are overwhelmed with claims for workers who have not received basic minimum wage, \$10.25, or for servers who are not even receiving the \$8.90 that is bringing them up to \$10.25 because they're simply not getting their tips.

Mr. Vic Dhillon: How would this bill serve the people who are affected by this, your clients?

Ms. Darcel Bullen: We know that minimum wage in Ontario is \$10.25. If a worker is earning \$10.25, they're earning 19% below the poverty line in Ontario. All we're asking is for people to have a chance to bring themselves out of poverty, if they are working full-time, by earning a wage that sustains them and their family.

Mr. Vic Dhillon: We heard earlier today from one of the deputants that this problem should be left with the employer and the employee, and they can deal with it. What's your take on that?

Ms. Darcel Bullen: Statistics demonstrate that that's not a good solution. The Ministry of Labour issues over \$100 million worth of orders every year, and only half of that is ever paid back to employees who have orders issued in their favour. We know that employees are incredibly intimidated from filing claims. It's estimated that only 4% of Ontarians file a claim with the Ministry of Labour when the Employment Standards Act is violated, so suggesting that we should ask employees, who are incredibly vulnerable in a recession, to bear the burden of enforcement of laws in Ontario just means that the government isn't being held responsible for doing their job. It just seems incredibly unfair.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Garfield Dunlop): Thank you to the government members. Now to the official opposition. Toby?

Mr. Toby Barrett: Thank you for the presentation. Just to clarify, you're using the term "garnishing" tips. You're referring to the employer taking a portion of the tips? Is that what you mean by that?

Ms. Darcel Bullen: We're referring to an employee earning an amount through their hourly work and an employer deducting that from what they receive from customers.

Mr. Toby Barrett: In the form of a tip—in other words, taking their tips, or some of their tips.

Ms. Darcel Bullen: Taking the money that they earned from customers, yes.

Mr. Toby Barrett: Yes, I see. This whole business of a garnishee: Do you feel that tips should be included—maybe they are—in someone's wages if, through a court, they're under a garnishee order, say, for non-support, something like that?

Ms. Darcel Bullen: I work under some really great supervising lawyers, and we've had discussions about how complicated this issue is. I actually feel like I would want to let the legislative representatives deal with the complexity of that issue, because I understand in terms of the Canada Revenue Agency, it is quite complicated. I would rely on our political officials to make the decision.

Mr. Toby Barrett: You don't have a problem with tip-pooling or tip-sharing? What do you feel is the best way to try to fairly distribute tip income between, say, kitchen staff and servers?

Ms. Darcel Bullen: Right. I think it's interesting—the suggestion that if servers or tipped workers are entitled to their tips, they won't actually share it amongst other workers who are doing kind of back-house work, like dishwashers or line cooks, because actually, anyone interfacing with the public, with the customer, has a direct incentive to ensure that their work product is of a high quality, and the way that you do that is by valuing other people's work. So as someone who has worked in the industry, I know that if I were to have the ability to

receive all of my tips, it would be in my best interest and for my employer's best interest, actually, to ensure that everyone I'm working with gets a fair distribution of the tip money.

Mr. Toby Barrett: I represent a rural area. I have many very small restaurants or almost weekend restaurants—bed and breakfasts—so the person who serves you is the owner. Maybe it's a husband-and-wife team. Sometimes their son and daughter are working there, helping out on weekends. Now, this law would prevent them from receiving a share of the extra money I put on the table. Do you have a problem with that?

Ms. Darcel Bullen: I think—

Mr. Toby Barrett: They're doing the work. They're doing the cooking and serving.

Ms. Darcel Bullen: Right. I think that hypothetical scenario in which kind of a small, family-owned business doesn't get the money they need to keep them afloat doesn't really make sense in the context of the bill, because the bill only affects employers who are actually not providing the people who work for them with the moneys they earn. So I'm—

Mr. Toby Barrett: The bill prevents an owner from receiving any share of the tip.

Ms. Darcel Bullen: The bill prevents employers from taking away money from employees who earn that money. If their employees are working for them, or they themselves are the individuals interfacing with the public, then they're receiving that money. So I think the bill actually only affects individuals who aren't complying with the Employment Standards Act.

The Chair (Mr. Garfield Dunlop): And that concludes your time. Thank you very much.

Ms. Darcel Bullen: Thank you so much.

OTTAWA SERVERS ASSOCIATION

The Chair (Mr. Garfield Dunlop): We'll now go to the next presenter, which is the Ottawa Servers Association: Antonny Garcia and Michael Vorobej. Is that Antonny and Michael? You have five minutes for your presentation, gentlemen.

Mr. Antonny Garcia: Members of the standing committee, thank you for having us here today, and a big thank you to Michael Prue for his hard work and for his perseverance on this bill.

I'm Antonny Garcia from Ottawa, representing the Ottawa Servers Association. I'm the founder and CEO.

For some technical reasons, my presentation today was going to be a written submission, but I will take questions on how I'm describing this terrible rip-off that is taking place in our industry.

Mr. Michael Vorobej: Okay. Hi there. I would like to just quickly direct everyone's attention, if that's possible, to this document, Bill 49, Protecting Employees' Tips Act, the second one.

On the fourth page, what we've done here is a mock-up of a typical banquet hall invoice. No one attends more banquets than MPPs and other political figures. You're

the guest speakers; you're doing fundraisers. So no one attends more banquets, yet apparently, no one knows less about what actually happens.

So in this document, what we have is the Nameless Banquet Hall. It's located in Anywhere, Ontario. Today's guests are the Blameless Political Party. The menu is the inevitable chicken luncheon. It's for 80 people. The menu is salad, chicken, chocolate cake. You get coffee or tea. The price per person is \$30. You're going to pay a 15% gratuity on that, and then you're going to pay HST on that. So we've done the numbers: It's \$2,400 plus a \$360 gratuity, and the HST is there as well, totalling over \$3,000. If you turn the page, we've got a couple of potential outcomes for the actual workers who are there.

By the way, I've got 25 years in this business, so I pretty much know what I'm talking about here, if I may say.

So you've got four banquet servers who come to work at 9:30 in the morning to begin to set up the lunch. They work until 2:30—everyone is gone and the speeches are over—and they clean up the last dirty dish and remove the last table cloth. So that's 20 hours total labour performed by these people.

So in scenario number 1, each server works for the Ontario minimum wage, for \$8.90, and shares equally in the \$360 gratuity. The total gratuity divided by 20 hours equals \$18 per hour, so their wage plus gratuity is \$26.90 per hour of taxable income. I've tried to use average figures, realistic figures, in this. Okay? You see the total earnings of \$538.

1400

Here's scenario number 2. Scenario 2 is far more common in this bent industry in which I work than scenario number 1 is, and I choose my words very carefully, by the way.

Scenario number 2: It's the same price, everything, same gratuity, but this banquet hall pays a flat rate of \$14 an hour. I haven't found the lowest figure in the province. Some do pay less; some may pay a bit more. In this example, 20 hours of labour are worth \$280, which is \$80 less than the value of the gratuity itself. Okay? Effectively, the banquet hall isn't paying minimum wage. They're actually getting free labour and having 80 bucks to do with as they please afterwards.

Going over to the next page, again what we're looking at is a 50% loss of income for Ontario workers, and this is the majority I'm talking about now, not the minority. This is the majority. At \$14 an hour, you're not paying a lot of income tax, if any. You are probably eligible for many government subsidies and you're not really able to participate in the economy. You are probably not going to drive a car—not that I'm advocating that everyone drives a car, but you don't even have that option; probably a bus pass is expensive for you.

So what we want to see here and what we, through our investigations—I haven't heard the word "Newfoundland" mentioned today, because Newfoundland has laws protecting as well. Other than banquet servers, you are the most overworked and underpaid people in the prov-

ince. I'm going on the record for that. So what you don't need to do, please, is reinvent the wheel here again. You don't need to reinvent the wheel. There's lots of good, clear legislation out there. Okay? It's out there and you need to tap into it, please.

What we need is clear, unambiguous protection for tips, gratuities and service charges: anything that an honest customer pays at the bottom of their bill, either on the invoice or by cash, thinking that that is a "tip," in common language. That needs to be protected by our Employment Standards Act so that more of us can afford the train fare to come down to Toronto and take a day off work and appear for 15 minutes in front of a committee hearing and, you know, take some interest in politics and things instead of working three or four jobs.

I know our time is limited, so we will welcome any questions. I would also just refer to the fact that the letter at the beginning of this document has already been sent to you in email form once, but you get a lot of emails, so we've put it on paper this time. It deals with the issues in a lot more detail.

But I'm telling you, this industry is going down the drain. I started off in a place, as the minimum wage worker, getting some tips, making a half-decent wage, and that building, which is a pretty major facility up in Ottawa, is now totally bent and no one makes a decent wage there anymore. The job I did in the 1990s is a McJob now.

The Chair (Mr. Garfield Dunlop): Thank you very much for your time. We'll now go to the government members. You have three minutes for your questions.

Mr. Vic Dhillon: You mentioned that a majority of the workplaces are in this practice. Have you done any sort of research or do you have any data on that?

Mr. Michael Vorobej: I can tell you that, other than the unionized facilities—and I must add for the record that all workers should be protected by this legislation. I just found someone who has a worse union contract than I did, this lady back here. But yes, I can tell you that major facilities in the city of Ottawa that have been built in the last few years—including one that Antonny used to work at, where he lost a job because he asked about the gratuity situation there and was summarily fired thereafter—are now building it into their business plan. They will put a price and they will put a gratuity on their paper menus, their website menus, and then they will not pass along the gratuity. They will be in category 2 of our sheet. They will be paying a flat rate of \$12, \$13 or \$14 an hour, which is less than the value of the gratuity, and they'll be pocketing the rest.

Basically what they do, just so everyone understands, is that that's either pure profit for the owners or, instead of paying their managers and chefs a decent management salary, they pay them a half-measure salary and take the rest out of the tip jar. That's the industry practice now.

We, today, work in a facility which was originally built by the people of Ontario, the people of Canada and the people of Ottawa in terms of financing that facility, and when that building opened in the 1980s, 50 cents of

every dollar went to management. That was their winning formula for success. Okay? So that's a government-owned facility. I won't mention the name today.

Mr. Vic Dhillon: I don't know if you were here, but there was an inference made that these types of issues are better left to the employer and the employee and can be dealt with at that level. What's your opinion on that?

Mr. Michael Vorobej: For decades, all political parties in this province have maintained a two-tier minimum wage: one for regular workers and one for servers in our industry. The industry has had decades to police itself and has failed—I can't even find the word—immeasurably to police itself.

Now you're actually at a point where you're at a competitive disadvantage if you don't steal the tips, because if your chicken dinner is 30 bucks and his is 30 bucks, and you keep the extra \$4.50, that's all in your bottom line. The other guy, who is just treating his workers half decently, is at a competitive disadvantage. This is a chronic problem. We're not here to talk about the whole industry; we're focusing on one piece of legislation today. If you want to call an inquiry into the restaurant industry, I'll book another ticket on Via Rail and I'll see you again. It's a big problem, big facilities.

I can tell you the worst story—I can't miss this opportunity—of a friend who was a long-time cook in a big church banquet hall that was like a commercial establishment attached to a church. In that church banquet hall, which probably holds 700 or 800 people for banquets, maximum, they paid the priest out of the tip jar. So there's no shame. This is money. We're all adults in this room; there's no one under 18. There's no shame when it comes to money. That's why we need a government. That's why we need laws.

The Chair (Mr. Garfield Dunlop): That's the time. We'll now go to the official opposition. Mr. Barrett?

Mr. Toby Barrett: Thank you for coming over to testify. We've been hearing about gratuity charges this afternoon, and you say we need a law. This proposed legislation, Bill 49, from my reading of it—and it doesn't take long to read it—does not address the automatic gratuity charges. I'm asking myself, what do you feel we would do? Does it require an amendment indicating that automatic gratuity charges—it's listed on the bill; that's a start, anyway. It lists the per cent. Is that what it usually does?

Mr. Michael Vorobej: Typically, yes, they do. Typically, it's 15%, but some places are a little bit higher now.

Mr. Toby Barrett: Is this not going far enough, with respect to more transparency or disclosure, to itemize it, to indicate what per cent is going to the house?

Mr. Michael Vorobej: In my view, I have not yet encountered a person—and we've done petitions as well, because we've been at this for a year and a half—outside of the industry who has a clue that this is going on. We've been on the radio. We've talked to reporters. We've been on TV. No one knows this is going on, both in the restaurants where there are cash transactions or in the gratuity banquet halls, hotels etc.

In my view, it's a misrepresentation. It's a consumer affairs issue as well, beyond a workers issue, but it's a misrepresentation and that's the way the industry would like to keep it. They'd like it to be ambiguous.

My God, until I did my research, I didn't even know that PEI had restaurants and banquet halls that they would need a law for this, but apparently they do. We'd be the fifth province—and their language is very clear, because it protects the client as well as the workers: Any charge—a tip, a gratuity, a service charge, anything that a reasonable individual would believe is a tip to be paid to the servers—should go to the servers.

For the record, we do pool our tips where we are. We share amongst the workers etc. That is not the issue. The issue is that you are not in a bargaining position with your employer to determine how much of the tips he gets. Once he decides he wants tips, he calls the shots. That's the power arrangement in a workplace.

Mr. Toby Barrett: Somehow you've got to track that. I think of wedding parties or church groups or organizations that book a hall. I guess they're not in business. There is no fine print for them to read. It just says, "Pay this per cent." It's called a gratuity; I don't know how that's defined under law. So it's not enough to at least itemize it?

Mr. Michael Vorobej: Consumers don't think they need a law. It's clear; it's plain English. What they're paying is a tip. The fact of the matter is that businesses are taking advantage, and the more they do, you're just getting a domino effect. The more people who do this—it gets to the point where people can't afford not to get involved in the same rip-off because the guy down the street is doing it. Everyone is charging the same price for the chicken dinner. That's the problem; it's the domino effect.

Again, it's high time that the province of Ontario stepped in and erased this, because in this province we need people with jobs. We've got people with jobs who can't pay taxes or don't pay taxes because they're not making enough; they're not getting on the tax rolls. I pay the province, the federal government and even my municipality before I ever see a dime of my pay—that's where I work—and that's fine. We want more people like that, not less.

The Chair (Mr. Garfield Dunlop): We'll now go to the third party. Mr. Prue.

Mr. Michael Prue: I have two questions. The first one is to Mr. Vorobej. The Ontario Restaurant Hotel and Motel Association is coming up two speakers after you, and they have suggested—I'm going to read from what they sent to us: "Automatic gratuity charge placed on bills mostly by banquet and hotels can be distributed to the 'house'"—that is, the owners—"as long as it is called a facility charge—we at this point are recommending an alternative name ... perhaps 'facility service charge.'"

1410

They want this changed so that it doesn't look like it's a gratuity—

Mr. Michael Vorobej: It sounds to me like they're trying to muddy the waters. If you pay for a brake job on

your car, and you don't get new brakes, you're being ripped off. If they just looked at your old brakes and charged you for new ones anyway, that's a rip-off. The charges have to be clear. Again, you will see language in other legislation in other jurisdictions, but the charges have to be clear.

That is a very slippery slope. If you say "facility charge" or whatever—if there is no gratuity, then people can pass the hat like they did in the old days. But you can't leave the customer the impression that they're paying a tip when they're actually not paying a tip.

Mr. Michael Prue: It seems to me that they've acknowledged that it isn't a gratuity, so they've been collecting the money using the wrong name, anyway.

To Mr. Garcia, a statement was made that you were fired from your job for complaining about employers skimming off the tips that were intended for servers. Could you tell us your own circumstance and what happened?

Mr. Antony Garcia: Yes. I worked in a place for banquets, serving, in 2006 in Ottawa. That's how I got involved in this fight. It's personal. Nobody wanted to go to management because everybody was scared. Workers in that building were not allowed to speak about unions or tips. They were stealing the whole 15% service charge and using it to cover labour costs and pay managers.

Then I said, "No, I'm going to go alone." Nobody wanted to go with me because they knew already what would happen. I went to management and asked a question about that, if the 15% service charge was supposed to be passed over to the servers. The thing is, soon after, I lost my job for speaking out. I'm not going to mention the name of the place right now; that's not the case.

The Chair (Mr. Garfield Dunlop): You've got 30 seconds.

Mr. Michael Prue: If I could just ask, do you know of other people that this has happened to as well? When they speak out, they get fired, or when they complain about—

Mr. Antony Garcia: They all got fired. I got a small group, and I started to talk to them about what was going on and about bringing the union inside. Then everyone who was with me lost their job after. They brought the union, but they ran a campaign inside the building to buy everyone and to scare all the employees. More than half of the employees were scared. They said, "If I vote yes, I'm going to lose my job." The vote was no, so the union couldn't pass.

The Chair (Mr. Garfield Dunlop): That concludes your time today, gentlemen. Thank you very much to the Ottawa Servers Association.

Mr. Michael Prue: Thank you for coming.

MS. CINDY VASSER

The Chair (Mr. Garfield Dunlop): We'll now move to the next presenter, Cindy Vasser. Welcome to Queen's Park, Ms. Vasser. You have five minutes for your presentation.

Ms. Cindy Vasser: Thank you kindly, Chair and members of the committee. Thank you very much for this opportunity to share my experience, opinions and suggestions with you. I personally believe that Bill 49 is a most fair and much-needed bill.

I am in the hospitality business and have been for numerous years. This practice of tipping out to the house did not exist in my experience until I started working at my current restaurant of employment. Currently, if our net sales are over \$300, we tip out 3.5% percent. The breakdown is 1.5% to the kitchen, 0.5% to the bar and, much to my shock and horror, 1.5% to the house—for what, I really don't know. I find this practice to be akin to theft. Why am I paying someone for the privilege of working for them? Is this done in other jobs? I don't think so.

Some national chain restaurants have tip-out totals of up to 5.5%. Why would a restaurant such as Bâton Rouge, with annual sales of \$10 million at the Eaton Centre, steal from their staff, basically? Where does that \$300,000 that they get per year in tipping out to the house go? Is it claimed with Revenue Canada? I doubt it. Do all owners claim this income that they get from tipping out to the house to Revenue Canada? That's doubtful. I've even heard of tip-outs as high as 9% from people I know in the industry. I have been told by the kitchen staff I work with that they have never received payouts of tips, so in fact, the house is taking 3% of my hard-earned money that most customers think is going to me for my great service. It is my belief that the general public is being deceived and does not know this practice exists.

I should like to mention at this time that if a customer does not tip at all—and believe me, this happens—then, in fact, I as a server am subsidizing whatever they happen to ingest. That's outrageous. I also tip the bartenders and kitchen, even if they are slow or make me an inferior product, which in turn reflects upon my tip.

Also, part of my sales that I'm tipping out on the house includes staff meals, sales not tipped on, and take-out, which customers rarely tip on, yet I tip out on all of those things. Knowing that the kitchen does not actually get the tip payout where I work, that would mean that the house gets 3% of my tips. That money adds up to a lot in a week, a month and a year.

My paycheque, with the meagre \$8.90 hourly wage, goes to pay my rent, my tips, all my other bills and expenses, and Toronto is not a cheap place to live.

The job of a server is fast-paced and sometimes stressful. No matter what is going on in our personal lives, we are expected to be happy, gracious and always smiling. As front-of-house staff, unlike the kitchen staff—who usually get paid more, by the way—we are seen as a reflection of the establishment we work for. Therefore, we are expected to be clean, presentable, well groomed and neatly dressed in the required uniform. That does not come cheap nor easily.

Most important of all, the main job of a server is to be an outstanding salesperson. The successful server is one

who knows their product well so as to make suggestions and upsell, which in turn enhances the customer experience and revenues for the restaurant and government. Without sales, there are no tips and the restaurant will cease to exist, yet with the practice of tipping out the house, the server ends up getting financially penalized for increased sales.

Some restaurant owners seem to think that our tips are simply fun money and free to be taken through many methods of gouging servers, such as paying a per-shift breakage fee. Some establishments actually charge a server for the replacement costs of a broken item, yet dishwashers are not charged for breakage because they don't make tips. Shouldn't breakage be considered an unfortunate part of doing business?

In restaurants where a set uniform with a company logo is required, the servers pay a marked-up retail price, not the wholesale price.

Some restaurants make the servers pay a percentage of their total credit card tips to make up for the percentage charged to the establishment by the credit card companies.

We are made to pay for mistakes, like food and drinks that were made that were incorrectly rung in and shortages in our inventory.

And while it is against the Employment Standards Act, the server pays in full for any walkouts or dine-and-dash, in my experience.

I emailed my concerns to my MPP, who happens to be Premier Kathleen Wynne. I received a reply in which it was suggested that in the future, perhaps tips should be pooled. Well, just as staff at our Premier's office come with many different skill sets, education and work experience, so do servers. I find the suggestion of tip-pooling to be insulting and considered without much process, especially considering that not everyone shares the same workload or ethic. Do we expect the salaries of those in the Premier's office to be pooled? I think not. Do salespeople pool their commissions? Hardly. Tell me what jobs pool their wages and salaries.

What I would like to see is:

- a complete end to tipping out the house, period;
- a province-wide set tip-out percentage of net sales minus any non-tipped amount going to bartenders and kitchen staff and paid directly to the bartender by a server;
- accountability and proof that the kitchen does, in fact, get their tip-out, and not the house;
- in the case of busboys and hostesses, they should also be paid directly by the server;
- perhaps even, as in DineSafe, a posted notice on the front door of an establishment stating what the tip-out is.

On a final note, while many critics think servers make a huge amount in tips, a week ago I walked out of a six-hour shift with \$7 in tips. I have worked shifts from 8 a.m. to 3:30 a.m. straight without a break. I have also worked every weekend and statutory holidays for the last year. We work shifts the general public wouldn't. Therefore, there is no way any restaurant operator should be

allowed to put their hands on my hard-earned wallet for their own profit or to top up salaries of their kitchen staff.

While I don't mind sharing with the team that assists me with putting out a great product and service, I feel this practice needs to be regulated by passing Bill 49. I have lost a lot of money this year and I'm sick of being pillaged.

I thank you very much for your time.

The Chair (Mr. Garfield Dunlop): Thank you very much.

We'll now go to the official opposition. You have three minutes.

Mr. Toby Barrett: Thank you. As we continue on in the afternoon, it seems to get more complex. I get the impression that so many restaurants have different approaches; even perhaps staff, talking with the owner, work out different ways of doing it.

So you're not opposed, in general, to tip-pooling or tip—

Ms. Cindy Vasser: Oh, I'm opposed to it, yes.

Mr. Toby Barrett: Tip-pooling and tip-sharing?

Ms. Cindy Vasser: Yes. Sorry: tip-sharing, no; tip-pooling, yes.

Mr. Toby Barrett: Okay. I've got to look up that definition again. So tip-pooling, you're in favour of?

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Ms. Cindy Vasser: No. Heaven's, no—

Mr. Toby Barrett: I've got to get this clear. That's a no—

Ms. Cindy Vasser: —because not everybody's work ethic is the same and not everybody works as hard.

Mr. Toby Barrett: I do hear that from people. There would be, say, two servers and one works harder than the other—

Ms. Cindy Vasser: Absolutely.

Mr. Toby Barrett: And then that discrepancy—someone working in the kitchen, and by law they have to be paid minimum wage.

Ms. Cindy Vasser: At least, yes. Quite often, some are paid a lot more.

Mr. Toby Barrett: Yes, of course, hopefully, in a prosperous business.

Ms. Cindy Vasser: And they don't have to be presentable as we do, the front-of-the-house staff. They can come to work looking like whatever.

Mr. Toby Barrett: Yes, but I like to think that most restaurants, the kitchen staff, if they aren't making more, get some of the share of the tip.

Ms. Cindy Vasser: Oh, absolutely. I'm not against that at all. It's all part of the teamwork.

Mr. Toby Barrett: So if we were to make any change to this law—and the law is one sentence, as you know—what would you recommend we change? Or does the law cover it?

Ms. Cindy Vasser: As I mentioned, even perhaps if there was a set percentage to be tipped out—from my tips, the bar gets 1%, the kitchen gets 1%, a busboy quite often gets 0.5% and a host gets 0.5%. I'm fine with that. We're all part of a team. But for the money to go to the

house—do they claim that with Revenue Canada? In a month, that's the price of my expensive asthma medication so I can breathe. I don't have benefits. Most people in the restaurant business don't have any benefits. I could use that money, quite frankly. But to go to the house doesn't make sense to me. Why am I paying somebody to work for them? And what are they doing with that money?

Mr. Toby Barrett: There is the one concern about a very small restaurant where it's an owner and sometimes they bring someone in part-time on the weekend—the owner gets the tips, especially if they're the only one there. If the law says that owners don't get tips, we're just concerned about unintended consequences.

The Chair (Mr. Garfield Dunlop): Okay, your time, Mr. Barrett, is up.

Mr. Toby Barrett: Yes, thank you.

The Chair (Mr. Garfield Dunlop): We'll now go to the third party. Mr. Prue?

Mr. Michael Prue: Just to clarify: The law does not say that owners don't get tips; it says they can't take their employees' tips. There's a difference. Anyway, I wanted to ask you the question: We have uncovered restaurants where people come in and take out food. They don't eat it there. They come and they get it in a Styrofoam container and take it away.

Ms. Cindy Vasser: Right.

Mr. Michael Prue: We've also uncovered where some employees, the servers, are required to pay a percentage of gross to the management on takeout food.

Ms. Cindy Vasser: Correct.

Mr. Michael Prue: There's no chance that you're going to get a tip.

Ms. Cindy Vasser: Generally, no.

Mr. Michael Prue: Generally, no. So if somebody comes in and takes out, say, \$40 worth of food and you have to pay 4%—because somebody put it in a Styrofoam container, you have to pay the manager \$1.60. Have you run into this?

Ms. Cindy Vasser: That is correct. I didn't make the food but I just carried on the transaction.

Mr. Michael Prue: All right. You carried on the transaction but you have to pay 4% of gross?

Ms. Cindy Vasser: Absolutely.

Mr. Michael Prue: Okay, and there's virtually no chance that you're going to get a tip?

Ms. Cindy Vasser: Generally, no. I would say, 85% of the time, no.

Mr. Michael Prue: Okay. I just want to clarify, because I want to make sure—I think my colleague here was having a little bit of difficulty. You are in favour of tip-sharing because you think you should be giving money to the busser, the hostess, the bartender and maybe, possibly, to the kitchen. You are opposed to tip-pooling, which I think in your case you mean that all the money goes into a pot and everybody shares it equally, so that if a waiter or waitress is doing a crummy job, they get a percentage of your tip, and you don't think that's fair.

Ms. Cindy Vasser: Correct, and they may have only worked for two hours in the shift, yet I worked for eight hours. So, no, it's hard to have fairness in that.

Mr. Michael Prue: Okay, because when you first started to speak I was going to say you would be the first person I have ever met from the restaurant industry, a server, who didn't think it was fair to share with the other people who are doing a good job.

Ms. Cindy Vasser: No; I do.

Mr. Michael Prue: Okay, but I think it was very clear what you were saying.

How long have you worked in the restaurant industry?

Ms. Cindy Vasser: Off and on—mostly on—about since 1980.

Mr. Michael Prue: Okay, so we're looking at 20-plus years.

Ms. Cindy Vasser: Correct.

Mr. Michael Prue: Okay. There were some people earlier today who said that this is not a widespread problem and pooh-poohed other people saying that 50% or 60% of restaurants have some form of tip-out to the employer. They said it wasn't even as high—when I suggested 10%, it probably wasn't that high. You're in the industry a long time, what percentage do you think it is?

Ms. Cindy Vasser: I think it's about 1.5% of the house.

There's an interesting website, Toronto Servers Review Restaurants, or something similar to that. I'm sorry. I think your office knows about that. There are people who come on that site who talk about all the different restaurants in the Toronto or Ontario areas and what the tip-out is, what they're made to pay for their uniforms, what they have to pay if their credit card slips aren't signed and whatnot.

Myself, I'm just finding, in talking to the people I know and going on that site, that this tipping to the house has become far more rampant than it was when I started in the industry. When I started in the industry, it didn't exist. It seemed to come up when we started getting more international and national chains: Moxie's, Baton Rouge and whatnot, and then the little guy—I work for a private restaurant owner—jumps on it, thinking, "Oh, well, other places are doing it. I'm going to do it, too." Of course the staff isn't going to say anything because they're just happy to have a job. There are a lot of people looking for work in the restaurant business. It's hard to find a job in that business right now. So we just kind of sit back and don't say anything about it, don't ruffle the feathers and just carry on paying. But like I said, I need that money for my medication.

The Chair (Mr. Garfield Dunlop): Thank you very much. We'll now go to the government members. Mr. Balkissoon: three minutes.

Mr. Bas Balkissoon: Thank you, Mr. Chair. A couple of clarifications: You started out by saying that you would rather keep all your tips and you make the decision to remunerate the bartender and the kitchen staff?

Ms. Cindy Vasser: No, no. I want to physically hand it to them as opposed to it going on a sheet of paper and

in my deposit, and then I don't know if in fact it all goes—what is intended, if it goes to the bar, if it goes to the kitchen. I know in my place of work right now, it doesn't go to the kitchen.

Mr. Bas Balkissoon: Okay, but who's going to verify that an employee does it or doesn't do it?

Ms. Cindy Vasser: Yes, that's what I'd like to know.

Mr. Bas Balkissoon: Okay. Because that's the one that puzzled me.

Ms. Cindy Vasser: Me too.

Mr. Bas Balkissoon: You did say you didn't mind if there's a formula about the—

Ms. Cindy Vasser: No, actually; a fair formula, no, I don't mind.

Mr. Bas Balkissoon: —you know, to give to everybody, a fair formula, but the house shouldn't be included. I think my colleague on the other side made several references to where the owner might be the chef and he has an employee who's the server and maybe you've got a host and a hostess. I don't know. How do you deal with it when the owner is part of that working staff?

Ms. Cindy Vasser: Etiquette states that owners don't get tipped, first of all—common etiquette. Although, if a chef is also the owner, actually as in my case, I don't mind tipping him out as the chef because he provided me, hopefully, with a great product, but—

Mr. Bas Balkissoon: How do we cover that in a piece of legislation?

Ms. Cindy Vasser: Well, I brought a—I'm not sure—

Mr. Bas Balkissoon: Yes, I got it. I got the sheet.

Ms. Cindy Vasser: In that, in a tip-out form—

Mr. Bas Balkissoon: So it would be a formula for the kitchen?

Ms. Cindy Vasser: —within our deposit.

Mr. Bas Balkissoon: So whoever works in the kitchen, whether it be owner or anybody else, they would be part of the tipping?

Ms. Cindy Vasser: Correct.

Mr. Bas Balkissoon: Okay. Go ahead, Vic.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for appearing before the committee today. Can you tell me how widespread the practice is of the employers taking tips from—

Ms. Cindy Vasser: Tipping to the house?

Mr. Vic Dhillon: Yes.

Ms. Cindy Vasser: You know what? I would have to actually talk to everybody in every place. All I know is that it does happen. It shouldn't happen. If you go on to that website that Michael Prue knows about, people give you a breakdown of how much goes to each of these places that have sales in the millions of dollars a year.

Mr. Vic Dhillon: Would you be okay with the idea of a manager taking the money and pooling it, and then divvying it up amongst the staff?

Ms. Cindy Vasser: What? All the tips I make?

Mr. Vic Dhillon: Yes.

Ms. Cindy Vasser: I would have a big problem with that; absolutely.

Mr. Vic Dhillon: Can you elaborate on that?

Ms. Cindy Vasser: I can elaborate on that in the way that the customer's intention is to give the money to their server. We're front end. We have to be happy. It doesn't matter whether a relative died that morning, we have to come in. We have to be happy. I come in when I've got pneumonia. I've come in when I'm really sick with a migraine, whatever. So, you know, I work for my tips, and that is what my customers intentions are, to give me the tips, not—

The Chair (Mr. Garfield Dunlop): That concludes your time, Mr. Dhillon. Cindy, that concludes your presentation as well. Thank you very much.

Ms. Cindy Vasser: Okay. Thank you.

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ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

The Chair (Mr. Garfield Dunlop): We'll now go to the final deputation of the day, the Ontario Restaurant Hotel and Motel Association. We have Leslie Smejkal, the vice-president of government relations; Tony Elenis, the president; and Terry Mundell, the president of the association. You folks have five minutes for your presentation. Welcome to Queen's Park.

Mr. Tony Elenis: Thank you. Good afternoon. My name is Tony Elenis. I am the president and CEO of the Ontario Restaurant Hotel and Motel Association. With me are Leslie Smejkal, our government relations manager, and Terry Mundell, president and CEO of the Greater Toronto Hotel Association. We're also joined here by various hospitality operators that support our recommendations.

Bill 49, Protecting Employees' Tips Act, 2013, is one line of legislation, and we all can agree it requires significant amendments before passing into law. It is important that the committee today understand a little bit about Ontario's hospitality industry before proceeding with Bill 49.

The ORHMA is Canada's largest hospitality provincial association that represents the interests of 11,000 accommodation and food service sectors. The hospitality industry is a significant component of Ontario's economy and character, yet it is vulnerable to economic volatility.

The minimum wage increases of 2008-09 impacted a great deal of suffering. Make no mistake about it, the hospitality industry has changed, with more of its leadership wearing many hats and performing many work tasks, and sustainment being at top of mind for most operators. This limits business growth and job growth.

Besieged by rising labour as well as food and energy costs, restaurant operators continually battle with the threat of shrinking margins, operating on a 2.5% pre-tax margin of profit in full-service restaurants—the lowest in our country—while the accommodation sector across Ontario operates on 50% reduction in profit margins since the year 2000. It's not about revenue growth anymore; it's about pressure from the expense lines forcing

changes to operations, including the role of most managers and owners.

With the long list of economic challenges faced by the hospitality industry, we ask that the government display compassion and amend Bill 49 to ensure the employer is protected of standard practices that are fair, easy to understand, simple to implement and not hinder business growth in Ontario. Gratuities are intertwined in a complex structure. ORHMA is calling for the following amendments to Bill 49.

We are calling for tip-pool sharing to be allowed for support employees, including kitchen workers. This promotes a team spirit and supports the entire team's work and success. This position supports the overall service experience with coordinating, cleaning up and preparing meals.

Today's culinary evolution has led to many open-kitchen concepts and professional plate presentations. Back-of-the-house, traditionally a name assigned to positions such as cooks, are now the main reason for the customer draw and experience. This has brought a new translation to who supports the customer service experience.

We are calling for managers and employers to be allowed to be part of the tip-sharing mix, as long as they contribute to the service operation. Here, the role of employer needs to be defined, as many independent operators work as greeters, as chefs, as servers and as buspersons. Primarily, due to the slim margins, owners are continually wearing many hats to make ends meet.

Tip-pool sharing is a key component of the employee-employer relationship and provides an opportunity for all involved in the service to benefit from the investments made while strengthening teamwork in this highly regulated and competitive industry.

We are calling for the automatic gratuity charge, currently placed on bills for functions, events and services by mostly banquets and hotels, to continue to include the house in the distribution. There are many forms of employee and employer relationships, including union and non-union negotiated contracts and incentives, many in the form of bonuses, wages, benefits and all types of perks. To review and analyze gratuity structures, one needs to review and analyze the whole package. Gratuities are but one component of the total compensation package. Employees take into account all components, and a change to one will result in an imbalance of the others.

We are calling for an exemption to the credit card markup fee tip portion, where employers are able to keep the cost portion, as the employers pay the tip whenever customers settle their bills by credit card. Based on the number of transactions, this expense can be significantly high. This is backed by the Competition Bureau of Canada, which estimates \$5 billion per year is paid in markup fees, the highest in the world.

To conclude, we expect the government will continue to consult with our industry to ensure that Bill 49 is fair and not onerous for our industry. Thank you for your consideration and time.

The Chair (Mr. Garfield Dunlop): Thank you so much for the presentation. We'll now go to the opposition. Mr. Barrett.

Mr. Toby Barrett: I'm trying to wade through the study that you've been working on, here. You indicate that in the vast majority of cases, servers who receive tips, the actual hourly wage is really only 50% of what their total compensation is. In some cases, tips are up to 80% of what they earn.

Mr. Tony Elenis: In many cases—and I refer to a study, which is going to be passed around to you, completed by the University of Guelph. We see total wage is 10% to 15%, even, of the total compensation for a server.

Mr. Toby Barrett: And then the rest is tips. Then the person working in the kitchen, unless there's pooling, doesn't accrue that benefit.

Mr. Tony Elenis: Agreed.

Mr. Toby Barrett: We've only got a few minutes. What very specific action steps would you like to see taken? What specific amendments would you suggest to this legislation? The legislation is one sentence. It's opened up a can of worms. There are other issues that have come forward. How can we improve this legislation?

Mr. Tony Elenis: The amendments, as I said earlier, that need to be added: that there is tip-sharing that includes employers and managers because of the complex structures there; that the gratuities on banquets and hotels are protected; and the ability for the employer to keep a portion of the markup fee that is added on anyone paying by credit card, because the employer pays the markup fee portion of the charge. It's revenue-neutral; they don't make dollars on it. It's approximately 1.5%, perhaps.

Mr. Toby Barrett: On credit cards, isn't there, hopefully, a federal initiative, where the banks are going to be forced to—

Mr. Tony Elenis: Well, that's the markup fees, yes, to reduce them. But we're referring here to the actual procedure of a credit card settlement to pay for the invoice or the food bill that includes the gratuity on it. A gratuity goes on the markup fee.

Mr. Toby Barrett: I'd like to see the banks give you a fair shake on that rather than the waiters and waitresses, myself. I think there's work being done on that. It's not under the provincial purview.

Mr. Tony Elenis: But that's to reduce the markup fees. When someone settles a food invoice in a restaurant, on that tip, basically, there's also the charge of the markup fee on the credit card.

Mr. Toby Barrett: That's right. They have the tip on top of it.

Mr. Tony Elenis: Right. That's the difference.

Mr. Toby Barrett: Thank you, Chair.

The Chair (Mr. Garfield Dunlop): We'll now go to the third party. Mr. Prue.

Mr. Michael Prue: I would like to thank your organization. You've come a long way, since I first put this in,

in terms of understanding what it's trying to do and your own response to it.

First of all, I think you understand that there is no intent in this bill whatsoever to end tip-sharing. The only intent of the bill was to make sure that the owner does not take a percentage of the employee's tips as a condition of their continuing to work there. You've probably heard some of the people describe what happens to them when they object.

But I do want to ask here about the automatic gratuity charge; I think you were in the room when I asked the workers from Ottawa, who said that they thought this was a slippery slope and used other words. Why is it important to change "gratuity"? Is that because people are thinking that it is a gratuity, and you want them to think it's now a service charge so that they won't think it's a gratuity? You still want to charge it.

Mr. Tony Elenis: First of all, thank you for seeing us along with the operators that we have in the room. We are looking at that wording, and we're suggesting something that makes sense. We still have not defined what the actual wording is. The suggestion we had was to change the word "gratuity," but keep the word "service" in there somehow. It's something that we need to talk about a little bit more, the exact name on it. We've actually made a call to many of our operators to give us suggestions on the name, and as this process moves on, hopefully we'll have more input to add to it.

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Mr. Michael Prue: Visa cards and things—you talked about that. I know Visa charges a different amount depending on how much money—a small restaurant might pay up to 5%, maybe even more, but the big chains probably pay 1.5%, 2%. On a \$100 bill, the waiter or waitress gets \$15. Why the big deal around this? You're asking the waiter or waitress to pay 30 cents. I don't understand why the restaurants think they need to recoup that 30 cents.

Mr. Tony Elenis: First of all, it's by scale. Larger food service companies probably have better provider deals with the credit card companies or the merchants, but on a smaller scale, for that smaller, independent restaurant, that 50 cents means a lot more, probably, than the \$2 to a larger one. It goes by scale.

Mr. Michael Prue: And this is going to make the difference whether the restaurant succeeds or doesn't?

Mr. Tony Elenis: Well, it's dollars coming out of the employer paying the gratuity portion.

Mr. Michael Prue: You also gave me this thing prepared by the University of Guelph, and I have seen it before. It's quite a confusing piece of work. They confuse tip-pooling with tip-sharing, with tip-outs, with everything under the sun. But part of what they do say here is, "It is worth noting that there are also situations where restaurants take a portion of the money for other uses such as, to cover the cost of 'dine-and-dash' or breakage, to recoup the cost of credit card fees or simply take a 'house share.'" Are these things fair for employees to cover?

Mr. Tony Elenis: We're only referring here to the credit card fees, and I think it is also noted in the report that this happens rarely.

Mr. Michael Prue: Well, he thinks it happens rarely. That is not the evidence that I—

Mr. Tony Elenis: I'm sticking to the report.

Mr. Michael Prue: All right.

The Chair (Mr. Garfield Dunlop): Folks, that concludes the time for the third party. We'll now go to the government members. Mr. Balkissoon?

Mr. Bas Balkissoon: You started out your presentation by indicating that you wanted managers to be included in the tipping process. There was a deputant before who said that the servers were there—and she gave an example of five hours for a particular event at lunch time—but the manager showed up at the end for one hour, and he collected as much in tips as they did. Do you think that's fair?

Mr. Tony Elenis: It will depend on the structure of the house, of the restaurant. There are many complicated matters that will make that decision.

If you want to get more complicated with this, if a manager wants to take tips out of a server, they can give fewer tables to that server, or those customers who come in and perhaps order more meals and tip more—

Mr. Bas Balkissoon: No, I want to remain with the banquet hall where the service charge is on the big bill. You have five servers for the event. The manager only shows up at the end just to make sure that everything is okay. He was there for an hour, but all the employees were there for five hours. How much in tips should the manager get? Should he get the full five hours like the other employees or should he just get for one hour?

Mr. Tony Elenis: It depends on the formula that is designed.

Mr. Bas Balkissoon: Okay, but where should the formula be designed? At the local level or in the legislation?

Mr. Tony Elenis: It should be designed at the local level.

Mr. Bas Balkissoon: Okay. Go ahead.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much.

Mr. Tony Elenis: Sorry, to get back to that, it depends on what other work that manager has done to support the servers. There is a lot more work done before you open the doors for customers to walk in.

The Chair (Mr. Garfield Dunlop): Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Chair. Thank you very much for coming before the committee today. We've heard over and over today that there's a high turnover in the restaurant industry of staff. Don't you think that if efforts were made to ensure that more of the tips remain in their pockets, it would be financially beneficial to the restaurant, instead of hiring people and training them again? Don't you think that would be a better business model?

Mr. Tony Elenis: We believe in sharing it fairly. As the member at the end of the table mentioned, what about

the other workers? What about the support staff? We believe that tips—those support individuals—

Mr. Vic Dhillon: I'm speaking about the house part, where the house gets a cut.

Mr. Tony Elenis: If the manager or the owner is part of the service support, they should be part of that portion.

The Chair (Mr. Garfield Dunlop): That concludes your time, to the government members.

Mr. Elenis, that concludes your time for your organization. Thank you very much for your presentation today.

Ladies and gentlemen, that concludes Bill 49 until next week, when we have clause-by-clause at 12 o'clock on—

Mr. Bas Balkissoon: Mr. Chair, before we leave—

The Chair (Mr. Garfield Dunlop): Yes, we've got a couple of other things.

Mr. Bas Balkissoon: Yes, but I would like research—there was an indication that other provinces have passed legislation. If that could be sent to us before we do clause-by-clause or as soon as possible, so it would have some consideration.

The Chair (Mr. Garfield Dunlop): Okay. Is there any problem with that? Okay.

Mr. Bas Balkissoon: Can we pick a date to get it by? By Monday afternoon, since we'll be dealing with this next week.

The Chair (Mr. Garfield Dunlop): Can you get that in for—

Interjection.

The Chair (Mr. Garfield Dunlop): Excuse me; explain again what you'd like.

Mr. Bas Balkissoon: There was one deputant who said that other provinces—I think he said Newfoundland, and there might be others—have already brought legislation—

Mr. Michael Prue: New Brunswick, Prince Edward Island. You don't have to do the research; come to my office.

Mr. Bas Balkissoon: There you go.

Ms. Lisa MacLeod: Plus, he has baked goods there.

Mr. Bas Balkissoon: Circulate that to all of us by email. Can we get it by email before, maybe say, Monday midday?

The Chair (Mr. Garfield Dunlop): That's fine.

If I may, to the committee members—

Interjections.

The Chair (Mr. Garfield Dunlop): A little quiet here. We've got clause-by-clause of Bill 49 ahead of us, and we have Bill 106, which has been passed to our committee; that's the francophone bill. Personally, as the Chair, I'd like to get both those bills cleaned up in this session. Whether we get to third reading or not on the francophone bill, I don't know.

But I'm just asking, would anyone be interested in laying out a format? The francophone bill is very short. Ms. MacLeod.

Ms. Lisa MacLeod: I'll speak both as the Ontario PC francophone affairs critic as well as the Vice-Chair; I wear a double hat here. My hope is that we could clear

the deck with this bill so it could go back to the House before the end of the session. Given that we were dealing with the programming motion and then some decisions by this committee, the committee was a bit backlogged.

My hope, Chair, is similar to yours: that we would consider one of two options as a committee, and we can do this at subcommittee. Two options: One would be to do public hearings next week, either splitting the time with this bill after clause-by-clause and going immediately into public hearings, or having a second day for that; or alternatively, meet regularly on Wednesday for public deputations and then again Thursday morning, if we could get support from the House leaders in order for us to do that.

I know that you have spoken with the minister; I have spoken with the third party critic. I think it's everyone's desire to see that bill proceed as quickly as possible, given the limitations that we did have with the committee and the backlog that we had with respect to the programming motion and the decisions made by the committee early on in the year.

The Chair (Mr. Garfield Dunlop): The other option would be on the afternoon of December 11, which is when we're scheduled to do the francophone bill, based on the motion that Mr. Crack brought forward. At this point, we only have three deputations. If we have the three-hour afternoon, I'm thinking we could even do clause-by-clause late in that day if we wanted to, because it's just one line, if anybody's interested in doing that as well.

I'd just like to get some direction from the committee, see how people feel about that. Or else that bill stays over—

Ms. Lisa MacLeod: Well, can we put that forward as a motion now?

The Chair (Mr. Garfield Dunlop): It's just basically discussion at this point. If someone will make a motion or whatever—does anybody from any of the other parties have any comment on this? Mr. Prue?

Mr. Michael Prue: I don't have any problem with what's being suggested on the 11th, and I don't even really have any problems with using whatever time is left over next week, if we can finish this bill quickly. I am not sure that we can, because I don't know what amendments are being brought forward from everyone else. I anticipate, and I have told people this, a number of amendments coming from the government, because I have talked to the Minister of Labour—

Mr. Bas Balkissoon: Because the bill is too simple.

Mr. Michael Prue: It's too deceptively simple. But I do want to finish, and I'm hoping we can finish this bill on the next occasion. If there is a half-hour left over, I certainly don't have any problem—

The Chair (Mr. Garfield Dunlop): The problem is, we have to advertise and change the date. So I think we'd better not interfere with the date that's scheduled next week. I'm thinking of the three hours we would have on the 11th or going to the House leaders for another morning or whatever it may be.

Ms. Lisa MacLeod: So I put forward a motion, then, that we would sit—

Interjection.

Ms. Lisa MacLeod: You're no fun.

The Chair (Mr. Garfield Dunlop): Mr. Balkissoon?

Mr. Bas Balkissoon: I don't have a problem with dealing with a francophone bill, but I'd rather the committee work very clean. Maybe we should finish Mr. Prue's bill next week and the following week look at the Wednesday and ask the House leaders for us to meet Thursday morning and finish the francophone bill, so that it'll be finished.

Ms. Lisa MacLeod: Can we then direct, through one of my colleagues—because right now I'm subbed out of this committee, but I'm here. Is it possible for someone on this committee to direct the Chair to write a letter to the House leaders with that as a proposal, for Wednesday the 11th and Thursday the 12th, so that the committee may report back on Thursday the 12th in the afternoon?

Mr. Bas Balkissoon: Just move the motion.

The Clerk of the Committee (Mr. Trevor Day): She can't.

Ms. Lisa MacLeod: I can't move the motion. Can you move the motion?

Mr. Michael Prue: I move it.

The Chair (Mr. Garfield Dunlop): So Mr. Prue has moved it—

Mr. Bas Balkissoon: And I disapprove of it because it's his bill.

The Chair (Mr. Garfield Dunlop): Let me make sure I'm clear. We have the afternoon of the 11th for committee hearings, and you're giving me authority to write the House leaders for permission to meet on Thursday morning for clause-by-clause. That's the motion.

Mr. Bas Balkissoon: I say we finish this bill.

The Chair (Mr. Garfield Dunlop): Bill 106 is not going to interfere at all with next week.

Mr. Bas Balkissoon: Okay.

Ms. Lisa MacLeod: Chair, may I ask, with respect to the folks at Hansard, if they may translate this discussion that we have just had into French, because we've had the conversation in English—that part of Hansard.

The Chair (Mr. Garfield Dunlop): We'll do our best to do that.

Ms. Lisa MacLeod: Thank you.

The Chair (Mr. Garfield Dunlop): So we've got a motion moved by Mr. Prue. All those in favour of that motion? That's carried.

Thank you very much, committee, and we'll see you next week for clause-by-clause at 12 o'clock.

The committee adjourned at 1452.

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