



Sweet & Sour

The Struggle of Chinese
Restaurant-Workers

Metro Toronto Chinese & Southeast Asian Legal Clinic

The Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC) is a not-for-profit community based organization which provides free legal services to the low income, non-English speaking members of the Chinese and Southeast Asian communities in Toronto.

Established in 1987, MTCSALC is mandated to provide free legal services, conduct public education activities, and engage in law reform advocacy in order to advance the interests and rights of our constituent communities. Over the years, MTCSALC has served tens of thousands of clients in various areas of law. A very significant portion of our caseload is in the area of employment law.

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The material in this report is intended to provide only general information and comment to the public. Do not, under any circumstances, rely on information found in this report as legal advice. Legal matters are often complicated. For assistance with your specific legal problem or enquiry please contact a lawyer to assist you.

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Acknowledgements

The Metro Toronto Chinese & Southeast Asian Legal Clinic would like to thank the following individuals who have provided invaluable contributions to this project.

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We would like to extend our appreciation to all the members of the Chinese Interagency Network Labour Committee for their advice and guidance throughout the project. We would also like to thank all agency staff of community service agencies serving the Chinese community in Toronto for reaching out to their clients to participate in the survey.

Special thanks to Yuhong Wang of CultureLink for facilitating the meeting with high school students at Central Technical School, and Rev. Alan Wu of Toronto Chinese Catering Evangelistic Fellowship for facilitating the meeting with the Fellowship members.

This project is made possible with funding from Legal Aid Ontario. We would also like to thank UNITE HERE for their generous donation towards the project.

Above all, we want to thank all the restaurant workers who participated in our survey and shared their experiences with us. We would not have been able to complete this project without their input and their contributions. We dedicate this report to all the restaurant workers whose courageous struggle for decent wages and fair treatment in employment inspires us all.



Avvy Go

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1. Executive Summary

Precarious employment is on the rise in the Ontario labour market¹. Recent immigrants, those with uncertain and precarious immigration status, racialized persons and women are over-represented in these situations, and certain workers are far more vulnerable to employer exploitation and abuse.

Of these, the experience of Chinese restaurant workers² stands out as a powerful illustration of the atrocities suffered by some of the most vulnerable workers in our economy, as well as a demonstration of the complete failure of the Ontario government to act on its legal obligation to protect workers.

Over the past three years alone, Metro Toronto Chinese and Southeast Asian Legal Clinic (MTCSALC) was contacted by over 600 clients with complaints about employment standard violations at their workplace. Many of these clients are working in the restaurant business.

These experiences are not new, and sadly they are not surprising. Almost thirty years ago, community agencies serving the Chinese community in Toronto became concerned about the increasing reports of exploitation of Chinese restaurant workers and undertook community-based research to better understand and document these experiences. The research focused on workers of Chinese descent working in restaurants in the then “new” Chinatown area near Dundas Street and Spadina Avenue in Toronto. The result was a report that documented the experiences and poor working

conditions of 100 Chinese restaurant workers, their educational background, the types of services they sought at community centres, and the barriers they faced in settling in Toronto³.

Given the persistent reports of employer exploitation and abuse of Chinese restaurant workers, MTCSALC decided to survey clients to understand the scope and scale of the problem, and determine what if anything had changed in the thirty years since the first needs assessment of this nature.

The resulting report paints a compelling portrait of their experiences in the workplace. It highlights the routine and pervasive violations of Employment Standards and Occupational Health and Safety Acts by restaurant employers, and is an urgent call to action for all stakeholders concerned including governments, labour organizations and community groups.

The report is based on a survey of 184 workers of Chinese descent employed in restaurants in the Greater Toronto Area between January 2013 and March 2016. Since workers often work for more than one restaurant at the same time, the survey attempted to capture the experience with each restaurant, as opposed to a compiled survey of the experiences of each worker at multiple restaurants. A total of 263 survey responses were received. It is possible that the same employer(s) owned more than one restaurant, but as the actual owner is often not known to the worker the survey did not attempt to capture those details.

1. Vulnerable Workers and Precarious Work: Final Report. Law Commission of Ontario. December 2012.

2. ‘Chinese’ refers to the workers’ ethnicity, not the restaurant.

3. Chinese Restaurant Workers Advisory Committee. Report of the Chinatown Restaurant Workers Needs Assessment. Toronto: University Settlement, 1988.

Given the growth of the Chinese population across the Greater Toronto Area over the past thirty years, the survey included responses from Chinese workers working at restaurants across this region. Not all of the restaurants are Chinese restaurants, i.e. restaurants serving Chinese cuisine.

Participants were identified using the MTCSALC client database, other community-based organizations that provide services to the Chinese community, and through a network of Chinese restaurant workers. As such, there is a high probability that there is an over-representation of those who have encountered legal or other issues at their workplaces for which they require assistance. The study was conducted via survey questionnaires administered through telephone and face-to-face interviews, and completed individually by workers at two different focus groups following a group introduction of the survey instrument.

The survey found there is a relatively high turnover rate among the Chinese restaurant workers interviewed. They were employed in various occupations such as cook (includes cook, assistant cook, sushi chef, dim sum chef, barbecue and deep fry chef), waiter/waitress, and general help (including kitchen help, delivery, dish washer, cashier, and receptionist). Some were employed in different occupations in different restaurants. The majority of workers worked full-time and long hours, with 59% reporting they worked 40 hours or more per week.

The survey found widespread and persistent violations of workers' rights and entitlements under the *Employment Standards Act, 2000 (ESA)* and the *Occupational Health and Safety Act, 1990 (OHSA)*.

A significant number of workers were paid less than minimum wage, and were routinely denied overtime pay, holiday pay and vacation pay.

Many workers reported they were owed wages by employers, often in the range of several thousand dollars. Among those who lost their jobs, the majority were denied notice or pay in lieu of notice. Payroll violations were reported to be widespread and persistent. Not giving workers a payroll slip, under-reporting work hours in payroll slips and employer records, and not making statutory payments are among the typical payroll violations reported by workers.

Workers also reported routine violations of the OHSA at their workplaces, ranging from lack of appropriate employer response to workplace accidents and injuries, use of intimidation and threats to prevent workers from filing a Workplace Safety and Insurance Board (WSIB) claim, and use of delay tactics and false records to deny workers access to the full WSIB entitlement.

Most telling, the workers' experiences showed that many factors made them more vulnerable to employer exploitation and abuse, including immigration status, age, gender and their intersections, language barriers, lack of awareness or knowledge of their employment standards and occupational health and safety rights, and systemic barriers in filing a complaint or navigating the claim process at the Ministry of Labour (MOL) and the WSIB.

The report findings with respect to accessing the MOL complaints or claims process show that the system is not capable of addressing the present worker realities, and is further characterized by systemic barriers that deny access to most workers. Many workers reported that they did not have confidence in MOL, and many did not file a complaint or claim. Workers reported problems such as the lengthy time taken to process a claim, and not receiving the full monies owed by the employer nor a partial amount even if the claim was successful. Equally troubling is the practice of putting the onus on the worker to prove all the details of a claim,

and providing advance notice of a workplace inspection thus giving employers time to hide evidence of ESA and OHSA violations.

While the findings of this study illustrate the experience of more than a hundred Chinese restaurant workers in the GTA, it is by no means representative of the experience of all such workers, nor all such workplaces. Some of the surveys were only partially completed, and therefore do not reflect the full range of experiences of those surveyed. Certain questions were omitted from the survey to preserve worker anonymity and to safeguard them from job loss as a result of participating in the survey. Thus there is minimal information about the employer and the workplace.

The results paint a useful picture of a general pattern of ESA and OHSA violations among GTA restaurants. There is scope for a future expanded study with more detailed questions about the workplace and methods used by workers to cope with or challenge rights violations, together with in-depth case studies.

The report endorses the 62 recommendations in the 1988 report of the Chinese Restaurant Workers Advisory Committee⁴. It recommends the adoption of a “wish-list” of changes suggested by workers to improve their working conditions and hence their lives, and puts forward an additional 16 recommendations (many of these echo the recommendations from the 1988 report, but were never adopted, with one or two exceptions).

Workers’ “Wish-List”:

- a. More use of preventative measures by the Ministry of Labour, including the use of audit as a tool to promote workers’ rights and monitor business compliance with the ESA.
- b. Politicians should meet with grassroots workers to work on their issues.
- c. Employers should be required to buy insurance to cover unpaid wages in case their business shuts down.
- d. Government should conduct more research on labour market issues, and provide more legal education for workers.
- e. Publicly name and shame bad employers to persuade other employers to comply with the laws.
- f. Create an anonymous Ministry of Labour tip-line for workers to report the non-complying restaurant and for the Ministry to conduct active inspections.
- g. The Ministry of Labour should conduct more inspections similar to those performed by Public Health.
- h. The Ministry of Labour should hire more Chinese-speaking investigators who could communicate directly with workers.
- i. Employment Standards Officers and Occupational Health and Safety inspectors should work in collaboration as the violations often exist simultaneously.

4. See Appendix B.

MTCSALC Recommendations:

1. That the Ministry of Labour develop and implement a long-term strategy in consultation with workers and community agencies that assist workers, to address employment standards violations in the restaurant industry. Proactive inspection at restaurants should be adopted as a key component of the enforcement system, to support the claim-based investigation on individual cases.
2. That the Ministry of Labour coordinate restaurant inspections with Canada Revenue Agency in order to target restaurant owners who submit improper or even fraudulent payroll tax deductions.
3. That the Ministry of Labour require all restaurants to post an up-to-date work schedule for all the workers in the workplace and in a place where all workers can see it, similar to the requirement to post the Employment Standards Poster.
4. That, upon the completion of an inspection, the Ministry of Labour issue a “Green Pass” to restaurants who meet the ESA requirements, similar to the “Green Pass” issued by the City’s Public Health department.
5. That the Ministry of Labour set up a third-party complaint mechanism to allow workers to report ESA violations to a third party such as a community-based agency and to follow up with inspection and necessary enforcement.
6. That the Employment Standards Branch of the Ministry of Labour implement an immediate and comprehensive inspection sweep of the restaurant industry, in particular of the Chinese restaurants in the GTA, for their compliance with the ESA.
7. That the Provincial Government re-establish the Wage Protection Fund to compensate workers for their unpaid wages and the statutory termination and severance pay.
8. That the Ministry of Labour increase the “administrative fees” for each ESA claim to an amount equivalent to at least 30% of the amount owed to the worker.
9. That Ontario’s Changing Workplace Review consider and adopt the recommendations in this Report.
10. That the Employment Standards Branch develop a more effective complaint procedure that does not place the full onus of proving the claims on the workers, and one that will allow the worker to remain anonymous.
11. That the Ministry of Labour develop Occupational Health and Safety training materials in Chinese (and other languages most commonly spoken by immigrants in Ontario).
12. That the Ministry of Labour develop curricula on Employment Standards protections to be incorporated into a core component of all English and French language training programs and other programs for newcomers.
13. That the Ministry of Labour work with immigrant settlement agencies, legal clinics and other workers’ rights organizations to develop effective strategies in outreach and education among workers, and enforcement of the law among employers.
14. That the federal and provincial governments collaborate to provide official language training services to all those who need it, using flexible delivery methods to accommodate workers’ irregular work schedules and other access challenges.

15. That the provincial government provide stable resources to community organizations to promote awareness of ESA and OHSA among immigrant and racialized workers, including through use of multilingual public education.
16. That the provincial government give stable funding to Community Legal Clinics and Community Health Centres that work with vulnerable worker populations, particularly immigrant and racialized workers, to support their clients to secure their ESA and OHSA rights and entitlements.

The report is a compelling call to all relevant stakeholders to act to reduce, if not eliminate the exploitation and abuse suffered by Chinese restaurant workers. It also raises important questions about the personal responsibility of all Ontarians to exert pressure to demand the just and ethical treatment of all Ontario workers, and particularly those in the restaurant sector.

Despite their vulnerability and the pervasive fear in speaking out, 184 courageous workers participated in the study. Whether the study participants represent the experience of a small number of Ontario Chinese restaurant workers, or whether their experience is symptomatic of a larger problem, the voices of these workers deserve to be heard and their search for fair treatment deserves our support.

2. Why A Report On Chinese Restaurant Workers?

Almost thirty years ago, several community agencies serving Chinese immigrants decided to launch a needs assessment of Chinese restaurant workers working in the then “new” Chinatown area near Dundas Street and Spadina Avenue in Toronto. The result was a report profiling one hundred Chinese restaurant workers and their experiences working in the restaurant business, their educational background, the types of services they sought at community centres, the barriers they face in settling in Toronto, and above all, their poor working conditions.⁵

This first ever report on Chinese restaurant workers documented the rampant violations of the workers’ basic employment standards by their employers. The workers were routinely denied overtime pay. Many were not paid minimum wage, vacation or public holiday pay. Workers also complained about working long hours with no benefits in a stressful and hazardous work environment. Many had to contend with health issues while others experienced workplace injuries and tried to seek compensation. The report called on all levels of government, the labour movement, as well as the Chinese Canadian community to work collaboratively to address these concerns in order to help improve the lives of Chinese restaurant workers.

Thirty years later, we wondered, are restaurant workers of Chinese descent faring any better? Based on the anecdotal evidence and casework statistics collected by the Metro Toronto Chinese & Southeast Asian Legal Clinic (MTCSALC), the answer is no. Indeed, many of the same issues raised thirty years ago are still endemic today.

Over the past three years alone, MTCSALC had been contacted by over 600 clients with complaints about employment standard violations at their workplace. Many of these clients are working in the restaurant business. Since late 2013, MTCSALC has been assisting roughly 60 former employees of the four Regal Chinese restaurants⁶ in the Greater Toronto Area (GTA), who collectively are owed more than \$600,000 in wages, statutory pay, termination and severance pay.

While there is more public awareness of workers’ rights today compared to three decades ago, and the provincial Government has in recent times taken some modest steps to strengthen workers’ protection under the Employment Standards Act⁷, violations of workers’ rights remains commonplace particularly for racialized and immigrant workers.

5. Chinese Restaurant Workers Advisory Committee. Report of the Chinatown Restaurant Workers Needs Assessment. Toronto: University Settlement, 1988.

6. The four Regal restaurants were owned by the same directors, Ellen Pun and her partners. Pun shut down these restaurants between late 2013 and early 2014, with no prior notice to her employees. After nearly two years of in-depth investigation, the Ministry of Labour in June 2015 issued an order against Pun and her 19 companies to pay back their employees a total of \$457,443.78. The actual amount owed is \$676,693.79, but the employees’ claims were capped at \$10,000 each under the *Employment Standards Act* provisions that were in force at the time of the claims. As of the date of this Report, the Ministry of Labour has yet to collect any money from Pun, who had filed for personal bankruptcy. The Ministry has also not taken any steps to prosecute Pun and her partners for their gross violations of the ESA.

7. S.O. 2000, c.41

The Law Commission of Ontario confirmed in *Vulnerable Workers and Precarious Work: Final Report, 2012* that members of racialized communities and immigrants are over-represented in precarious employment, and these jobs are predominantly found in non-unionized workplaces. As such, they are also among the most vulnerable workers in Ontario, and typically look to provincial employment standards legislation to protect their basic rights in the workplace.

Chinese restaurant workers are among those who are the most marginalized and the least able to protect their own rights without outside intervention, which in turn increases their vulnerability to exploitation by employers. While they were once concentrated in downtown Chinatown in Toronto, Chinese restaurant workers are now spread out all over the GTA, working in a variety of restaurants that serve a wide range of cuisine. A typical Chinese restaurant worker who seeks help from MTCSALC is a male between the ages of 30 to 50, who does not speak English or French as his first language and as such faces linguistic and other barriers in accessing the labour market, as well as legal services and advice. A typical claim the MTCSALC files with the Ministry of Labour (MOL) on behalf of the worker results in an order to pay against the employer, but with no further action from the Ministry to collect any of the money owed to the employee.

Like many others who are concerned about workers' rights and have advocated for tougher laws, MTCSALC has also called on Governments and unions alike to develop new models to protect vulnerable workers. Yet so far, these calls for action seem to have fallen on deaf ears.

What more can advocates do to get the attention of policy makers?

And further, to what extent are we - the patrons of restaurants, responsible for the restaurants' failure to honour and respect their employees' rights? When we patronize a restaurant, we expect to receive good service and good quality food at a good value. But we never stop to wonder if restaurant workers are underpaid and overworked, and whether they are the ones who are paying too high a price to meet customer needs.

With this Report, we hope to once again point out the urgent need for action to ensure that all restaurant workers enjoy the basic rights they are entitled to under the law, regardless of their immigration status, and ethno-racial and socioeconomic backgrounds.

We hope this report will also serve as a wake-up call to all Ontarians, so that we all become more aware and mindful of the sacrifices (the sour) that many restaurant workers have made, in order to satisfy our demand for good value restaurant food (the sweet). While we do not suggest Ontarians should stop eating out for fear of condoning bad business practices, each one of us can help support workers' struggle for respect and for a decent job by demanding that our political and business leaders to do the right thing and protect restaurant workers who are among the most vulnerable to exploitation.

3. Methodology

3.1 Description of Survey Design and Interview Process

The results of this study are based primarily on confidential, and voluntary personal interviews with 184 Chinese restaurant-workers.

A questionnaire was designed to collect responses from Chinese workers who have worked in a restaurant since 2013. The questionnaire was translated into the Chinese language as a significant number of these workers are not fluent in English. Telephone interviews and in-person interviews in either Cantonese or Mandarin were conducted to collect confidential responses from Chinese-speaking workers. The survey was carried out between January 2016 and March 2016.

To develop a potential list of interviewees, MTCSALC went through its client database to identify all the current and past clients who had contacted our clinic and had self-identified as having worked in a restaurant between 2013 and 2015. From this initial list, clients were contacted either by MTCSALC staff or by one of the two project volunteers.

In addition to telephone interviews, some clients came to the MTCSALC office in-person to respond to the survey. The questionnaire was administered by MTCSALC staff or by the project volunteers.

Some of the workers interviewed had worked in more than one restaurant since 2013. A separate questionnaire was completed for each of the restaurants the client had worked in, so as to capture their full working experience and to ensure that MTCSALC obtained all relevant and accurate data for the study.

In addition to its past and present clients, MTCSALC also reached out to member agencies of the Chinese Interagency Network (CIN) Labour Committee, as well as other community agencies in Toronto that provide services to members of the Chinese communities. The survey and the questionnaire were discussed and shared with the staff of these community agencies. This was done initially through an in-person meeting at the CIN Labour Committee. In addition, the two project leads also engaged with some of the community agencies to provide background information about the project and to solicit their input. Staff of these community agencies then conducted in-person questionnaire interviews with their clients who have worked, or are presently working in restaurants. The completed questionnaires were shared with MTCSALC.

3.2 Focus Group Meeting

Efforts were also made to reach out to the broader Chinese community. This was done in part by issuing a press release that was sent out to the Chinese language media and was posted on www.51.ca, a Chinese language website targeting the Chinese community in Toronto.

Following the various outreach efforts, a focus group session was conducted with 15 Chinese high school students of Central Technical School in Toronto. These students work part-time in different Chinese restaurants. They completed the questionnaire based on their working experiences, and further shared their thoughts and recommendations in the focus group.

The two project leads also attended two sessions with the Toronto Chinese Catering Evangelistic Fellowship at a church in Markham to administer the questionnaire to attendees. The Fellowship was created specifically for Chinese restaurant workers. One of the Fellowship members had approached MTCSALC after hearing about our project. About 40 Fellowship members, all currently working in the restaurant industry, participated in these sessions. Following an introduction and explanation of the questionnaire and survey, each participant completed an individual questionnaire.

3.3 Limitation of Methodology

Due to a number of factors including resource limitations, we were unable to conduct a random survey of the Chinese community at large, in order to identify those members of the community who are or have been restaurant workers. As a result, the interviewees of this study have all been in contact either with a legal clinic or with a community agency. It is therefore more likely that these restaurant workers have encountered legal or other issues at their workplaces for which they require assistance.

That being said, the fact that so many of them report similar workplace experiences in not just one restaurant but in multiple restaurants suggests that their stories are more reflective of a general trend within the restaurant industry, rather than isolated incidents involving a “few bad apples”.

At the end of the day, whether it is sheer bad luck that these 184 restaurant workers have all experienced some sort of workplace violations, or whether it is a pandemic that afflicts the entire restaurant industry, the voices of these workers deserve to be heard and their search for fair treatment deserve our support.

4. Background And Profile

The study on the Chinese restaurant-workers and their workplace experiences confirms one of the key findings of the Vulnerable Workers and Precarious Work: Final Report by the Law Commission of Ontario, that members of racialized communities and immigrants are over-represented in the precarious employment that is found predominantly in non-unionized workplaces.

We interviewed 184 Chinese restaurant workers about their work experiences in a restaurant (or restaurants) between January 2013 and March 2016. As some of the workers worked for more than one restaurant during this time period, we received a total of 263 responses⁸.

We found that there is a relatively high turnover rate among the Chinese restaurant workers we interviewed; they occupy various work positions in the restaurant; most work full-time; and the majority work long hours. 59% of the responses indicate working hours of 40 or more per week.

4.1 Number of Restaurants the Workers Worked At

Of the 184 workers we interviewed, 95 (51%) worked in only one restaurant between January 2013 and March 2016; 54 (29%) worked in two restaurants; 23 (13%) worked in three, and 12 (7%) worked in more than three restaurants.

4.2 Location of the Restaurant

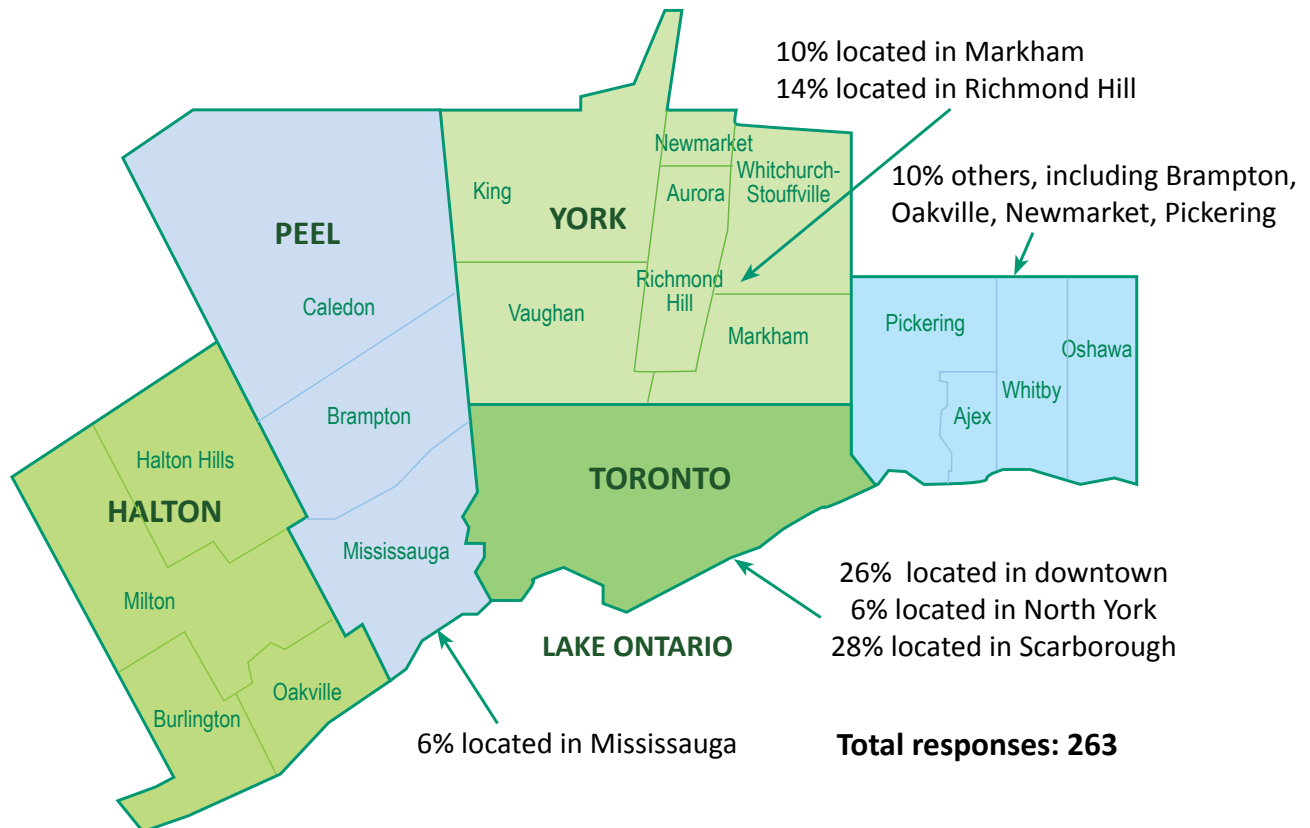
Of the 263 responses we received, 26 % of the restaurants are located in downtown Toronto, 6% in North York, 28% in Scarborough, 10% in Markham, 14% in Richmond Hill, and 6% in Mississauga. 10% of the GTA restaurants grouped into the category of 'Other' (because numbers were too small) are in Brampton, Oakville, Newmarket, Pickering, Oshawa, and Vaughan. A much smaller number of responses also included in this category pertain to restaurants located in the non-GTA cities of Niagara Falls, Peterborough, Barrie, and Windsor.

4.3 Workers' Position at the Restaurant

The workers we interviewed reported that they worked in various positions in the restaurant. For the purposes of this report, we classify the positions into the following four categories: supervisor, cook (including cook, assistant cook, sushi chef, dim sum chef, barbecue and deep fry chef), waiter/waitress, and general help (including kitchen help, delivery, dish washer, cashier, and receptionist). A worker employed as a chef in one restaurant may not have worked as a chef in the other restaurants where he or she was employed at another time

8. We asked workers to complete a separate response for each of the restaurant that they worked at during January 2013 and March 2016. To ensure anonymity, we did not ask workers any of the restaurants' names because we understand many of them still work there. More importantly, we were more interested in examining their restaurant working experience than where they worked. The 263 restaurant working experiences therefore do not represent 263 distinct restaurants in the GTA because any given two workers we interviewed might have worked at the same restaurant. As well, the workers did not answer all the questions in the survey, with the result that for some questions, the total number of responses is less than 263.

– meaning a worker with more than once place of employment may be employed in different positions in the different restaurants. Based on the responses we received, we found that 4% worked as supervisor, 36% as cook, 35% as waiter/waitress, and 25% as general help.



4.4 Full-time or Part-time

Similarly, if a worker worked full-time in one restaurant he or she may not have worked full-time in the other restaurant(s) of employment. Based on the responses we received, 33% reported they worked part-time, and 67% reported having full-time employment.

4.5 Average Number of Working Hours in a Week

The following is the average number of working hours in a week based on 263 responses: 41% reported working less than 40 hours; 27% reported working between 40 and 50 hours; 28% reported working between 51 and 60 hours; and 4% reported working over 60 hours.



5. Survey Findings

5.1 Employment Standards Act Violations

Employment Standard Act (ESA) violations are rampant according to the 184 Chinese restaurant workers we interviewed. While we do not assert that our study is a reflection of the general practice representing all the restaurants in the GTA, the results do suggest there is a general pattern of ESA violations in these workplaces.

a. Minimum Wage, Overtime, Public Holiday, Vacation Pay and Termination Pay

“The employer employed a number of workers on probation, and they are paid low wages with no statutory deduction, and were let go within 3 months of time”
- Participant

“Why would employers pay employees more when they can pay them less?”
- Participant

We asked the workers if they were paid at least the minimum wage, overtime pay, public holiday pay, vacation pay and termination pay. The following table provides a summary of the responses we received (represents number of restaurants).

Overtime pay violation is one of the worst and most common types of ESA violations. As indicated above, 27% of the workers reported working 40-50 hours per week, 28% worked 51-60 hours, and 4% worked over 60 hours, but only 7% reported receiving overtime pay. Overtime pay applies to work over 44 hours per week. Taking into account only those workers who worked for more than 44 hours a week, we find that 89% did not receive overtime pay. Only 11% received overtime pay. Many workers said that it is the norm for employers not to pay overtime in the restaurant business. A number of respondents explained that their employer paid their wages at a fixed weekly amount. While they appreciated having a stable income, they found it often meant they worked for fifty or more hours a week without receiving any overtime pay.

In addition, workers reported the many “innovative” ways that employers used to avoid paying the full statutory entitlements. For instance, one worker reported that her employer paid her an additional four (4) hours as public holiday pay when she worked on a public holiday. Another worker said he only received 50% of the public holiday pay. A number of respondents reported that the employer used the money collected in tips to supplement the workers’ wages so as to evade their obligation to pay minimum wage.

	Yes (in percentage)	No (in percentage)	N/A or don't know
Minimum Wage	57	43	
Overtime Pay	7	52	41
Public Holiday	35	61	4
Vacation Pay	35	57	8 (don't know)
Termination Pay	11	19	70

b. Termination Pay or Notice

We asked the workers whether they received termination pay or notice when they were laid off, and whether they had any problems collecting unpaid wages when they were terminated, including wages withheld by employer.

70% of the responses indicated that this question did not apply to them. Of the remaining 30% responses, 38% received termination pay while 62% did not receive any termination pay.

c. Unpaid Wages

20% of the responses indicated wages were owed by the employer; 77% did not, while 3% said they didn't know if they were owed any wages.

Of the 20% responses that reported unpaid wages, 22% had quit their job, 40% did not quit and 38% had lost their job due to restaurant closure.

d. Public Holiday Pay/Vacation Pay

With respect to public holiday pay, 35% of the responses indicated they received public holiday pay, 61% did not, and 4% said they don't know.

Regarding vacation pay, 35% of responses reported they received vacation pay, 57% said no, and 8% said don't know.

Similar to overtime pay, this is another area where ESA violation is commonplace, with only 35% of responses reporting they received public holiday and vacation pay.

e. Methods Of Payment, Payroll Slips, Unpaid Hours and Reprisal

"There is not a single Chinese restaurant that I am aware of that pays all the statutory pay to its employees."

Participant

"My observation is that most restaurants in Chinatown only pay cash, and most employees I know want to pay tax, but they have no choice but to work in cash jobs and make a living. People actually want statutory deductions in all of their salary, not just a portion of it. But it's usually the employer who decides how much deductions will be made."

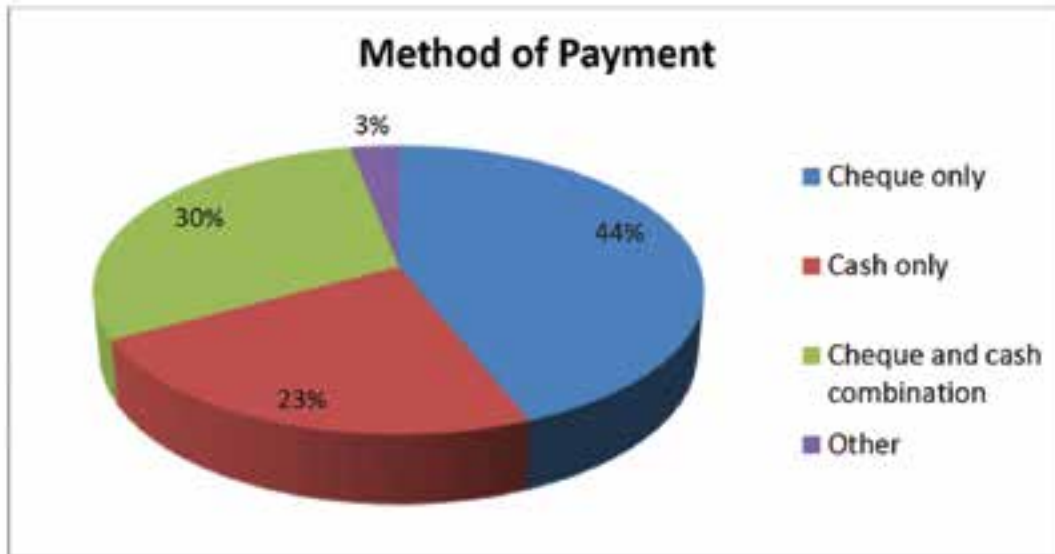
Participant

One of the questions we asked the workers is, what was the method of payment. At MTCSALC, we often see clients reporting that they are paid by a combination of cash and cheque. There are many issues associated with this method of payment. For a start, by paying cash employers hope to avoid their obligations to pay taxes and as a result, employees do not get to contribute as much to the Employment Insurance (EI) and Canada Pension Plan (CPP) programs. When it comes time to claim these benefits, workers will be hard-pressed to prove that they are entitled to more than what their employers have deducted from them.

In addition, being paid by cash makes it difficult for the workers to prove their wage rate and hours of work in case of a claim with MOL. Indeed, despite being aware that this kind of half-cash-half-cheque method of payment is widespread practice in the restaurant industry, MOL persists in placing the onus on the worker to prove his or her claim every time one is filed. Without proper pay stubs and paycheques to use as evidence to support their claims, the

MOL order to pay ends up giving many workers a lot less than what they should be legally entitled to receive even if they have been successful with their claim.

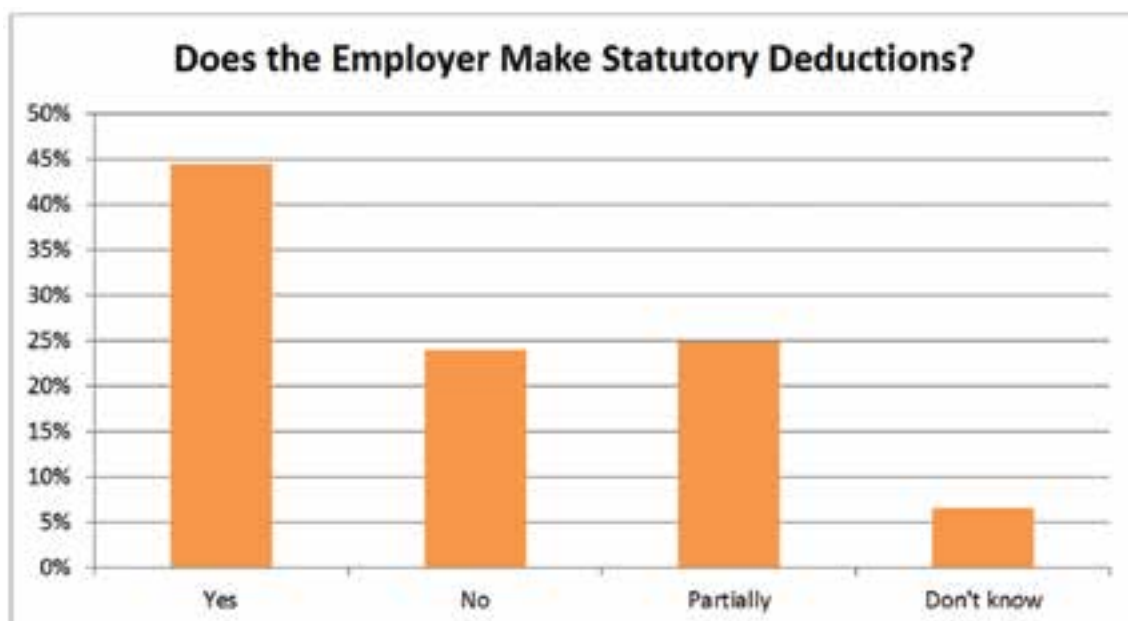
The findings with respect to the method of payment are as follows:



As evident from the data, a glaring 53% of responses indicate workers were paid either in cash exclusively (23%), or a combination of cheque and cash (30%), while only 44% of the responses report they were paid exclusively in cheque. 3% of the responses report they received their pay through direct deposit (represented as 'Other' in the chart).

f. Statutory Deductions

An important question that arises in relation to the method of payment is whether the employer makes statutory deductions such as payroll tax, CPP and EI. The findings with respect to this issue are as follows:



When an employer fails to make the statutory deductions, the employer also fails to file the employee's income tax deduction. Indeed, at MTCSALC, we have encountered many cases involving workers having to file income tax as "self-employed", even though in reality they are not. In so doing, workers are denied access to their EI and CPP entitlements, and to WSIB benefits if they suffer workplace injuries. They face additional barriers to accessing government services or programs that require them to prove their income and their employment (such as when they file an application for immigration sponsorship of their family). Many of these government services and programs were developed to ensure that the most vulnerable people in Canada could access government assistance when it was required. Yet, many Chinese restaurant workers, who constitute one of the most vulnerable groups of workers, are denied such access because their employers are failing to meet their statutory obligations.

In general, workers are aware of the importance of making statutory deductions, and would try to raise the issue with their employers. However, many workers said that their employer only wanted to pay them in cash. Some workers reported that they would persist in raising the issue with their employers until the employer finally obliged and put them on the payroll. Persistence did not win out in every instance, and some workers were fired for asking to be paid properly and put on the payroll.

Statutory deductions are often termed by some employers as a privilege reserved for permanent workers. Some workers reported the employer would only pay them in cash during the probationary period, but would make statutory deductions once they passed probation.

Perhaps not surprisingly, only 59% of the workers surveyed reported that they received payroll slips from their employer, while 41% reported they did not.

While we did not ask this question in the survey, it is the experience of MTCSALC that the payroll slips issued by the employer do not always correspond to either the actual pay of the workers or the actual number of hours worked. For instance, many restaurants will only include the cheque portion of the employee's pay on the payroll slip, and not the cash portion. And in many cases, regardless of the actual number of hours worked, the payroll slip would show that an employee has worked 44 hours or less, which is just under the limit for overtime pay.

In addition to the ESA violations described above, there are many other issues regarding pay, including the following: actual wage received is different (lower) from the negotiated wage; unauthorized deduction of workers' wage for breaking kitchen supplies, like a bowl; persistent delays in payment; bounced cheques; underpayment.

Many workers feel powerless to bring up these issues with the employer. When some bravely do so, employers usually dismiss their claims by stating that their own record of hours or pay is the correct version.

We also asked the workers whether they were penalized with reprisals by employers for asserting their ESA rights. 3% reported yes, 35% answered no and 62% indicated not applicable.

5.2 Occupational Health and Safety Violations

“I earn my living by working very long hours, and due to the long working hours, I developed illness and I had to take 6-month leave from work without any compensation”

Participant

As can be expected, most of the time ESA violations occur in tandem with OSHA violations in the workplace. For example, one worker said that he was forced to continue working after injuring his finger while on duty, because his employer threatened him with not paying the \$3000 in wages that had been withheld if he stopped working.

We asked the workers if they had witnessed or were aware of any workplace injuries or health and safety concerns in the restaurant, and if these incidents were reported to the Workplace Safety and Insurance Board (WSIB) or the MOL.

29% (74 responses) reported witnessing or being aware of workplace injuries, health or safety concerns in the restaurant.

31% of the 74 responses said the workplace injury was reported to WSIB, 58% said the incident was not reported to WSIB, and 11% said “Not Applicable.”

The fact that such a high percentage of workplace injuries were not being reported to WSIB is most likely a result of the power imbalance inherent in the employer-employee relationship, which was noted by many workers.

For example, many workers reported that their employer or manager told them not to report the workplace injuries to WSIB. Some workers reported receiving threats from the employer or the manager if they attempted to file a WSIB

claim. One worker said that he was threatened by his employer not to make a WSIB claim because it would “bring troubles to himself”. The employer had added that he would hire a professional accountant to defeat his WSIB claim. The worker felt discouraged because he knew that the employer could easily manipulate the work records and undermine his WSIB claim.

If workers decided to file a WSIB claim despite their employer’s demands and threats, the employer or manager would use unscrupulous tactics to interfere with the process. These tactics include intentionally delaying submission of their documents to WSIB, or reporting to WSIB that the injured worker does not work full-time to decrease the amount of compensation. Additionally, employers would sometimes ask injured workers to take days off without pay instead of filing a WSIB claim.

5.3 Precarious Working Conditions

“Due to the pool of workers available, including international students, visitors and people without status—some of them I know only receive \$3.50 per hour, we are treated as disposable because employers could fire us and easily get replacements. As a result, the minimum standard is being pushed down. People are willing to work for less.

Participant

The precarious working conditions illustrated are not limited only to ESA violations. Chinese restaurant workers are increasingly seeing themselves as disposable workers.

a. Workers' Vulnerability

It is evident from this study that Chinese restaurant workers constitute one of the most vulnerable groups of workers who consistently experience severe ESA violations and unsafe working conditions. Among this group are sub-groups of workers who are particularly vulnerable to exploitation because of their age or immigration status. Older workers, immigrants, workers without legal resident status, and workers without permanent resident status (but with the legal right to work) including international students and visitors are often taken advantage of by employers because of the additional barriers to employment these workers face.

As one worker said, older workers tend to be relegated to more labour intensive and least desirable positions such as dish washing, and they are often paid only in cash without statutory deductions, rendering them ineligible for social protections like EI. Some of the older workers have been sponsored by adult children in Canada. In such cases, the sponsor has signed an undertaking with the Government of Canada to provide for their parents during the sponsorship period. Older workers who do not wish to be financially dependent on their adult children would actively seek out jobs in Chinese restaurants, despite the harsh working conditions, often because these are the only jobs they can find. As a result of immigration law changes in 2011, the sponsorship period for parents and grandparents has doubled from 10 to 20 years, with financial and other consequences for the sponsor as well as those who are sponsored.

Additionally, workers without legal resident status are also particularly vulnerable to exploitation by their employers. Their lack of status makes it more difficult for these workers to pursue their rights, given the fear that their immigration status would be exposed and they

would be at risk of detention and deportation. Not surprisingly, employers take advantage of these workers often by paying them at a lower rate than other workers, and much lower than the minimum wage. One worker without legal resident status revealed that she was forced to leave after she experienced sexual harassment from customers and the employer refused to take any action to protect her.

a. Employer's Abusive Behaviour

"I was often being scolded at and poorly treated by the employer who constantly pressured me to work faster and harder. I was basically doing two people's work and the employer was still not satisfied. I feel like I was overworked and was not being respected. It's not fair that I worked 60 hours, but the employer's records show I only worked 44 hours."

Participant

In addition to the persistent and widespread ESA violations already mentioned, many Chinese restaurant workers also experience psychological abuse from their employers. Many feel they are powerless to stand up to and confront their employers. For example one worker said that it is normal for restaurant workers to be scolded and otherwise verbally abused by employers when they make mistakes. Workers are also routinely subject to unreasonable demands from employers with respect to workload. They typically try to comply with the demands as they could easily lose their job for making basic requests. Due to their lack of English proficiency, workers recognize that there are limited employment opportunities available to them in the labour market, and their next job is likely to be with yet another Chinese restaurant where ESA violations and abusive work culture are pervasive.

b. Unpredictable Schedule

“The employer doesn’t follow the schedule. He just sends employees home when he doesn’t need them. Sometimes he makes people go to work right away, with a 2-hour notice”

Participant

Like many workers in Ontario who experience erratic work scheduling, which is not protected by the ESA, many restaurant workers reported that their schedule is often changed without advance notice. One worker reported that the employer would send workers home when business was slow, but then demand they come back to work with less than two hours of notice.

5.4 Ministry of Labour (MOL) claim process

“I feel MOL is doing nothing. They don’t understand minority workers’ situation at the restaurant. We become powerless.”

Participant

The focus of this report is not only the working conditions experienced by Chinese restaurant workers, but also the effectiveness of the present legal system in enforcing workers’ rights. We asked workers a number of questions about their experience in filing ESA claims with MOL and with the claim process. Their responses are troubling to say the least.

In total, only 49 responses indicated having filed an ESA claim with MOL, representing 20% of a total 251 responses⁹. Contrast this with a very

high percentage of violations (43% in minimum wage, 89% in overtime pay, 63% in public holiday pay and 62% in vacation pay) reported in the survey, and we can conclude that the majority of the ESA violations were never brought to the attention of MOL.

Of those who filed a claim with MOL, 44 responses (96% of the total 46 responses) required assistance in order to file their claim. Of these 94% did not have to pay for this assistance.

We asked workers whose claims were completed how long it took for their claims to be processed, and whether they received any of the monies owed to them.

43 responses reported that their ESA claim process was completed. Of these, 37 responses (86%) reported their claim took more than two years to complete, 1 response (2%) reported the claim was completed within one to two years, and 5 responses (12%) had their claims completed in less than a year.

MOL’s lengthy processing time to deal with their ESA claims has proven to be frustrating and detrimental for the claimants.

With respect to the collection of monies owed, 89% reported their claims already had a decision from MOL. But only 8 respondents (19% of the 43 completed claims) had received monies owed to them while 81% had not received any monies owed.

Based on this survey alone, it would appear that the success rate of the Ministry in getting back wages owed to workers is quite dismal. We assume the low recovery rate is likely due to the insolvency and closure of restaurants involved.

9. Some of the respondents did not answer this question.

Of the remaining 80% of survey responses which did not lead to an ESA claim, 41 of the respondents gave reasons for not filing an ESA claim with MOL. The most common reasons reported were that they did not know how and where to file their claim when faced with these issues, and that they did not know the law. Some workers said their lack of English proficiency was another barrier to filing a claim.

Other reasons reported by the respondents for not filing a claim include: the fear of losing their job; the need to maintain a good relationship with their employer; their preference to negotiate directly with the employer to work things out; the lack of confidence in MOL; and finally, the closure of the restaurant.

5.5 MOL Inspections

“I have been working in the restaurant sector since I arrived in Canada in 2002...I have never once witnessed or heard of MOL inspection in the workplace.”

Participant

From time to time MOL would announce that they have done a “blitz” in some undeclared workplaces in Ontario as part of their efforts to ensure compliance with the ESA. At MTCSALC, we often wonder where these blitzes take place. More specifically, we wonder if MOL has ever sent anyone to the restaurants where our clients work, as part of their “proactive” enforcement.

We decided to pose this very question to our respondents in the survey. Among the 257 responses¹⁰, only 11% reported that they have heard of or seen MOL conduct an inspection or investigation at the restaurant where they worked.

One respondent recalled that just before the inspection, (as MOL would have already provided a notice of inspection to the employer), his employer ordered all the employees who received cash payment to take a day off on the day the MOL inspector was scheduled to arrive.

This kind of inspection method is highly ineffective if the Ministry wants to get a true picture of employer compliance or lack thereof with the ESA. By providing prior notice, MOL is giving employers time to revise their records to give a false image that they are complying with their statutory obligations, and more importantly, to instruct their employees not to report ESA violations.

10. Again, not all the respondents answered this question.

6. Recommendations

“MOL inspection and ESA enforcement is very weak... Regarding the \$15 campaign, even if the minimum wage is raised to \$20 per hour, Chinese restaurant owners would still pay Chinese restaurant workers under minimum wage. Most Chinese restaurant owners are aware of ESA, but they intentionally avoid the obligations because the standard among the Chinese restaurant sector is much lower. ”

Voices of the Workers

While the survey serves the important purpose of highlighting, once again, the extensive and gross violations of restaurant workers’ rights in our city, the study will have achieved nothing if it does not lead to any change.

To start the process for change, we need to begin by listening to the people who are most directly affected by this issue, namely, the workers themselves.

For that reason, we asked the workers to provide us with their “wish-list” of changes that are needed in order to improve their working conditions, and hence their lives.

Below are some of the main suggestions from the workers:

1. More use of preventative measures by the Ministry of Labour, including the use of audit as a tool to promote workers’ rights and monitor business compliance with the ESA.
2. Politicians should meet with grassroots workers to work on their issues.
3. Employers should be required to buy insurance to cover unpaid wages in case their business shuts down.
4. Government should conduct more research on labour market issues, and provide more legal education for workers.
5. Publicly name and shame bad employers to persuade other employers to comply with the laws.
6. Create an anonymous Ministry of Labour tip-line for workers to report the non-complying restaurant and for the Ministry to conduct active inspections.
7. The Ministry of Labour should conduct more inspections similar to those performed by Public Health.
8. The Ministry of Labour should hire more Chinese-speaking investigators who could communicate directly with workers.
9. Employment Standards Officers and Occupational Health and Safety inspectors should work in collaboration as the violations often exist simultaneously.

In addition to the above, MTCSALC also recommends the following measures, many of which echo the recommendations referenced in the first report on Chinese Restaurant workers that was released 30 years ago, but were never adopted (with one or two exceptions):

1. That the Ministry of Labour develop and implement a long-term strategy in consultation with workers and community agencies that assist workers, to address employment standards violations in the restaurant industry. Proactive inspection at restaurants should be adopted as a key component of the enforcement system, to support the claim-based investigation on individual cases.
2. That the Ministry of Labour coordinate restaurant inspections with Canada Revenue Agency in order to target restaurant owners who submit improper or even fraudulent payroll tax deductions.
3. That the Ministry of Labour require all restaurants to post an up-to-date work schedule for all the workers at the workplace and in a place where all workers can see it, similar to the requirement to post the Employment Standards Poster.
4. That, upon completion of an inspection, the Ministry of Labour issues a “Green Pass” to restaurants who meet the ESA requirements, similar to the “Green Pass” issued by the City’s Public Health department.
5. That the Ministry of Labour set up a third party complaint mechanism to allow workers to report ESA violations to a third party such as a community-based agency and to follow up with inspection and necessary enforcement.
6. That the Employment Standards Branch of the Ministry of Labour implement an immediate and comprehensive inspection sweep of the restaurant industry, in particular of the Chinese restaurants in the GTA, for their compliance with the ESA.
7. That the Provincial Government re-establish the Wage Protection Fund to compensate workers for their unpaid wages and the statutory termination and severance pay.
8. That the Ministry of Labour increase the “administrative fees” for each ESA claim to an amount equivalent to at least 30% of the amount owed to the worker.
9. That Ontario’s Changing Workplace Review consider and adopt the recommendations in this Report.
10. That the Employment Standards Branch develop a more effective complaint procedure that does not place the full onus of proving the claims on the workers, and one that will allow the worker to remain anonymous.
11. That the Ministry of Labour develop Occupational Health and Safety training materials in Chinese (and other languages most commonly spoken by immigrants in Ontario).
12. That the Ministry of Labour develop curricula on Employment Standards protections to be incorporated into a core component of all English and French language training programs and other programs for newcomers.
13. That the Ministry of Labour work with immigrant settlement agencies, legal clinics and other workers’ rights organizations to develop effective strategies in outreach and education among workers, and enforcement of the law among employers.

14. That the federal and provincial governments collaborate to provide official language training services to all those who need it, using flexible delivery methods to accommodate workers' irregular work schedules and other access challenges.
15. That the provincial government provide stable resources to community organizations to promote awareness of ESA and OHSA among immigrant and racialized workers, including through use of multilingual public education.
16. That the provincial government give stable funding to Community Legal Clinics and Community Health Centres that work with vulnerable worker populations, particularly immigrant and racialized workers, to support their clients to secure their ESA and OHSA rights and entitlements.

7. Conclusions

Like the settlement workers who thirty years ago called on all levels of government and labour unions to work together to help protect the rights of restaurant workers, we too believe all of these institutions must play a role if we want all workplaces to respect the laws of the land.

As voters, as residents of this city and this province, and as restaurant patrons, we too have a role to play. The next time you patronize a restaurant, think about the people who prepare and cook your food, serve your meals and clean up. Let us all work together to make sure that they are treated with respect and in accordance with the law at their workplaces.

Despite their vulnerability and the pervasive fear in speaking out 184 courageous workers participated in the study. Whether the study participants represent the experience of a small number of Ontario Chinese restaurant workers, or whether their experience is symptomatic of a larger problem, the voices of these workers deserve to be heard and their search for fair treatment deserves our support.

Appendix A:

Survey Questionnaire (English)

1. Contact information

Last name of worker: _____

Tel No. (Optional): _____

2. How many restaurants have you worked for since January 2013? _____

3. Working period: Last employment with a restaurant _____

2nd last _____ 3rd last _____ 4th last _____

From _____ (MM-DD-YYYY) To _____ (MM-DD-YYYY)

4. Location of the restaurant:

Downtown Toronto _____ North York _____ Scarborough _____

Markham _____ Richmond Hill _____ Mississauga _____

Others (please specify): _____

5. Number of years the restaurant had been running:

Less than 2 years _____ 2-4years _____ 5-10 years _____

Over 10 years _____ I don't know _____

6. Number of employees working at that restaurant:

Less than 5 _____ between 5-10 _____ between 11-20 _____

Over 20 _____

7. Work position/Department _____

8. Did you work part time or full time: P _____ F _____

9. Average number of working hours in a week:
- Less than 40 _____ between 40-5 _____ between 51-60 _____
- Over 60 _____
10. Estimated wage per week \$
11. Method of payment:
- Cheque only _____ Cash only _____ A combination of cheque and cash _____
- Other (please specify) _____
12. Does the employer deduct income tax, CPP, EI?
- Yes _____ No _____ Partially _____ Don't know _____
13. If no deduction or only partial deduction, was it your choice or your employer's?
- Mine _____ Employer's _____
14. Does the employer give you proper payroll slips?
- Yes _____ No _____
15. Did your wage meet or exceed minimum wage: Yes ____ No ____
- (Minimum wage is \$11.25 as of 2015-10-01; \$11.00 from 2014-06-01 – 2015-09-30; \$10.25 before 2014-06-01)
16. Did you receive overtime pay? (1.5 X pay for hours over 44 a week)
- Yes ____ No ____ Didn't work overtime ____
17. Did you receive public holiday pay, i.e. Christmas, New Year's Day?
- Yes ____ No ____ N/A ____
18. Did you receive vacation pay (4%) Yes ____ No ____ don't know ____
19. If you got laid off, did you receive any termination pay or notice?
- Yes ____ No ____ N/A ____
20. Did you have any problems with unpaid wages? (including wages withheld by employer)
- Yes ____ No ____ Don't know ____
21. If so, did you have to quit because of unpaid wages?
- Yes ____ No ____ N/A ____

22. Did you get any reprisal from employers? (e.g. punished for asking for employment rights)

Yes___ No___ N/A___

23. Have you ever heard about or seen the Ministry of Labour coming to the restaurant to do inspection or investigation?

Yes ___ No ___

24. Did you witness or were you aware of any workplace injuries, health, or safety concerns in the restaurant?

Yes ___ No ___

25. If yes, were these incidents reported to WSIB or the Ministry of Labour?

Yes___ No___ N/A___

26. Were there any other unfair practices to workers in this restaurant?

27. Have you ever filed an ESA claim to the Ministry of Labour?

Yes ___ No ___

28. If no, what is the reason _____

(If you did not file an ESA claim against this restaurant and did not work at any other restaurant in the past three years, survey ends here.

If you did not file an ESA claim, but had worked at other restaurant (s), please go to next page)

29. Did you receive any assistance when filing this claim? Yes ___ No ___

30. Did you have to pay for this assistance? Yes ___ No ___

31. Did you file your claim in the last 6 months? Yes ___ No ___

32. Did MOL issue order to pay or make a decision? Yes ___ No ___ Still in progress ___

33. Did you receive your monies owed? Yes ___ No ___ Still in progress ___

34. If the process is finished, how long did the process take?

Still in progress ___ Less than 1 year ___ 1-2 years ___ Over 2 years ___

35. How satisfied are you with the MOL Claim process

Very dissatisfied ___ Somewhat dissatisfied ___ Neutral ___

Somewhat satisfied ___ Very satisfied ___ N/A ___

36. Any other comments?

Survey Questionnaire (Chinese)

1. 雇员姓: _____ 电话号码: _____ (可不留)
自从2013年1月, 你在几个餐馆工作过? _____
2. 餐馆的工作时间: (请选择一项) 最后一家 /最后第二家 /最后第三家 /最后第四家:
从 _____ 到 _____
3. 餐馆的地点:
多伦多市中心 _____ 北约克 _____ 士嘉堡 _____
万锦 _____ 列治文山 _____ 密市 _____
其他: _____
4. 这家餐馆经营多久了?
1-2 年 _____ 2-4年 _____ 5-10年 _____ 10年以上 _____ 不知道 _____
5. 这家餐馆有多大? (员工的数量)
不到5个员工 _____ 5-10个员工 _____ 11-20个员工 _____
21个员工以上 _____
6. 你在餐馆的职位或工作部门是什么? _____
7. 你是全职还是兼职?
全职 _____ 兼职 _____
8. 平均每周你的工作小时?
少于40小时 _____ 41-50小时 _____ 51-60小时 _____ 61小时以上 _____
9. 你的工资?
工资是: \$ _____ 每周
10. 工资是如何支付的?
只拿支票 _____ 只拿现金 _____ 支票和现金都有 _____ 其他 _____
11. 雇主有没有扣除收入税, 退休金, 失业金?
有 _____ 没有 _____ 只对部分工资进行扣除 _____ 不知道 _____

12. 如果雇主没有扣除, 或者只对部分工资扣除, 这是雇主还是你的决定?

雇主决定 ____ 你的决定 ____

13. 你的雇主有提供工资单给员工吗?

有 ____ 没有 ____

14. 你的工资至少或超过低工资吗?

有 ____ 没有 ____

最低工资列表:

2015年10月1号后最低工资是\$11.25;

2014年6月1号后最低工资是\$11.00

2014年6月1号之前最低工资是\$10.25

15. 每周工作超过44个小时, 有拿1.5倍的加班费吗?

有 ____ 没有 ____ 没有加班 ____

16. 有拿公众假期 (比如圣诞节, 元旦) 工资, 不管有没有在公众假期当日上班

有 ____ 没有 ____ 不适合 ____

17. 你有拿到年终假期金 (4%)?

有 ____ 没有 ____ 不知道 ____

18. 如果你被解雇, 有解雇通知或者解雇费吗?

有 ____ 没有 ____ 不知道 ____

19. 老板有拖欠的工资吗? (包括雇主押工资)

有 ____ 没有 ____ 不知道 ____

20. 如果有, 你有因为欠工资而离职的吗?

有 ____ 没有 ____ 不知道 ____

21. 你有经历过老板报复吗, 比如向老板要求拿劳工法例应得工资而被解雇?

有 ____ 没有 ____ 不知道 ____

22. 你见过或听说过劳工部来餐馆进行检查或者调查吗?

有 ____ 没有 ____

23. 你见过或者知道在餐馆里的工伤，健康和安事件吗？

有 _____ 没有 _____

24. 如果有， 这些事件有报给工伤局或者劳工部吗？

有 _____ 没有 _____ 不适用 _____

25. 在餐馆里还有其他对员工不公平的操作吗？

26. 你有向劳工部提出申诉过吗？

有 _____ 没有 _____

27. 如果没有， 为什么？ _____

(如果没有提出过申诉， 调查结束)

28. 如果有， 请回答以下问题：

a. 向劳工部提交申诉表格时候需要其他人帮助 有 _____ 没有 _____

b. 是否需要付费才得到帮助 有 _____ 没有 _____

c. 你是在过去6个月内提交申诉的吗？ 是 _____ 不是 _____

d. 劳工部是否有下支付工资命令或者决定 有 _____ 没有 _____ 还在调查中 _____

e. 是否拿回拖欠的工资 有 _____ 没有 _____ 还在调查中 _____

f. 处理申诉时间有多长

还在调查中 _____ 不到一年 _____ 1-2年 _____ 年以上 _____

g. 对劳工部处理申诉的满意程度

非常不满意 _____ 不满意 _____ 一般 _____ 满意 _____ 非常满意 _____

29. 其他想法？

RECOMMENDATIONS

1. University Settlement House

- 1.1 That the University Settlement House commit itself as the lead agency to follow up the recommendations of this report.
- 1.2 That the Advisory Committee be continued for the purpose of following up this report and supplemented with Chinese restaurant workers and other interested parties.
- 1.3 That the University Settlement House assign a staff person for six months to work with restaurant workers as the primary implementer of these recommendations.
- 1.4 That this report be distributed to all agencies and levels of government mentioned herein. That after six months follow-up communication be initiated to inquire about the status of implementation of the recommendations.
- 1.5 That University Settlement House take the lead role in working with other community agencies to develop educational campaigns for restaurant workers on the role of the Workers' Compensation Board, Employment Standards Branch, Canada Pension Plan, Health and Safety Legislation and Unemployment Insurance.
- 1.6 That University Settlement House present to Chinatown physicians information about the Workers' Compensation Board claims process so that they will encourage their patients, when appropriate, to apply.
- 1.7 That University Settlement House apply for appropriate funding to facilitate the provision of Home Day Care Services, with caregivers chosen from the Chinese community.
- 1.8 That University Settlement House extend its recreational activity hours to accommodate the working schedule of restaurant workers, e.g. the swimming pool time would be open in mid-afternoon.
- 1.9 That University Settlement House initiate a drop-in program for a trial period of six months for restaurant workers during their odd afternoon hours. It will be a place to play chess, ping-pong, chat, or seek interpreting and other services from the staff.
- 1.10 That University Settlement House organize special summer activities for shift workers and their families.

2. Federal Government:

The Advisory Committee recommend:

- 2.1 That all new landed immigrants, regardless of sponsorship and employment status, have the right to take six-month government-sponsored ESL classes, with remuneration; and that the federal government reduce the waiting list to get into such courses.
- 2.2 That the Canada Employment and Immigration Commission (CEIC) and community colleges develop a six month ESL skill-specific/job specific training program (English for Specific Purpose) to aid new immigrants who have the work skills but lack the English proficiency for qualifying examinations and on-site childcare facilities be provided for ESL students when necessary.
- 2.3 That Immigrant Settlement & Adaptation Program (ISAP) funding to community-based agencies be revised to abolish the citizenship restriction and that the criteria of service should be based on the language needs of the clients rather than length of residency.
- 2.4 That Revenue Canada initiate an audit of the industry to be sure that workers are getting the pensions to which they are entitled.

3. Provincial Government

- 3.1 That the Ministry of Labour develop and implement a long-term strategy to address employment standards violations in the restaurant industry.
- 3.2 That the Employment Standards Branch of the Ministry of Labour, implement an immediate and intensive sweep of the Chinese restaurant industry to investigate possible violations of provincial employment standards legislation.
- 3.3 That the Employment Standards Branch develop a more effective complaint procedure which does not place the full onus for investigation on the workers, and which will protect the complainant's identity.
- 3.4 That the Ministry of Labour, Employment Standards Branch and Workers' Compensation Board hire Chinese-speaking staff to work with Chinese-speaking clients to enforce, translate and distribute the pertinent information in Chinese.
- 3.5 That the Workers' Compensation Board and Ministry of Labour

work closely with the Chinese Restaurant Owners Association to ensure all restaurant workers are covered by the Board, that postings are in place in all restaurants, and workers are assisted in filing claims.

- 3.6 That the provincially elected representatives of ridings be the key players in the legislature to monitor the follow-up actions to the recommendations.
- 3.7 That the Industrial Safety Branch, Ministry of Labour, conduct a special six-month industry-wide monitoring and inspection program with the assistance of the Toronto Department of Public Health.
- 3.8 That the Ministry of Labour develop health and safety training program materials in Chinese.
- 3.9 That the Ministry of Labour advise restaurant owners that they are legally mandated to post the Occupational Health and Safety Act information sheet in English and in the majority language of the workforce.
- 3.10 That the Ministry of Education, Ministry of Citizenship and Boards of Education develop curricula on labour laws, workers' rights and how to fill out forms, e.g. workers' compensation claims. These curricula be a core component of all ESL/EWP programs.

4. Municipal Government

- 4.1 That Community and Social Services conduct an outreach program in Chinese so that Chinese restaurant workers have full information on childcare subsidy programs.
- 4.2 That the Toronto Fire Department make regular spot checks to the kitchen areas of restaurants to ensure fire exits are not blocked and all potentially fire-hazardous equipment is properly maintained.
- 4.3 That the City of Toronto study the pattern of ownership of the industry, to amend by-laws to ensure better ventilating, larger food preparation areas, and to improve garbage disposal, parking and traffic problems.
- 4.4 That the elected representatives with large number of Chinese restaurants (e.g. Ward 6, 7) be the key plays in the city government to monitor the follow-up actions to the recommendations.
- 4.5 That the Department of Public Health include occupational health and safety training in its sanitation training program for restaurant workers.

- 4.6 That the City of Toronto finance a community-based health and safety education and prevention program for restaurant workers.
- 4.7 That the Department of Public Health and the Industrial Safety Branch, Ministry of Labour, initiate a project in consultation with restaurant workers and the Chinatown Restaurant Owners' Association, to develop a model workplace design that includes a minimum standard for space required for kitchen and food preparation areas.
- 4.8 That the Toronto Department of Public Health initiate an epidemiological study of industrial diseases and hazards associated with restaurant workers, and that Chinese physicians be encouraged to participate in such a study.

5. Educational Institutions

- 5.1 That the Toronto Board of Education establish English in the Workplace (EWP) programs in Chinatown restaurants, with locations and times chosen to meet the schedules of the restaurant workers; that the industry co-operate by providing time off for restaurant workers to attend the program and by providing appropriate locations.
- 5.2 That the Toronto Board of Education provide an orientation to the Employment Standards Act and Workers' Compensation as a core component of the curricula of English in the Workplace Programs and all community-based ESL programs and workplace programs.
- 5.3 That community colleges and the various Boards of Education commit adequate resources to provide ESL instructors with an orientation on labour laws, WCB, Employment Standards, and health and safety issues.

6. Community Agencies serving Chinese speaking immigrants:

- 6.1 That neighborhood houses extend their recreational activity hours to accomodate the working schedule of restaurant workers, i.e. the swimming pool time be open in the mid-afternoon.
- 6.2 That community agencies offer counselling and translation services for restaurant workers in evenings from 7 to 10 p.m. on a regular basis.
- 6.3 That Chinese Family Life Education Services implement educational programs and support services specifically

designed for restaurant workers and their families who have to cope with erratic working hours and its stress factor.

- 6.4 That the Toronto Workers Health and Safety Legal Clinic and the Metro Chinese and Southeast Asian Legal Clinic provide advocacy for restaurant workers and help to file health and safety complaints to the Ministry of Labour.
- 6.5 That the Metro Chinese and Southeast Asian Legal Aid Clinic for Chinese and Southeast Asians establish a special Employment Standards Branch clinic to provide advocacy counselling and assistance to Chinese restaurant workers filing claims.
- 6.6 That advocacy work for restaurant workers in a case-by-case approach and in a collective effort be treated as priority components of agencies' mandates.
- 6.7 That the Association of Chinese Community & Social Service workers in conjunction with the Chinese Interagency Network organize a conference or workshop on a more effective model of community development in frontline services.
- 6.8 That the Chinese Interagency Network (CIN) endorse the recommendations of this report and encourage its member organizations to develop programs and policies that will better address the needs of restaurant workers.
- 6.9 That all the follow-up programs and activities be co-ordinated by CIN to avoid duplication of efforts and resources.
- 6.10 That United Way recognize restaurant workers as a priority target group in need of services and commit funding accordingly.
- 6.11 That organizers of community English as a Second Language (ESL) programs consider the working hours and shifts of restaurant workers, and provide varying class times and more flexible formats for classes, e.g. drop-in tutorials, correspondence courses and telephone tutoring.

7. Chinese Canadian Community:

- 7.1 That the community as a whole acknowledge the exploitation that exists in the restaurant industry and recognize that the concerns and experiences of restaurant workers is very much a human rights issue.
- 7.2 That organizations such as the Chinese Canadian National Council, Council of Chinese Canadians in Ontario, Federation of Chinese Canadian Professionals and Federation

"An Injury to One is An Injury to All", endorse this Report and develop policies and programs within their own mandate and sphere of influence.

- 7.3 That the above-mentioned organizations initiate sessions with the Chinese Businessmen's Association and Restaurant Owners Association to come up with long-term strategies to address this issue.

8. The Chinese Restaurant Industry:

- 8.1 That the Restaurant Owners Association and the Chinese Businessmen's Association commit the industry to a concrete plan of action to address the present exploitative employment practices and follow-up on the recommendations particularly those related to Employment Standards, Workers' Compensation Board and Health and Safety Legislation.
- 8.2 That the industry conduct its own comparative market analysis and look into ways to increase its competitive edge while conducting business in strict accordance with the law as all industries must.
- 8.3 That the industry identify initiatives that would provide employees with conditions more hospitable to family life (e.g. maternity leave with benefits, family leave day).
- 8.4 That the industry provide workers with time off on a partially remunerated basis for English in the Workplace Programs and the industry provide space for such classes.
- 8.5 That the industry with the assistance of City of Toronto develop and set up a business improvement area.
- 8.6 That the industry work closely with the City Public Health Department to provide workers with a cleaner and safer work environment.
- 8.7 That the industry review its hiring policy and work practices to ensure that women have equal promotional opportunities, and that there is no discrimination against older Chinese immigrant women in terms of pay and work hours.
- 8.8 That the industry recognize and adhere to the policy of equal pay for work of equal value.

9. Labour Movement:

There is a need for systematic changes to improve working conditions within the Chinese restaurant industry, therefore we recommend:

- 9.1 That the Ontario Federation of Labour and Labour Council of Metro Toronto endorse this Report and commit their resources to assist in the follow-up of any relevant recommendations.
- 9.2 That the labour movement reaffirm its commitment to the unorganized sector, and lend its support to the work of community groups in educating the restaurant workers.
- 9.3 That unions representing Chinese-speaking restaurant workers in non-Chinese restaurants strengthen their servicing by hiring Chinese-speaking business agents, and by providing more attention to the needs of the Chinatown restaurant employees.
- 9.4 That the Ontario Workers' Occupational Safety and Health Centre (OWOSHC) of the Ontario Federation of Labor provide occupational health and safety training workshops for frontline community workers and ESL instructors.
- 9.5 That the Metro Labour Education and Skills Training Centres (a project of the Labour Council) sponsor labour education programs in Chinese and provide English at the Workplace Programs for unionized restaurant workers.



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