ZARELLA, J., with whom McLACHLAN, J., joins, concurring. I agree with the result reached by the majority. I also agree with the majority that this court should reconsider its approach to premises liability law in cases involving self-service commercial establishments in which the plaintiff alleges that the mode of operation created a foreseeable risk of harm.[1] I write separately, however, to emphasize that the mode of operation rule that the majority articulates does not presume that all self-service operations are inherently dangerous and, therefore, does not relieve a plaintiff of the burden of proving that the self-service operation in question gave rise to a foreseeable risk of injury to its customers.[2]

Applying the mode of operation rule in the present case, I emphasize that the focus of the analysis is not on how long the piece of lettuce was on the floor but on whether the design or operation of the salad bar created a foreseeable risk of harm, thus retaining the causal link between the actions of the premises owner in designing and operating the self-service facility and the injured invitee. If the plaintiff can prove that the salad bar operated by the defendant was designed, constructed or maintained in such a way as to give rise to a foreseeable risk that a hazardous condition was likely to result, and if the plaintiff also can prove that she fell as a result of slipping on the piece of lettuce, a jury reasonably could conclude that the salad bar, rather than the lettuce, was the proximate cause of her injury. It necessarily follows that the defendant, by the mere fact that it owns, operates and maintains the hazardous mode of operation, had actual notice of the defect. In other words, by placing a salad bar in a commercial setting and inviting customers to serve themselves, the defendant may be charged with the knowledge that foreseeable risks, including the possibility that food will fall to the floor, were inherent in the mode of operation.

The evidence required to prove that a particular mode of operation gave rise to a foreseeable risk of injury should be readily available to an injured party and, in this case, such evidence was adduced at trial. Specifically, the evidence established that the salad bar had no railings and that the four inch ledge was too narrow to accommodate trays or containers, thus requiring customers to hold their containers over the floor while serving themselves. The salad bar itself was located in the middle of a linoleum or tile floor and was surrounded on both sides by a narrow floor runner, approximately two to three feet wide. Furthermore, the store manager testified that the floor area surrounding the salad bar was "precarious" because customers regularly caused items from the salad bar to fall to the floor. In these circumstances, a fact finder reasonably could

have concluded that, because the contents of the defendant's salad bar regularly fell to the floor as a result of poor construction, the salad bar created a dangerous condition of which the defendant had actual notice.

The rule that the majority announces results in a mode of operation analysis that is consistent with principles of common-law negligence. In allowing a plaintiff to prove that the hazardous condition that caused her injuries was the specific mode of operation of the defendant's business, the rule alleviates any concerns regarding the difficulty in producing "time-on-the-floor" evidence. Moreover, if a plaintiff is unable to demonstrate that the defendant's business gave rise to a foreseeable risk of injury, he or she may elect to prove actual or constructive notice of the condition that caused her injury by reverting to "time-on-the-floor" evidence or other evidentiary means. Finally, the mode of operation rule that the majority adopts and traditional premises liability law require proof of essentially the same elements. The rule therefore results in some degree of certainty and consistency for both consumers and business owners. Accordingly, I agree with the majority that the judgment of the trial court should be reversed and that the case should be remanded for a new trial.

[1] I do not agree, however, with one of the majority's principal reasons for its reconsideration. The majority states that, "because self-service businesses are likely to achieve savings by virtue of their method of operation, it is appropriate to hold them responsible for injuries to customers that are a foreseeable consequence of their use of that merchandising approach unless they take reasonable precautions to prevent such injuries." This rationale assumes that any savings realized by the owner of a self-service business establishment results in increased profits rather than lower prices. I disagree. One need only compare the price of one gallon of gasoline at a self-service station with that of a full-service station to recognize the fallacy of this assumption. Nevertheless, if a fairer rule can be crafted that results in a store owner being held liable for operating or constructing a particularly hazardous business operation, I agree that we should adopt it.

[2] Because self-service retail operations have graced this country for almost one century; see E. Halper, "Supermarket Use and Exclusive Clauses," 30 Hofstra L. Rev. 297, 386 (2001) ("[t]he seeds of the shift from service-oriented grocery sales to self-service groceries were planted when Clarence Saunders opened the first Piggly Wiggly store . . . in Memphis . . . for business in 1916"); and this state since at least prior to World War II; see, e.g., *Nocera* v. *Great Atlantic & Pacific Tea Co.*, 15 Conn. Sup. 174, 174 (1947) (describing defendant's "self-service store" at which "[p]ackaged articles are displayed on shelves and customers take what they want from the shelves and take them to the cashier, who collects the purchase price and delivers the articles purchased to the customer"); *Bernhard* v. *Great Atlantic & Pacific Tea Co.*, 10 Conn. Sup. 9, 10 (1941) (action for implied warranties of fitness and merchantable quality arising from purchase of corn at defendant's "self-service store"); *Alfonso* v. *Stavnitsky*, 8 Conn. Sup. 34, 37 (1940) (discussing "self-service chain store"); consumers are familiar with all aspects of this type of operation, including the generalized risks associated with using such a facility. Therefore, any new rule that this court adopts should not automatically include all self-service operations but only those that are improperly designed or operated.