

# Québec Cases We Should All Know About, Part 2: The Guillaume Case, Or What (Not) To Do When Employees React To Racism At Work



Québec's legal landscape is rich with cases that are particularly interesting for workplace investigators and employers, although many remain overlooked due to the lack of English translations. In the second part of my series that aims to ensure greater access to this caselaw,<sup>1</sup> I delve into the Human Rights Tribunal of Québec's decision in *Commission des droits de la personne et des droits de la jeunesse (Guillaume) c. Entrepôt de la lunette inc. (9318-1022 Québec inc.)*.<sup>2</sup>

This case of discriminatory termination from employment that I frequently discuss when facilitating training on [Respect at Work](#), because it addresses key concepts relevant to the application of respectful workplace policies and clarifies employers' obligations under human rights legislation.

## **The facts**

The case involves Ms. Guillaume, a Black woman who worked at an eyewear store. One Saturday, as she walked onto the floor store, Ms. Guillaume overheard a client making a racist joke about Black people while talking to Ms. Duchesne, her manager. Ms. Guillaume initially ignored it. However, the client noticed her, and repeated the joke even louder to make sure she heard it. Ms. Guillaume, who was in shock, laughed nervously and walked away. This incident affected her mood for the rest of the day, and she left work immediately after her shifts, without speaking to anyone.

That evening, Ms. Guillaume attended a staff dinner at a coworker's house. During dinner, Ms. Duchesne repeated, in front of the whole team, the joke she heard earlier that day. This time, Ms. Guillaume spoke up to say that the joke was offensive and made her uncomfortable. Her response led to a confrontation, and she left early, criticized by a coworker for "ruining the evening with her attitude."

On her first day back at work the following week, Ms. Duchesne called Ms. Guillaume into her office to apologize. However, she also told Ms. Guillaume that she was taking the situation too personally and that she should not be so affected by it, as it was "nothing but a joke." Once home, Ms. Guillaume posted about her experience on Facebook (the post was private, and she did not name her employer or anyone

involved). A coworker, who happened to be a “Facebook friend,” shared the post with Ms. Duchesne.

Later that week, influenced by poor advice from Human Resources, Ms. Duchesne fired Ms. Guillaume, citing her “unacceptable and unprofessional attitude.”

## The Tribunal’s conclusions

The Tribunal found that Ms. Guillaume was fired because of her reactions to racist jokes directed at her racial group.<sup>3</sup> The evidence showed that one month before her termination from employment, Ms. Guillaume had received excellent performance reviews (especially about the quality of her customer service and her positive attitude at work), that she was explicitly fired due to her change of attitude at work, and that her change of attitude was clearly linked to the incidents (i.e., the racist joke repeated twice in her presence, including in front of all her coworkers, and the minimization of the incident by her manager).

The Tribunal also found that the employer did not protect Ms. Guillaume from the racist behaviour of the client and her manager, and that it failed to accommodate her by allowing sufficient time so that she could recover her “professional attitude.”<sup>4</sup>

In terms of reparations, the Tribunal awarded Ms. Guillaume \$10,000 in damages for moral injury, and ordered the employer to adopt an anti-discrimination policy<sup>5</sup>(the evidence showed that the employer – a company that owned several eyewear stores in Québec, including the boutique where Ms. Guillaume had worked – did not have such a policy).

## Takeaways

The *Guillaume* case is a clear illustration that the concept of “workplace” extends beyond the office to include other locations where employees would not be if it was not for their work, such as a work-related event at a coworker’s house.

This case is also a great reminder that employers have an obligation to protect employees from the behaviour of individuals with whom they engage in the context of their work, including non-employees, such as clients; in other words, the protection is not confined to interactions with coworkers.

Another valuable insight from *Guillaume* is that employers should recognize the vulnerability of employees subject to discriminatory behaviour, and understand that a change in an employee’s demeanor might be a response to such incidents.<sup>6</sup> Human rights law provides that responses to discrimination should not result in punitive measures like alteration of working conditions or termination from employment, and that in those circumstances, employers must provide reasonable time for affected employees to regain composure, acknowledging the impact of such incidents on their well-being.<sup>7</sup>

## Footnotes

1. To catch up on the first part, see: Frédérick J. Doucet, “Navigating gender-based harassment in the workplace: A look at *Lippé v. Québec*” (September 13, 2023), Rubin Thomlinson’s *Insights*, online: <https://rubinthomlinson.com/quebec-cases-we-should-all-know-about-part-1-navigating-gender-based-harassment-in-the-workplace-a-look-at-lippe-v-quebec/>.

2. 2022 QCTDP 13 (CanLII) [*Guillaume*].

3. *Ibid*, para 39.

4. *Ibid*, para 56.

5. The Tribunal ordered that the policy must specify: (1) the employer's obligations under the *Charter of Human Rights and Freedoms*, including a prohibition against terminating an employee based in whole or in part on race or color, and (2) the obligations of all staff and management to foster a work environment that respects the dignity of all people, including a reference to the inappropriateness and offensiveness of racial jokes that may result in discrimination in the workplace; *Ibid*, para 96.

6. *Ibid*, para 37.

7. *Ibid*, paras 48 and 56.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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