

TRIBUNAL DES DROITS DE LA PERSONNE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-53-000318-103

DATE : 11 avril 2011

SOUS LA PRÉSIDENCE DE L'HONORABLE DANIEL DORTÉLUS

**AVEC L'ASSISTANCE DES ASSESSEURES : Me Claudine Ouellet
Mme Judy Gold**

COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

Demanderesse

c.

CALEGO INTERNATIONAL INC.

et

STEPHEN RAPPS

et

AGENCE VINCENT

et

VINCENT AGOSTINO

Défendeurs

et

CENTRE DE RECHERCHE-ACTION SUR LES RELATIONS RACIALES

Plaignant devant la Commission des droits de la personne et des droits de la
jeunesse

et

**Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma,
Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu,
Xiang Huan Xie et Yong Mei Sun**

Victimes devant la Commission des droits de la personne et des droits de la
jeunesse

JUGEMENT

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1. LE SOMMAIRE

[1] Le 11 juillet 2006, les défendeurs ont-ils, en violation des articles 4, 10 et 16 de la *Charte des droits et libertés de la personne*¹, porté atteinte aux droits des quinze employés d'origine chinoise impliqués dans ce litige, d'être traités en pleine égalité sans distinction ni discrimination fondée sur leur origine nationale, pour avoir tenu des propos discriminatoires et posé des gestes à leur endroit occasionnant leur démission ?

[2] Dans l'affirmative, quel est le montant des dommages moraux et punitifs à accorder à chacune des victimes ?

[3] Le 26 janvier 2010, la demanderesse (la Commission) intente ce recours en faveur de Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang

¹ L.R.Q., c. C-12, art. 4, 10 et 16.

Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie, tous des travailleurs d'origine chinoise.

[4] La Commission réclame, pour chacun des travailleurs, une somme de dix mille (10 000) dollars, ce qui comprend le montant de sept mille (7 000) dollars à titre de dommages moraux et trois mille dollars (3 000 \$) à titre de dommages-intérêts punitifs.

[5] Elle réclame, pour M. Wei Li et M. Yong Shan He, une somme additionnelle de sept mille (7 000) dollars pour agression physique, ce qui comprend le montant de cinq mille (5 000) dollars à titre de dommages moraux et deux mille (2 000) dollars à titre de dommages-intérêts punitifs.

[6] La Commission demande aussi l'émission d'une ordonnance enjoignant aux défendeurs de mettre sur pied un programme favorisant l'intégration dans l'entreprise Calego International (Calego) des travailleurs immigrants dont les travailleurs d'origine chinoise afin de prévenir toute discrimination fondée sur l'origine ethnique et nationale en milieu de travail.

[7] En 2006, le Centre de recherche-action sur les relations raciales (CRARR) a déposé, au nom de ces travailleurs, une plainte auprès de la Commission. En l'instance, le CRARR recherche essentiellement les mêmes conclusions que la Commission pour ces travailleurs. Il allègue, en sus, la violation des droits protégés par l'article 46 de la *Charte* concernant tous les travailleurs chinois. Le CRARR demande au Tribunal d'émettre les ordonnances suivantes :

- ORDER the Defendant Stephen Rapps to make a written apology to the Victims on behalf of himself and Calego International Inc.;
- ORDER the Defendant Stephen Rapps to make a written apology, on behalf of himself and Calego International Inc., to the Chinese Montreal community as a whole and to publish this apology in all local media, including the Chinese media;

[8] Selon le Tribunal, les témoignages clairs, convaincants et crédibles des quinze victimes, constituent une preuve suffisante pour démontrer de manière prépondérante que le comportement et les propos du défendeur Rapps reliés à l'origine non canadienne des travailleurs chinois en rapport avec l'hygiène et la malpropreté des toilettes et de la cuisine à l'entrepôt de la défenderesse Calego International, ont porté atteinte au droit de ces travailleurs d'être traités en pleine égalité sans distinction, exclusion ou préférence fondée, sur leur origine nationale.

[9] Selon l'interprétation des tribunaux, l'atteinte à la dignité se manifeste, entre autres, par le mépris et le manque de respect, ce qui est le cas ici.

[10] La prétention des défendeurs à l'effet que la Commission n'a pas démontré une preuve *prima facie* de discrimination, n'est pas fondée car elle n'est pas supportée par la preuve.

[11] Pour les motifs exprimés en détail plus loin dans ce jugement, la défense doit échouer et la demande est en partie accueillie.

2. LES FAITS / FACTS AND EVIDENCE

[12] The following facts are not in dispute.

[13] Mr. Stephen Rapps, Defendant, is president of Calego International Inc., a bag design and import company, located in Ville St-Laurent, Quebec.

[14] Calego International employs approximately 45 permanent workers, distributed among the front office, the art department, the warehouse and including two employees in the Orient. During its peak season, from April to August of each year, the company uses the services of an employment agency to supplement its manpower with temporary workers.

[15] Mr. Vincent Agostino, Defendant, is the owner of Agence Vincent, the employment agency that recruits, hires and partially supervises the temporary workers who work at the Calego International warehouse.

[16] The 15 litigants were temporary workers hired by Agence Vincent who worked at Calego International during the summer 2006. They all are of Chinese origin, having arrived to Canada within 3 years to 3 weeks of the alleged incident.

2.1 Preuve en demande / Evidence submitted by Plaintiff

Mr. Jun Cai Wang

[17] Mr. Wang, a mechanical engineer, arrived to Canada in June 2005.

[18] Following his arrival to Canada and prior to his employment at Calego International, he studied while working cleaning houses. He currently administers his own small business.

[19] Testifying in both English and Chinese, the Plaintiff states that he had been introduced to Calego International by an intermediary agency, Agence Vincent.

[20] During the summer 2006, he worked at Calego International for 3 or 4 consecutive days during his school break. He worked 8 hours per day and was paid \$6/hour in cash by Agence Vincent.

[21] He worked unpacking boxes and placing semi finished products on the assembly line, as well as placing finished products inside boxes, which were then sent to the warehouse.

[22] Mr. Wang states, during cross-examination, that as he had not paid particular attention to the number of people working at Calego, he was neither able to estimate the number of employees in the warehouse in July 2006, nor confirm that 53 out of the

60 contractual employees were of Chinese origin. He could only attest to the fact that there were many employees at the time, including many of Chinese origin.

[23] He describes the working conditions as messy: Boxes were everywhere and the washroom and the kitchen were notably dirty. The kitchen area and the three microwave ovens were insufficient to accommodate all the employees during the lunch period; lines were long to access the microwaves and, as the lunch period wasn't long, arguments would break out among those waiting.

[24] He noticed food left on the tables and insects flying in the kitchen as well as urine on the bathroom floor. Never having seen a professional cleaning service maintain the kitchen, he assumed that the boss was relying on the employees who used the kitchen to keep it clean. He never asked any of his superiors if this was actually the case.

[25] He had noticed a sign on the bathroom door that was written in Chinese only, saying to keep the toilet clean. He affirmed that the sign produced by the defense during the proceedings was not the sign that he saw posted in the bathroom at Calego International in July 2006.

[26] On July 11, 2006, at approximately 1:30 p.m., Mr. Wang was working on the assembly line when a woman of South Asian origin summoned the Chinese workers to a meeting.

[27] According to Mr. Wang, only the Chinese employees attended the meeting. He recalls that both an elderly French-Canadian woman and an elderly Black woman employee did not attend the meeting.

[28] There was an interpreter present at the meeting which began with the president of the company stating very loudly that "he is not very happy, this is not funny and... this is Canada, not China. You need to wash hands, take shower, use shampoo." When Mr. Rapps then spoke about the dirty kitchen, he said, "This is my kitchen, not yours. You Chinese eat like pigs".

[29] Reacting to this comment, one of the workers present immediately responded with profanity. Subsequently, the meeting came to an end due to the chaotic aftermath: The Chinese employees became agitated and angry; several of them began to argue with Mr. Agostino, while Mr. Rapps said, "Out, get out".

[30] Mr. Wang vividly remembers having witnessed Mr. Agostino grab the neck of a Chinese man who was standing next to him, and aggressively say that he would kill him.

[31] Following the incident, approximately 20 to 30 Chinese employees congregated outside the factory. A relative of the boss came to talk to them, apologizing and inviting them to resume their work. Fifteen among them decided not to return to work, discussed the idea of returning the next day to protest and decided, in an ad hoc

manner, to request a formal written apology from the boss as well as financial compensation.

[32] On the following day, July 12, 2006, they returned to the company to formally submit their requests. They met with a relative of the boss who invited them to return to work; the company, however, refused to provide a formal apology.

[33] Mr. Wang never returned to work at Calego International.

[34] During cross-examination, Mr. Wang admits that he never described the aforementioned incident in writing. The Center for Research-Action on Race Relations (CRARR) helped him recall the incident whereas the Human Rights Commission took his oral statement, which they themselves put into writing.

[35] Furthermore, the case of physical assault was not discussed when the Chinese employees congregated outside the warehouse on July 11. The significance of the assault was highlighted during the discussions with CRARR at a later date.

[36] The Plaintiff considers himself a victim of racial discrimination because, even though the workforce at Calego was composed of people from a variety of backgrounds, including Southeast Asians, Haitians, Africans and Canadians, only the Chinese workers were called to the meeting.

[37] In addition, whereas the kitchen was used by all the employees, it was exclusively the Chinese who were stigmatized. Moreover, the sign posted in the bathroom saying to keep the toilet clean was in Chinese only, implying that it was only the Chinese who dirtied the toilet.

[38] Mr. Wang felt very bad as well as deeply insulted and angry by the comments of Mr. Rapps; no one had, in his 41 years, accused him of eating like a pig. He is currently requesting that Calego International provide a formal written apology in addition to financial compensation.

Mr. Yong Shan He

[39] Mr. He, a mining engineer, arrived to Canada in June 2005.

[40] Following his arrival to Canada and prior to his employment at Calego International, he did occasional work. He is currently a mechanic.

[41] Testifying primarily in Chinese, Mr. He states that he had been introduced to Calego International by an intermediary agency called l'Horizon. In 2006, he worked at Calego for 5 to 7 days, transporting boxes and placing them on a pallet. He worked 40 hours per week and was paid \$6/hour cash by the intermediary agency.

[42] According to Mr. He, there were between 60 and 70 people working at Calego in July 2006; he is unable, however, to assess the number of employees that were of Chinese origin.

[43] Describing the working conditions at Calego, Mr. He affirms that the kitchen had been set up to accommodate the permanent workers only, yet many part-time employees were hired during the time that he worked there. Due to insufficient space in the kitchen during his 30 minute lunch period as well as because of the dust, Mr. He ate his lunch in the parking lot.

[44] He had observed a typed sign on the bathroom door and over the toilet bowl that was written in Chinese only, saying to keep the premises clean. He affirms that the signs produced by the defense during the proceedings were not the signs that he saw posted in the bathroom at Calego International in July 2006. The Chinese sign had been worded differently; moreover, he never saw English or French signs.

[45] He also never saw a cleaning service maintain the kitchen or the bathroom. During cross-examination, he states that he was unaware, however, if the washroom was clean first thing in the mornings as never visited the bathroom until later in the day.

[46] On July 11, 2006, while working in back of the warehouse, a woman summoned the Chinese employees, saying, in English, "Chinese, go to the front". Mr. He affirms that the only non-Chinese person he saw at the meeting was Mr. Rapps.

[47] He recalled that when he reached the front of the warehouse where the meeting was held, Mr. Rapps, using an interpreter, said in a sermonizing fashion:

C'est une affaire qui est très sérieuse. Ici, on est au Canada, on n'est pas en Chine. Et ceci est ma cuisine, pas la votre. À tous les jours, on doit prendre la douche, et il faut qu'on utilise le savon. Ici, c'est ma cuisine à moi. Vous, les chinois, vous mangez comme des cochons.

[48] Astounded by what Mr. Rapps had said, the people in attendance were virtually paralyzed for a few seconds. Before the interpreter had finished translating, a young Chinese man swore at Mr. Rapps, a quarrel ensued and the meeting turned chaotic.

[49] Mr. He testifies that he approached Mr. Rapps with the intention of reasoning with him. He had wanted to tell him that the kitchen was dirty due to the lack of maintenance, that it was not being used exclusively by the Chinese employees and that he found it unfair that the Chinese were singled-out and blamed.

[50] As soon as he finished speaking, Mr. Agostino grabbed him by the collar, pushed him and said, "Out".

[51] Following the incident, Mr. He, accompanied by 4 Chinese co-workers, drove his vehicle home. On the street in front of his house, several co-workers discussed the possibility of returning to Calego the next day to request an apology.

[52] Mr. He does not remember the identities of the 4 co-workers that were in his car. He could neither recall the number of people involved in the discussion on the street in front of his house, nor if other employees joined in the discussion.

[53] The next day, returning to the Calego parking lot, he and his co-workers enumerated four conditions for their return to work: A written apology; adequate maintenance of the kitchen and bathrooms; regular supervisors; compensation.

[54] The group met with Mr. Rapps' father who informed them that Mr. Rapps wasn't present. He invited them to a barbecue and asked them to return to work, offering to pay them for the balance of the previous day; they, however, did not comply.

[55] Mr. He never returned to work at Calego International nor did he subsequently work for Agence Vincent. He was paid for the time he had worked on July 11.

[56] He believes that he was treated in a discriminatory manner because only the Chinese employees were summoned to the meeting and because of the content of Mr. Rapps' speech.

[57] Describing the event as tragic, he states that, following the incident, he found himself unemployed and experienced financial difficulties.

Mr. Ai Hong Su

[58] Mr. Su, a mechanical engineer, arrived to Canada in April 2005. He currently works as a machine operator.

[59] Testifying primarily in Chinese, Mr. Su notes that his employment at Calego International was his first job experience in Canada. He worked there for 3 or 4 consecutive days in the summer 2006, working 8 to 10 hours per day and earning \$7/hour in cash. He worked, for the most part, discharging merchandise.

[60] He estimated that approximately 40% or 50% of the 60 to 70 people working at Calego in July 2006 were of Chinese origin, adding that they were numerous compared to the employees of other ethnic backgrounds.

[61] According to Mr. Su, the bathroom and the kitchen were dirty, with garbage piled up in the kitchen, food left on the tables and flies everywhere. In the several days that he worked at Calego, he never saw any members of the staff clean the kitchen.

[62] He found it strange that there was sign in the bathroom, written in Chinese only, saying, "Keep this place clean". He affirmed that the signs produced by the defense during the proceedings were not the signs that he saw posted in the bathroom at Calego when he worked there. In addition to never having seen English or French signs, the text of the Chinese sign was not as long.

[63] On July 11, 2006, shortly after his half-hour lunch, other Chinese workers informed him that “we were going to a meeting”. The only 2 non-Chinese persons he observed at the meeting were Mr. Rapps and Mr. Agostino.

[64] Mr. Rapps, at first, found an interpreter who told him that most of those present understood English. Mr Rapps nevertheless insisted that she translate sentence by sentence. He then proceeded to say:

This is Canada, not China. In Canada each and every one of us, we have to brush our teeth. We have to wash our face, we have to wash our hands with soap and we have to take a shower with soap... Whenever you are in the washroom, when you urinate, you have to urinate inside the bowl. After you finish relieving yourself in the washroom, you have to flush the water... This is my kitchen, not yours. While you are in my kitchen you have to make sure that you keep it clean. You Chinese eat like pigs.”

[65] Mr. Su noted that the interpreter did not translate “You Chinese eat like pigs”.

[66] Immediately following, a Chinese employee yelled, “Fuck you”. The meeting then became chaotic with several people pushing each other.

[67] Finding the situation unbearable, Mr. Su left the premises and went home by metro, specifying that he neither participated in any group meeting following the incident nor the following day. Subsequent to the incident, Mr. Su never returned to work at Calego International.

[68] He became involved in the group that eventually filed the complaint to the Human Rights Commission, when, the same evening or the day after, he saw a post on the Internet describing the incident and inviting participants and witnesses to come forward. Subsequently, members of the group contacted each other by telephone.

[69] Approximately 7 or 8 days following the incident, the group went to the CRARR where they discussed the incident but not the precise testimonies of each individual. The 15 plaintiffs were present and gave their versions of the incident when they subsequently met with the investigator of the Human Rights Commission.

[70] Mr. Su felt very humiliated by what Mr., Rapps had said, notably by the implication that Canadians have adequate hygiene whereas the Chinese do not.

[71] Moreover, he found Mr. Rapps' comment, that the Chinese eat like pigs, unacceptable and insulting, especially since the comment was directed at all the Chinese people present at the meeting. Furthermore, he found it objectionable that the Chinese employees were blamed for the lack of cleanliness in the kitchen, whereas, in addition to being very small, the kitchen was used by all the employees. Mr. Su claims to have been traumatized by the incident which he thought about for a long time afterwards. He had immigrated to Canada where he believed that all were treated equally. However consequential to the treatment received at Calego, he essentially questioned his decision to have come to Canada.

[72] In addition to requesting compensation for moral and punitive damages, he is currently asking that Calego International provide a formal public apology in the media.

Mr. Zhan Hong Hou

[73] Mr. Hou, a technician at Petro China, arrived to Canada in March 2003.

[74] Following his arrival to Canada and prior to his employment at Calego, he worked as a cabinetmaker. He is currently a machine operator.

[75] Testifying primarily in Chinese, Mr. Hou states that he was employed as a packer at Calego International. He worked approximately 8 hours per day for 3 days and was paid \$7.50 per hour. There were people of diverse nationalities employed at Calego, including Asians whose nationalities he was not necessarily aware of.

[76] In addition to never having seen anyone maintain the cleanliness of the kitchen at Calego, he noted that the washroom was very dirty, with marks of urine on the floor and a sign written in Chinese only, saying to keep the bathroom clean. He affirmed that the signs produced by the defense during the proceedings were not the signs that he saw posted in the bathroom at Calego when he worked there.

[77] On July 11, 2006, the Chinese employees were summoned to a meeting at the front of the warehouse. The only non-Asian persons at the meeting were Mr. Rapps and Mr. Agostino.

[78] Mr. Rapps, after having inquired if all the Chinese were present, asked a Chinese woman standing next to him to translate sentence by sentence. He then said, "This is Canada, not China... You have to use soap to wash your hands and use shampoo to take a shower. And you have to brush your teeth. This is my kitchen, very dirty". He mentioned the necessity to urinate in the bowl and not on the floor. He became angry and said, "You Chinese eat like pigs".

[79] Mr. Hou states, when cross-examined, that there were certain things he did not comprehend when Mr. Rapps spoke. Nevertheless, even though the interpreter did not translate the last sentence, Mr. Hou did understand it.

[80] Astounded and very upset, Mr. Hou replied, "Fuck you." Mr. Rapps then pointed his finger at the Plaintiff and told him to leave, after which Mr. Agostino approached him and, in a very nice manner, said, "My friend, get out of here". Mr. Agostino and several women then escorted him out of the warehouse.

[81] After ten minutes, his co-workers began to leave the warehouse. Mr. Agostino came out fifteen minutes later and invited the 20 or so who were gathered outside to return to work. They refused and then made the decision to return to Calego the following day with four demands that they had enumerated: a formal written apology, financial compensation, improved working conditions and regular supervisors.

[82] Their demands were refused when they returned to the warehouse on July 12, 2006. During the more than two hours that they were there, they met with Mr. Rapps' father and nephew as well as Mr. Agostino who offered to pay them for the half day that they didn't work the previous day if they returned to work. They however did not comply.

[83] During a subsequent meeting at the Human Rights Commission, all the plaintiffs were present however they didn't discuss the incident among themselves. A woman interviewed them one by one; she wrote down Mr. Hou's oral declaration which he then signed.

[84] Mr. Hou was surprised and very insulted by the Defendant's comment, "The Chinese eat like pigs". He has continually felt nervous subsequent to the incident. He is currently seeking compensation from Calego International.

Mr. Li Li

[85] Mr. Li, an engineer, arrived to Canada in June 2006.

[86] Following his arrival to Canada and prior to his employment at Calego International, he worked for a day or two as labourer in a factory. He currently works as a nurse's aide.

[87] Testifying in Chinese, Mr. Li states that, shortly after his arrival to Canada, he learnt about available employment at Calego via the Internet, and was subsequently referred to an intermediary agency by friends. At the time, he was able to read English and had minimal comprehension of French.

[88] He worked at Calego for 7 or 8 days, his job principally consisting of removing knapsacks from boxes and placing them on a pallet. He was paid \$6/hour in cash by Agence Vincent. He estimates that approximately 30 out of the more than 50 employees at the Calego warehouse were of Chinese origin.

[89] Due to inadequate management practices, the working conditions at Calego were not good. Mr. Li was assigned work from several supervisors and was continually pushed to accelerate his rhythm of work. The bathroom at Calego, with paper and stains on the floor, was neither terribly dirty nor very clean. He often saw insects in the garbage in the kitchen which was notably dirtier than the washroom.

[90] He never saw the personnel clean the premises when he was there. During cross-examination he states that he was unaware that a maintenance company cleaned the premises at night.

[91] Shortly after lunch on July 11, 2006, a person came to the back of the warehouse and specifically asked the Chinese employees to attend a meeting called by the boss.

[92] After ensuring that all the Chinese employees were present, Mr. Rapps, with the help of an interpreter, said,

Ici c'est le Canada, pas la Chine... Vous autres, ici, à tous les jours, il faut que vous preniez une douche avec du shampoing, il faut que vous vous serviez aussi du savon. Et aussi, il faut chasser de l'eau après vous êtes servis de la toilette... J'ai vu que la cuisine est malpropre aujourd'hui après l'utilisation C'est ma cuisine à moi, pas la votre. Vous, vous avez sali ma cuisine.

[93] With his tone becoming increasingly louder as he spoke, he said, "You Chinese eat like pigs".

[94] The meeting turned to chaos: Mr. Zhan Hong Hou immediately replied, "Fuck you", to whom Mr. Rapps responded, "I'll kill you"; Mr. Agostino pushed Mr. Yong Shan He; several employees declared that they couldn't work there and would leave.

[95] After three to five minutes, Mr. Li followed his co-workers out of the warehouse, where approximately 20 employees spent five to ten minutes discussing how to subsequently proceed.

[96] The following day, upon returning to Calego to request a formal written apology, a group of approximately 20 employees spent twenty to thirty minutes outside of the company warehouse. They met with Mr. Rapps' father who provided a verbal apology on behalf of his son who had gone to Toronto. He explained that his son got carried away the day before because he had as just lost a contract. He offered to pay them for the half day that they didn't work the previous day if they returned to work. They however did not comply.

[97] Following the incident of July 11, 2006, Mr. Li never returned to work at Calego International.

[98] He considers himself a victim of discrimination because, even though the workforce at Calego was composed of people from diverse backgrounds, only the Chinese workers were summoned to the meeting. This, in addition to a Chinese-only sign posted on the bathroom door, suggests that the Chinese employees were solely to blame for the dirty state of the premises.

[99] Trembling after the incident, Mr. Li felt humiliated, saddened and angry. It was the first time he had been treated in such a manner, and was subsequently depressed for a considerable period of time.

[100] He is currently seeking financial compensation from Calego and a formal written apology to the employees involved in the incident as well as to the Chinese community at large. In addition, he is requesting that Calego improve the working conditions of their employees by assigning regular supervisors and by ameliorating the hygiene in the warehouse.

Ms. Zhong Mei Hu

[101] Ms. Hu, an accountant, arrived to Canada in February 2004.

[102] Following her arrival to Canada and prior to her employment at Calego International, she worked for a food manufacturing company. She is currently a student.

[103] Testifying primarily in Chinese, Ms. Hu affirms that she worked on the assembly line at Calego, placing labels onto bags and toys. She worked there for 10 days and was paid \$5/hour in cash. At the time, she spoke an elementary English.

[104] In addition to the washroom that was very dirty with paper all over the floor, there were flying insects in the kitchen due to the full garbage containers. During the period that she worked at Calego, she never saw a cleaning service maintain the kitchen or the bathroom. There was a notice on the door of the bathroom, written in Chinese, saying to keep the premises clean.

[105] During the afternoon of July 11, 2006, a woman who worked in the office summoned all the Chinese employees to a meeting. When a co-worker of Greek origin inquired whether she should also attend, she was told no as the meeting was only for the Chinese workers.

[106] Having arrived to the meeting area, Ms. Hu heard Mr. Rapps ask if all the Chinese were present. After having found a woman to interpret, he said,

Récemment, l'environnement n'est pas propre, est très sale, notamment dans la cuisine et dans les salles de bain...N'oubliez pas que vous êtes au Canada présentement, que vous n'êtes plus en Chine. Alors avant de manger, prendre les repas, et après avoir été à la salle de bain, il faut se laver les mains et le soir n'oubliez pas de prendre une douche... Les chinois quand ils mangent, ils mangent comme des cochons.

[107] Although the interpreter didn't translate the Defendant's last sentence, in spite of Mr. Rapps' insisting, Ms. Hu clearly heard and understood what he had said.

[108] Immediately following, there was silence in the room and palpable tension in the air. A man of Chinese origin then said "Fuck you" to Mr. Rapps. Several people followed a co-worker, Mr. Wei Li, out of the room after he said, "Si vous autres, vous êtes encore chinois, il faut plus travailler ici". Ms. Hu also left.

[109] The Plaintiff and a group of co-workers, when standing outside the warehouse, decided to return inside, where the meeting had resumed, to explain the content of Mr. Rapps' speech to those who had not left, as they were newly-arrived immigrants and the elderly who had not understood what the Defendant had said. When back inside the room, she saw that Mr. Wei Li, whom she had not noticed standing outside the warehouse, had also returned with the same intention of speaking to the employees who had remained inside.

[110] During cross-examination, Ms. Hu states that she could neither recall precisely how long the group stood outside the warehouse before going back inside, nor how

long she stayed in the warehouse the second time. She was uncertain if those who had remained inside really did not understand English.

[111] Mr. Rapps asked Mr. Wei Li to leave the room. Mr. Li didn't want to leave as he wanted to continue the explanations to his co-workers. Consequently, Mr. Agostino put one hand on Mr. Li's neck and pushed him with his other hand. A group of employees then left the room, including Ms. Hu who then went home.

[112] The Plaintiff did not return to the warehouse the following day; she had received no information regarding the gathering at Calego on July 12. She was paid for the half-day that she had worked on July 11, 2006.

[113] Ms. Hu never subsequently returned to work at Calego International.

[114] She became involved in the group that eventually filed the complaint to the Human Rights Commission after having read an Internet message regarding the incident, written by Mr. Wei Li. She then stayed in contact with the group by e-mail; at the time, however, there was no discussion of legal action.

[115] Some time later, the group met in a park near *Métro Plamondon*. Afterwards, following continued e-mail communication, individual appointments were scheduled with a lawyer at the CRARR. When Ms. Hu did in fact go to an appointment with the lawyer, she did not discuss the incident with her former colleagues that she met when she was there.

[116] At a later date, she and the other Plaintiffs met at the Human Rights Commission, where they were all together during the discussion with the investigator.

[117] Ms. Hu considers herself a victim of racial discrimination because Mr. Rapps summoned exclusively the Chinese employees to the meeting and then took the time to ensure that all the Chinese workers were in fact present. In addition, employees of other ethnic backgrounds were told not to attend the meeting.

[118] Ms. Hu felt humiliated by the way she and the Chinese people in general were treated by Mr. Rapps, notably by his statement that the Chinese eat like pigs. She found his comments particularly degrading.

[119] Very hurt by the events, she subsequently became frightened that the same kind of incident would repeat itself elsewhere. She is currently requesting compensation from Calego International.

Ms. Yong Li Zhao

[120] Ms. Zhao arrived to Canada in December 2005. In China, she worked for a large state company.

[121] Following her arrival to Canada and prior to her employment at Calego International, she worked at a restaurant for a several days. She currently works as an accounting clerk.

[122] Testifying primarily in Chinese, the Plaintiff states that a Chinese intermediary agency referred her to Agence Vincent who, in turn, introduced her to Calego International.

[123] She worked as a packer at Calego for 4 or 5 days in July 2006. She worked 8 hours/day and was paid \$6/hour in cash. At the time she had been in Canada for approximately 6 months and could understand keywords in English.

[124] Ms. Zhao mentions that the workforce at Calego was composed of people of many different nationalities. She estimates that 40 out of the 60 employees working at the Calego warehouse at the time were of Chinese origin

[125] Ms. Zhao describes the work environment as oppressive, particularly the bathroom and kitchen where there were flying insects and a considerable amount of garbage. Due to the lack of space, she never ate lunch in the kitchen which was too small in relation to the number of people using it. While at Calego, the Plaintiff never saw anyone clean the premises.

[126] Shortly after lunch on July 11, 2006, Ms. Zhao was working in back of the warehouse with her co-workers who were of various ethnic backgrounds, when a young woman of Philippine origin said, "All Chinese in front".

[127] When the plaintiff arrived to the front of the warehouse, a crowd of people were already there. She heard Mr. Rapps inquire if all the Chinese were present. She specifies that she saw only Chinese employees at the meeting; in fact she noticed that the non-Chinese employees continued working.

[128] Mr. Rapps asked a young woman of Chinese origin to interpret, however soon after she was replaced by another interpreter. He then said, "On est au Canada, on n'est pas en Chine". After speaking about personal hygiene, he raised his voice, became very emotional and angrily told those present that they had dirtied his kitchen. He said, "You Chinese eat like pigs". He urged the interpreter to translate his last sentence, which she had not done as she was seemingly embarrassed.

[129] A young man of Chinese origin, standing behind the Plaintiff, responded, "Fuck you". The meeting then became disorderly and the people in attendance, caught off guard by what they had heard, became distraught. Ms. Zhao instinctively followed some of her co-workers outside of the warehouse. Turning her head as she was leaving, she heard Mr. Agostino loudly say "out" to a man that he was pushing. She also heard the phrase "I will kill you", said by someone who did not have a Chinese accent.

[130] Ms. Zhao then went home, discussing the incident with her co-workers as they walked to the bus stop. She noticed that several people went back into the warehouse and then came back out again, Mr. Wei Li included.

[131] She did not return to Calego the following day, nor did she receive any telephone calls regarding the gathering at Calego on July 12. She was paid for the half-day that she had worked on July 11, 2006. She subsequently did not return to work at Calego International.

[132] She became involved in the group that eventually filed the complaint to the Human Rights Commission after having read an Internet message inviting people who were able to testify to come forward.

[133] She states, during cross-examination, that she went to a meeting at the Human Rights Commission, where those present discussed their feelings regarding the incident, but not the incident itself.

[134] Ms. Zhao considers that she was treated in a discriminatory manner because the Defendant had summoned only the Chinese employees to the meeting. In addition, he made sure that all the Chinese employees were in fact present as well as ensured the translation of his speech into Chinese.

[135] Ms. Zhao affirms that she felt very sad after the events of July 11, 2006. Crying, she testifies that, at the time, she was a new immigrant and believed that Canada was a country that was respectful of human rights. She had only been doing her job and could not understand why she was the object of humiliation and discrimination.

[136] She felt psychologically broken and helpless, wondering about and even regretting the kind of life she had chosen for herself and her child. Not knowing how to protect herself from this kind of situation, she asked herself how she would protect her innocent child who was also Chinese.

Ms. Xiang Ma

[137] Ms. Ma, a computer engineer, arrived to Canada in October 2005. She is currently employed as an accountant.

[138] Testifying primarily in Chinese, Ms. Ma mentions that she was introduced to Calego International by an intermediary agency that she named in Chinese.

[139] A full-time student at the time, she worked at Calego for one to two weeks during the summer 2006, packing and placing labels on objects from China. She was paid \$6/hour in cash.

[140] She describes the work environment as dirty and messy with an odor emanating from the products that were removed from the containers. It was apparent that no one took care of cleaning the dirty bathroom which she avoided when at all possible. She

never ate lunch in the kitchen as it was too small for the number of workers using it. With many people assigning work to the employees, Ms. Ma affirms that they were treated like slaves.

[141] Shortly after lunch on July 11, 2006, while at her workstation in back of the warehouse with other employees of various nationalities, Ms. Ma was told by a woman of Philippine origin, "Chinese people in front". Curious as to why the Chinese employees were summoned, she heard Mr. Agostino repeat, "Chinese in front."

[142] Upon arriving to the meeting area, she heard Mr. Rapps inquire if all the Chinese employees were present. He then said, "This is Canada, not China". In addition to telling the men to urinate in the toilet bowl, he addressed the subject of personal hygiene and said, among other things, "Il faut prendre la douche tous les jours, il faut utiliser... la savonnette pour se nettoyer en prenant la douche. Il faut aussi utiliser le shampoing pour se laver les cheveux ". He subsequently raised his voice and said, "This is my kitchen... You Chinese eat like pigs".

[143] Mr Hou replied, "Fuck you", and the meeting became unruly. When Mr. Yong Shan He walked towards Mr. Rapps to talk to him, Mr. Agostino stopped him, putting his hand on his neck while expelling him from the warehouse. Astounded and angry by what they had heard, people gradually left the warehouse, including Ms. Ma who met Mr. He and 4 or 5 other people in the parking lot. She did not go back into the warehouse that day and left with Mr. He who drove her and several others to the metro.

[144] On the way home, a group of 4 or 5 co-workers phoned the Chinese agency that introduced them to Calego to lodge a complaint. The same evening, Ms. Ma received a call back from the agency and was told that Mr. Rapps intended to apologize and hoped that the employees would return to work the next day.

[145] Interested in the apology, the Plaintiff returned to the warehouse the following morning, where she spent between one and two hours. Mr. Rapps was not there, however the Defendant's cousin and father, addressing those that had come, did not say anything that resembled an apology; they were rather explaining and justifying the events of the day before, notably that Mr. Rapps had been angry and raised his voice because he had seen flies in the bathroom in addition to having lost a contract.

[146] The Defendant's father, in addition to inviting them to a barbecue, offered to pay them for the entire previous day if they returned to work. Ms. Ma notes that she was so angry that she only listened to what Mr. Rapps' father initially said.

[147] Upset that there was no forthcoming apology, the group submitted four demands that they had enumerated earlier that morning: a written apology, improved working conditions, particularly concerning security issues, the designation of regular supervisors, and compensation for the profound psychological hurt caused by the declaration, "Chinese, you eat like pigs".

[148] As there was no satisfactory response to their demands, the employees would not resume their work. They left the Calego premises when Mr. Agostino told them that if they did not return to work, he would call the police.

[149] The group, composed of the majority of the 15 litigants, then went for assistance to Chinese Family Service who referred them to the *Commission des normes du travail*. Two days later, they went to the CRARR and, together, related the incident to Mr. Fo Neimi. They subsequently met with the investigator of the Human Rights Commission.

[150] Ms. Ma mentions that several days after the incident, approximately ten persons met in a park near the Plamondon metro station.

[151] She was paid for the half-day that she had worked on July 11, 2006. She never subsequently returned to work at Calego International.

[152] Ms. Ma affirms that she and her co-workers at Calego were newly arrived immigrants and it was their first job experience in Canada. Consequently, they were not sufficiently prepared to deal with the kind of treatment they had received from the Defendant, which she qualified as unbelievable and terribly hurtful.

[153] Ms. Ma affirme that, subsequent to the incident, she could neither sleep nor eat, adding that, "C'était comme blanc dans ma tête... Il n'y a rien qui se passait dans la tête. Il n'y avait plus d'idées, il n'y avait plus de pensées".

Mr. Nai Guang Wu

[154] Mr. Wu, a mechanical engineer, arrived to Canada in March 2005. He is currently a student.

[155] Testifying in Mandarin, the Plaintiff mentions that his employment at Calego International was his first job experience in Canada. He worked there 8 hours/day for 6 days, in assemblage and transport. He was paid \$6/hour in cash by an intermediary agency that the Plaintiff named in Chinese. At the time, he spoke a minimal amount of English.

[156] Mr. Wu, who did not eat his lunches in the kitchen at Calego due to the lack of hygiene and the overcrowding, noticed that the garbage was often full. The bathroom was not clean and during the period that he worked there, he never saw the personnel clean the kitchen or the bathroom. He had observed a note in the bathroom written in Chinese, saying to maintain cleanliness.

[157] A few minutes after 1 p.m. on July 11, 2006, the foreman called all the Chinese employees to a meeting. Having arrived to the meeting area, Mr. Wu observed that Mr. Rapps designated an employee to act as an interpreter. After making sure that all the Chinese employees were present, he said:

Ici on est au Canada, on n'est pas en Chine. Vous autres, après avoir été à la salle de bain, il faut se laver les mains... Il faut utiliser du savon pour se laver les mains. Et il faut prendre les douches tous les jours. Pour se laver les cheveux, il faut utiliser du shampoing... Les salles de bain plus la cuisine sont très sales. Et la cuisine est à moi, ce n'est pas votre cuisine.

The interpreter did not translate the Defendant's last sentence, "Vous, les chinois, vous mangez comme des cochons".

[158] Mr. Hou, standing in back, then swore out loud whereas Mr. Wu and his colleagues were shocked and upset. When Mr. He approached Mr. Rapps to talk to him, Mr. Agostino pushed him with his hand on Mr. He's neck. Mr. Wu states that he did not hear any death threats.

[159] Mr. Wu then left the meeting area. Spending approximately 10 minutes outside the warehouse, he didn't discuss the incident with his co-workers nor did he return inside. He then went home.

[160] The next day, he and others returned to Calego and submitted 4 demands: a written formal apology from Mr. Rapps, improved management, improved working and hygienic conditions, and compensation. They met with two people, including Mr. Rapps' father who, in addition to inviting them to a barbecue, also offered to pay them for the entire previous day if they returned to work. The employees, however, did not comply because, although three of their demands were met, their request for a written apology was refused.

[161] Mr. Wu specifies, during cross-examination, that the four requests had been elaborated earlier during an informal gathering whereby Ms. Yong Mei Sun wrote them down on a piece of paper and circulated the paper among the others, who were in agreement with what she had written.

[162] He was among those who, several days later, went to Chinese Family Service, to the *Commission des normes du travail*, to the gathering in the park, as well as to a meeting with the investigator of the Human Rights Commission.

[163] Mr. Wu never subsequently returned to work at Calego International.

[164] He considers that he was treated in a discriminatory manner because the content of Mr. Rapps' speech was exclusively directed at the Chinese employees in addition to being degrading and prejudiced.

[165] Following the incident, he felt humiliated and outraged by the treatment he had received and, consequently, did not work for a long time afterwards.

Ms. Yong Mei Sun

[166] Ms. Sun, an engineer, arrived to Canada in 2005. She currently works in her field.

[167] Testifying in English, French and Chinese, Ms. Sun mentions that she had never worked as a labourer prior to her job at Calego International, where she worked for six days packing and unpacking backpacks. Her hours were from approximately 7:30 a.m. to 5 p.m. and she was paid \$7/hour by cheque, at her request.

[168] Ms. Sun states that the working conditions at Calego were not good, with no protection for the workers. Due to the dirty state of the kitchen and the fruit flies, she usually ate her lunch outside. During the time that she worked there, she never saw the personnel clean the kitchen or the bathroom.

[169] With palpable emotion and often in tears, Ms. Sun describes the incident of July 11, 2006. Shortly after lunch, Mr. Agostino went to the area where she was working along with 5 or 6 other employees all of whom were Chinese, and said, "All in front, we have meeting."

[170] When she arrived to the meeting area, where there were many Chinese workers already present, Mr. Rapps inquired if all the Chinese were there. Someone then went to the back of the warehouse and returned with more Chinese employees. The response was affirmative when the Defendant subsequently asked, "Are you all Chinese?" In fact, Ms. Sun declares, only Chinese employees attended the meeting.

[171] Mr. Rapps then proceeded to ask a woman to translate. He then said, "We are here in Canada, not in China. We take shower with shampoo; we wash our hand after the toilet". The interpreter was translating word-for-word until Mr. Rapps said, "You Chinese eat like pigs" which she did not translate in spite of Mr. Rapps' urging, to which she responded, "They all understand". Ms. Sun affirms that she clearly understood what Mr. Rapps had said.

[172] The reaction in the room was one of shock. The meeting then became disorderly: while, standing at the front, she heard Mr. Rapps say, "I will kill you" to the person who yelled profanities, and heard Mr. Agostino say, "Out, out". When a co-worker said, "We cannot stay here, we have to leave", Ms. Sun left the warehouse and, frightened, immediately went home. That evening, she received a call from the intermediary agent who told her to return to the warehouse the following day as Mr. Rapps intended to apologize.

[173] On the morning of July 12, 2006, Ms. Sun and her colleagues returned to the Calego premises to hear the apology. While waiting for Mr. Rapps, one of those present suggested that, prior to the Defendant's arrival, they prepare to negotiate by clarifying what they actually were asking of Calego. Suggestions were made by those present and Ms. Sun, summarizing the suggestions, wrote down four demands in English: A written apology, a clean working environment, particularly in the kitchen, the designation of regular supervisors, compensation. She specifies, during cross-examination, that she didn't circulate the written document, nor did she read it out loud.

[174] As Mr. Rapps was unfortunately not there that day, the group met with his cousin and his father and who said, among other things, that he had been to China many times

and that he loved Chinese people. Although he made some sort of gesture, he did not apologize. The four demands were submitted to Mr. Rapps' cousin.

[175] Subsequently, Ms. Sun was informed that the company agreed to the requests for improved working conditions and regular supervisors. Although Mr. Rapps was prepared to apologize on Friday, there was "no way", however, that he would provide a written apology. Regarding the demand for compensation, Calego was prepared to pay the employees for the entire previous day even though they only had worked a half-day.

[176] Ms. Sun denies, during cross-examination, that Mr. Rapps' father claimed that, on the previous day, his son had not said, "The Chinese eat like pigs", but had said, "We should not eat like pigs".

[177] After the employees stated that the response to their demands was unacceptable, Mr. Agostino asked them to return to work. They replied however that they would not comply without a written apology. Mr. Agostino then told them that if they did not return to work, he would call the police if they did not leave the premises.

[178] Several of the group then went to Chinese Family Service who referred them to the *Commission des normes du travail*, to CRARR and to the Human Rights Commission.

[179] Ms. Sun never subsequently returned to work at Calego International.

[180] She considers herself a victim of racial discrimination because even though the workforce of Calego was composed of people from a variety of backgrounds, including Greeks, Black people and Québécois, who all shared the use of the facilities, only the Chinese were called to the meeting.

[181] In addition, she had been summoned to the meeting and reproached, not because she had done something wrong in regards to the kitchen and the bathroom at Calego, but only by virtue of the fact that she was Chinese.

[182] Ms. Sun's distress due to the way she had been treated, compounded by the difficulties she and her co-workers faced in filing the complaint as they were new immigrants and unaware of procedures in Canada, was exasperated when she saw Mr. Rapps, on television, portray himself as the victim, saying that he would sue the group for slander.

[183] During cross-examination, Ms. Sun explains that Mr. Rapps' appearance on television was in response to her own television appearance, where she described the July 11th incident to the reporter and repeated what the Defendant had said. Her television interview had occurred at Chinese Family Service prior to the onset of the legal proceedings, having been initiated by a Chinese person who alerted the television station of the incident.

[184] Ms. Sun affirms that she feels extremely upset, deeply hurt and abused by the incident. Having children, she worries about the kind of world they live in. The incident has stayed with her ever since, and she claims that she cannot get past it without an apology from the Defendant.

Mr. Xin Hu

[185] Mr. Hu, a human resources manager, arrived to Canada in July 2005. He currently works as a cabinetmaker.

[186] Testifying primarily in Chinese, he mentions that he had been introduced to Calego International by an intermediary agency.

[187] He worked at Calego 8 hours/day for approximately 10 days during the summer 2006, during vacation from his full-time studies. His job consisted of packing, loading and unloading and transport; he was paid \$6/hour in cash by the intermediary agency.

[188] Estimating that there were minimally 40 or 50 employees in the warehouse in July 2006, he could not approximate how many were of Chinese origin.

[189] He describes the working conditions at Calego as miserable in comparison to companies for whom he had previously worked, notably in regard to hygiene and the attitude of the administrative personnel towards the employees.

[190] There were fruit flies in the kitchen, which was not even large enough to accommodate 30% of the employees. At the entrance to the bathroom there was a sign written in Chinese only. During the period that he worked at Calego, he never saw the personnel clean the kitchen or the bathroom.

[191] After lunch on July 11, 2006, while working at the back of the warehouse, his supervisor, a woman of Philippine origin, announced that a meeting was to take place at the front of the warehouse. When non-Chinese workers inquired if they should attend, she replied, "Only Chinese" and that they should continue working.

[192] Having arrived to the meeting area, Mr. Hu heard Mr. Rapps ask, "All Chinese here?" Mr. Rapps did not begin his speech until he received confirmation from Mr. Agostino that all the Chinese employees had arrived. He asked someone to interpret, then changed his mind and designated someone else.

[193] Mr. Hu testifies that Mr. Rapps spoke with an arrogant and condescending tone during his speech, which was essentially a lesson on personal hygiene and how to use sanitary equipment. He began by stating that he was dissatisfied with the unsanitary conditions in the kitchen and the bathrooms. He said:

Nous vivons au Canada, et ce n'est pas en Chine...Il faut comprendre l'importance de l'hygiène et de la salubrité. Il faut prendre la douche tous les jours, il faut se laver les cheveux avec le shampoing tous les jours, il faut se laver les mains tous les jours aussi. Alors, quand vous allez à la salle de bain,

après la toilette, il faut nettoyer le bol et il faut aussi pisser dans le bol... C'est ma cuisine, ce n'est pas la vôtre. Je veux que ça soit propre dans la cuisine. Vous les chinois, vous mangez comme cochons.

The interpreter did not translate the last sentence.

[194] After a minute of silence, during which Mr. Hu was shocked by what he had just heard, someone in the audience said, "Fuck you", after which the meeting became chaotic. Mr. Hu heard somebody say, "I will kill you", as well as a person say, "Out". On his way out of the room, he saw Mr. Agostino push someone with his hand on the person's neck.

[195] After exiting the warehouse, Mr. Hu went home, not returning inside nor discussing the incident with his co-workers.

[196] Having been told by the intermediary agency that Mr. Rapps intended to apologize, Mr. Hu returned to Calego the following day. When he arrived, an elderly person and many of his Chinese colleagues were discussing the four demands formulated by the employees.

[197] The invitation to a barbecue and the offer to be paid for the entire previous day was of no interest to Mr. Hu who had come for an official apology. As it was not forthcoming, he and his colleagues, after discussion, went to Chinese Family Service, and, subsequently, to the *Commission des normes du travail*, the CRARR and the Human Rights Commission. He also participated in a gathering in a park near the Plamondon metro.

[198] Mr. Hu never subsequently returned to work at Calego.

[199] He affirms that he is pained by the manner in which he was treated by the Defendant, specifying that he had always been an upright and honest man, respectful of and respected by his entourage. Be it at his high-level job in China, at the companies where he worked prior to Calego, or at the technical school where he had studied, the relationships with his colleagues and with the management had always been good.

[200] Describing the events of July 11, 2006, he stated, "J'ai plutôt vécu une expérience d'humiliation la plus grave de ma vie". When he thinks or talks about the incident, he gets headaches and can't sleep.

[201] During cross-examination, he admits that he never consulted a doctor regarding these problems.

Ms. Xiang Huan Xie

[202] Ms. Xie, a physician, arrived to Canada in May 2004. She is currently a student of English and French.

[203] Testifying primarily in Chinese, she mentions that her job at Calego International was her first employment experience in Canada. She worked there for three days, labeling and sorting bags, and was paid \$6/hour in cash by an intermediary agency. At the time, although her spoken English was not good, she could understand as well as read and write English which she had studied in high school and university.

[204] She worked in a team of 7 or 8 people at Calego, two of whom were not Chinese. Mentioning that there was a rotation system to eat lunch in the kitchen, she claimed that she never saw members of the staff clean the kitchen or the bathroom.

[205] Approximately thirty minutes after lunch on July 11, 2006, she was called to a meeting. As she was walking through the passageway, she heard somebody say, "Chinese in front". Furthermore, a Chinese co-worker informed a non-Chinese co-worker, that a meeting had been called, to which he responded, "Chinese".

[206] Ms. Xie affirms that only the Chinese employees were present at the meeting and denies, during cross-examination, that two Black employees as well as an Arab employee attended as well.

[207] When Ms. Xie arrived to the meeting area, which consisted of an empty space and tables, numerous Chinese employees had already arrived. She heard Mr. Rapps inquire if all the Chinese were present, after which a non-Chinese employee left the meeting area and returned with more Chinese employees. As a young Chinese woman refused Mr. Rapps' request to interpret, he designated someone else to translate.

[208] He then stated, "This is Canada, not China". He added, "À tous les jours, il faut se laver les mains, il faut prendre la douche". Speaking about the dirty conditions in the kitchen and the bathrooms, he raised his voice and said, "It's my kitchen... You Chinese eat like pigs". All the employees understood the last sentence which the interpreter did not translate.

[209] After a few seconds of total silence, someone behind her and towards the right responded, "Fuck you". She heard a non-Chinese person say, "Out"; the meeting then turned chaotic.

[210] Two Chinese employees, who had been standing behind her, attempted to go towards the front; she had heard them say that they wanted to explain to Mr. Rapps why the kitchen was dirty. She turned her head and saw a non-Chinese person push a Chinese worker, with his hand on the worker's neck.

[211] Angry, discouraged and frightened, the Plaintiff told the person standing next to her, Ms. Yong Li Zhao, that she was unable to continue working for the company and that she had to leave.

[212] Outside the warehouse, people gathered in groups of two and three. She did not go back into the warehouse and left with a colleague who drove her to Côte-Vertu.

[213] Ms. Xie did not return to the warehouse the following day, nor did she subsequently return to work at Calego International. She was paid for the half-day that she had worked on July 11, 2006.

[214] She became involved in the group that eventually filed the complaint to the Human Rights Commission when Ms. Zhao contacted her several weeks later.

[215] She considers herself a victim of racial discrimination because only the Chinese workers were called to the meeting, because the Defendant asked that the contents of his speech be translated into Chinese, and because Mr. Rapps had said, "This is Canada, not China" as well as "You Chinese eat like pigs".

[216] In tears, Ms. Xie, testifying that her dignity was violated by the manner in which she had been treated, says, "C'est la plus grave humiliation que j'ai subie de ma vie". She states that she could accept not having money or work, but she could not accept being treated with disrespect.

[217] During the first few months following the incident, Ms. Xie suffered from insomnia. In January 2007, she returned to China as she didn't want her children to undergo the kind of hurt and humiliation that she had experienced. After approximately two months, however, she returned to Canada, realizing that she had to face her emotions. As she retained the feeling of being scared, she could never bring herself to do the same kind of work that she did at Calego. Furthermore, she found it difficult to overcome the psychological obstacles that she was facing.

[218] During cross-examination, Ms. Xie mentions that when she went to China, she was not in a healthy psychological state. She never consulted a psychiatrist in Canada, however did consult her family doctor. In 2008, with six visits to the hospital emergency and two hospitalizations, she was diagnosed with lupus.

Mr. Li Ming Zhou

[219] Mr. Zhou arrived to Canada in November 2004. In China, he worked as a teacher and researcher in a university laboratory.

[220] Following his arrival to Canada and prior to his employment at Calego International, he worked in a clothing factory. He is currently a student.

[221] Testifying principally in English and Chinese, the Plaintiff states that he worked at Calego International for approximately three weeks. Working 8 hours/day with occasional overtime, he was employed as a machine operator and was paid \$6/hour in cash by an intermediary agency.

[222] As there were flies in the kitchen which was also small and dirty, he usually ate his lunch outside. He never saw a company or members of the staff clean the kitchen or bathroom during the period that he worked at Calego, nor did he notice urine stains on the bathroom floor. In the washroom, there was a sign in Chinese saying to maintain

cleanliness, which was not the same sign that was produced by the defense during the proceedings.

[223] After lunch on July 11, 2006, Mr. Zhou noticed the quiet when he returned to his workstation near the office. A co-worker informed him that all the Chinese employees had gone to a meeting. He noted that the co-worker as well as a White woman working in the office remained at their workstations and didn't go the meeting.

[224] Being almost the last to arrive to the meeting area, he heard Mr. Rapps ask if all the Chinese were present, to which someone responded in the affirmative. There were tables in the meeting area, situated behind Mr. Zhou. The non-Asian employees who were working behind these tables motioned to Mr Rapps if they should also participate in the meeting. He motioned back that no, they should continue working.

[225] Mr. Rapps asked a woman if she could interpret. After she gesticulated that she could not, he designated the task to another woman. He then said,

Recently the cafeteria not very clean. The *poubelle*, there is flies. This is Canada, not your China. You should take shower, use the shampoo, wash hands. And when you go the washroom, after you have to push the water... You Chinese eat like pigs.

The interpreter, who had been translating word-for-word, was reluctant to translate the last sentence. In spite of his insisting, she told him that everyone understood.

[226] Subsequently, someone said, "Fuck you", and another person said, "I will kill you". The meeting then became disorderly. Mr. Zhou saw Mr. Agostino push Mr. Yong Shan He. He also noticed a young woman crying.

[227] He then left the warehouse and went home, not returning inside nor discussing the incident with his co-workers.

[228] Mr. Zhou returned to Calego the following morning to hear the Defendant apologize. Following discussion, the employees decided to put the four demands in writing. The written document was then read out loud.

[229] Mr. Zhou affirms that, during the gathering, a Chinese sign, "Chinois ne perdent pas la face contre les autres chinois" had been affixed to a car. He specifies that the sign was not a poster: it had been written that morning on a piece of paper; he did not know by whom. During cross-examination, he states that he didn't see any employees picket in front of the Calego warehouse.

[230] The group of workers met with two of Mr. Rapps' relatives, including an elderly man who offered to pay them for the half-day not worked the previous day if they returned to work, adding that if they did not comply, they would have to leave the premises.

[231] Mr Zhou affirms, that the elderly gentlemen never said that his son would apologize for the tone of voice used the previous day, nor that his son had not said what was purported by the employees. Mr. Zhou claims that no apology was forthcoming, particularly not a written apology as requested by the employees. He could not recall whether the elderly gentleman had said that he had been to China and that he liked the Chinese. However, he did hear him say, "My son made a big mistake"; he said it to himself, however, and not to the public present.

[232] Upon leaving the Calego premises, the workers went to Chinese Family Service who referred them to the *Commission des normes du travail*. They were then referred them to the Human Rights Commission.

[233] The group of co-workers, who didn't know each other at the time, subsequently met in a park to become acquainted and to see how to deal with what had happened on July 11. They later met at the CRARR where they discussed the incident, as well as at the Human Rights Commission when approximately 10 persons were present during the discussion with the investigator.

[234] Mr. Zhou never subsequently returned to work at Calego International.

[235] He considers that he was treated in a discriminatory manner because of the insulting content of the Defendant's speech that was directed at the Chinese employees.

[236] With perceptible emotion, Mr. Zhou testifies that, subsequent to the incident, he has lost the pleasure of eating. When he eats, he recalls the humiliating episode of July 11. He is afraid to eat in public places and in front of non-Chinese people as he is scared that he will be insulted once again, being accused of eating like a pig. This has developed into an obsession.

[237] Referring to the incident, Mr. Zhou states, "This hurt my heart". He still cries when he thinks it, as he did when he returned home on the day that it had occurred.

Mr. Wei Li

[238] Mr. Li arrived to Canada in June 2005. He currently works in a grocery store.

[239] Testifying in primarily in Chinese, Mr. Li mentions that he worked at Calego International for 2½ days, doing assembly work. At the time, he could understand basic English and French.

[240] He had noticed a sign on the bathroom door at Calego, written in Chinese, saying to maintain cleanliness.

[241] Shortly after lunch on July 11, 2006, Mr. Li heard Mr. Rapps say the word "meeting" to Mr. Agostino. After a brief exchange between the two, Mr. Agostino left.

The Plaintiff assumed that Mr. Agostino went to at the back of the warehouse to summon the Chinese employees to the meeting.

[242] Mr. Li affirms, during cross-examination, that he did not see any Black, Syrian or Greek employees participate in the meeting.

[243] At the meeting, Mr. Rapps designated an interpreter and said, in a loud voice, "Ici, c'est au Canada". He continued, saying things such as, "Il faut se laver les mains, il faut utiliser un shampoing pour se laver les cheveux et il faut prendre la douche tous les jours" and ended with "Vous mangez comme des cochons". The interpreter did not translate the last sentence.

[244] After a few seconds of silence, someone in back responded, "Fuck you". The meeting then turned chaotic. Having heard someone say, "Out, out", Mr. Li understood that they were being told to leave, therefore he and many others left the warehouse using the door leading to the parking lot.

[245] As he normally travelled to work by bus and used the main door to access the Calego premises, he returned into the warehouse in order to find the main door and from there his bus to go home. Seeing that several Chinese co-workers were talking to Mr. Rapps and Mr. Agostino, he became angry and yelled, "Vous êtes appelés des cochons et vous continuez à travailler?"

[246] Mr. Agostino and another person, each on either side of him, then shoved him towards the exit, holding his arms and pushing his back.

[247] The following morning, Mr. Li returned to the Calego warehouse. There were people standing in front of the company with a paper sign; he however did not pay attention to what was written on the sign as, in addition to not knowing his co-workers, he had come for the sole reason of hearing the Defendant apologize.

[248] He spoke to his colleagues about the humiliating content of Mr. Rapps' speech and the demand for an apology; when more people arrived they formulated the four demands and looked for a competent person to write them down. The document was then read aloud.

[249] The employees met with Mr. Rapps' father, among others, who said that Mr. Rapps was away on a business trip and that he had made a mistake. The employees were invited to return to work. As they didn't comply, they were told that if they didn't leave the premises, the police would be called.

[250] During cross-examination, Mr. Li states that, as he was angry at the time and was waiting for an apology, he does not recall how long he stayed at Calego that morning, nor if Mr. Rapps' father had said that although his son regretted the tone he used the previous day, he never said that the Chinese eat like pigs.

[251] After leaving the Calego premises, he and his co-workers went to Chinese Family Service, and then to an office on boulevard René-Lévesque. He also participated in a subsequent gathering in a park.

[252] Mr. Li was paid for the half-day he worked on July 11. He never subsequently returned to work at Calego International.

[253] He considers that he was treated in a discriminatory manner when Mr. Rapps stated that the Chinese were not clean.

[254] He felt greatly humiliated by the way in which was treated. Following the incident, he didn't dare seek employment. At the time, he was enrolled in a technical training program. As the end of his training approached, he became increasingly wary of looking for work and, consequently, did not do the required internship and dropped out of the program.

Mr. Yong Huo

[255] Mr. Huo, a mechanical engineer, arrived to Canada in October 2005.

[256] Following his arrival to Canada and prior to his employment at Calego International, he worked at temporary jobs. He currently works as a quality controller.

[257] Testifying in English, he states that he did assembly work during the 4½ days that he worked at Calego. He was paid \$6/hour in cash by Agence Vincent.

[258] Describing the working conditions, he mentions that there were many fruit flies in the kitchen. The bathroom was neither very clean nor very dirty; there were two signs, on the door and on the wall, written in Chinese only, saying, "Please keep the washroom clean". Mr. Huo affirms that there were no trilingual signs in the washroom and that he never saw a company or members of the staff clean the kitchen or bathroom during the period that he worked at Calego.

[259] In the early afternoon of July 11, 2006, he was called to a meeting. After having designated a Chinese woman to act as an interpreter, Mr. Rapps said, "This is Canada, not China. We take shower and shampoo every day, wash hands with soap, flush the toilet after use. Don't piss on the floor". Speaking louder and louder to the point of screaming, he added, "This is my kitchen, not yours. My kitchen, I want it clean. You Chinese eat like pigs".

[260] When Mr. Rapps urged the interpreter to translate the last sentence, she replied that everybody understood. Mr. Huo specifies that, in fact, it was easily comprehensible as it was a simple sentence.

[261] Subsequently, Mr. Hou shouted, "Fuck you", after which the meeting turned chaotic. Mr. Huo told the people behind him they should no longer work for Mr. Rapps

and that they should leave. He did not hear anyone say, "I will kill you" nor witness any physical aggression.

[262] Leaving the warehouse to go home, he spent less than 10 minutes outside talking to his co-workers, who decided to return the next day for an apology.

[263] The following morning, Mr. Huo and approximately 20 of his colleagues gathered at the warehouse where they formulated and wrote down the four demands, which were read aloud in Chinese.

[264] He had noticed a few pieces of paper, written in Chinese, affixed to the window of a car in the parking lot. He did not see anybody picketing, nor did he see a sign in English saying that Walmart should not deal with Calego. He also did not recall what was written on the Chinese signs.

[265] The group of employees met with two people, including Mr. Rapps' father who said that his son was on a business trip in Toronto. In response to the four demands, he stated that Calego was prepared to improve the hygienic conditions as well as to pay them for the afternoon of July 11 if they returned to work, however there would be no apology in writing. Mr. Huo states, during cross-examination, that at the time he had not been listening attentively to the other comments made by Mr. Rapps' father.

[266] The co-workers, leaving the Calego premises after being warned that the police would be called if they stayed, went to Chinese Family Service and to the *Commission des normes du Travail* who referred them to the Human Rights Commission.

[267] Mr. Huo never subsequently returned to work at Calego International.

[268] He considers himself a victim of racial discrimination because only the Chinese employees were called to the meeting, because of the designation of a Chinese woman to translate, because of the content of Mr. Rapps' speech, notably "This is Canada, not China" and most significantly, "You Chinese eat like pigs", as well as because of the signs in the washroom written in Chinese only.

[269] With noticeable emotion, Mr. Huo testifies that every time he recalls the incident, he feels very bad. He states, "I suffered a lot inside... If the physical suffers it can be recovered, finally it can be recovered, but inside you never recover. This is the worst humiliation I suffered in my life...the worst one".

2.2 Preuve en défense /Evidence submitted by the Defendants

Mr. Réjean Girard

[270] Mr. Girard, a general labourer, has been employed at Calego International since 1979.

[271] Over the years that he has worked at Calego, its workforce has been composed of people of diverse national origins, including Greeks, Africans, Jamaicans, French, Québécois, English and Chinese as well.

[272] In July 2006, his tasks included the maintenance of the kitchen and the bathrooms at the Calego warehouse. In addition to a company who sent two persons twice weekly at nighttime to clean the bathrooms, he cleaned the men's and women's washrooms approximately twice a day.

[273] Mr. Girard states that the bathrooms, at the time, were in a very insalubrious state with urine, excrement, stains on the toilet seats and paper on the floors. After each of the three lunch periods, the bathrooms were once again notably dirty.

[274] There were French, English and Chinese signs posted in the bathrooms, saying to keep the bathrooms clean and to wash hands. Mr. Girard affirms that the signs filed into evidence by the Defendants, were in fact the French and English signs that were posted in the washrooms at Calego in July 2006.

[275] He adds that the signs were put up before July 11, 2006, a few days after the arrival of a group of Chinese employees.

[276] Mr. Girard testifies to having seen which people were responsible for the unsanitary conditions of the bathrooms, and affirms that they were all of Chinese origin. Prior to their arrival and subsequent to their departure from Calego, the bathrooms were clean.

[277] The kitchen, which could comfortably accommodate 35 to 40 people, was also in an unhygienic state. As the garbage was continually overflowing, Mr. Girard was obliged to replace the garbage bags often during the day and to take out the garbage twice during the three lunch periods.

[278] The garbage was constantly filled beyond capacity, not only due to the quantity of trash, but also due to an attitude whereby the employees in question piled their rubbish onto the garbage without waiting for the bags to be replaced. He stated, during cross-examination, that there was however no other place for the employees to throw out their trash.

[279] As the number of employees increased significantly during the company's peak season, the lunchtimes were divided into three distinct lunch periods. Consequently, according to the Witness, the kitchen was not utilized beyond capacity and its limited size was not the reason that it was dirty.

[280] Mr. Girard testifies that he was often asked by employees of Calego to respond to maintenance issues and adds that he was surprised that not one of the fifteen litigants had seen him clean the bathrooms.

Ms. Cynthia Wood

[281] Ms. Wood, an employee of Calego International since May 2003, works as a packer and a quality controller.

[282] She testifies that prior to the arrival of the Chinese employees, there were close to 10 people employed at the Calego warehouse. During the period of the incident in question, with the continued arrival and departure of other employees, Ms. Wood, at times, was unable to eat in the kitchen due to the lack of space; there was notably an insufficient number of chairs.

[283] Noting that the sanitary conditions are currently better at Calego, she describes the state of the women's washroom in July 2006, stating that it was "always dirty, blocked, feces, droplets of blood and the toilet seat cover... people would use it, they stand on it instead of sitting on it, so it's scratched, broken off. At times I could not use it, it have to be replaced by seat emergency from the men's toilet". At the time, Mr. Girard cleaned the bathrooms and kitchen every day, as often as required.

[284] There were signs in the washroom, written in French, English and Chinese, advising people to wash their hands after using the toilet. These signs were posted in the bathroom prior to July 11, 2006.

[285] The Witness affirms that she had observed that the arrival of the Chinese employees was the cause of the dirty conditions in the kitchen and in the bathroom at Calego.

[286] In July 2006, Mr. Rapps and Mr. Agostino summoned the Calego workers and the contract workers to a meeting.

[287] She was present at the meeting, standing behind the crowd in her working area which was very close to where the meeting was held, at a distance of approximately 5 or 6 feet. She specifies that that she was listening and not working during the meeting.

[288] Mentioning that she was of Jamaican origin, Ms. Wood notes the names of several of her co-workers who also attended the meeting, notably a Syrian woman, a Haitian woman, a British Guyanese man and a Filipino man.

[289] During the meeting, an interpreter was translating from English into Chinese.

[290] Although she does not have a verbatim recollection of what Mr. Rapps had said, she remembered that he began by telling those present why he had called the meeting and that he sternly spoke about the hygiene in the kitchen and the bathrooms. She did not hear him talk about eating, nor did she hear him say, "We are in Canada, not China", nor "You Chinese eat like pigs", nor "We don't eat like pigs".

[291] With no recollection that the meeting broke up in disorder, Ms. Woods states that when Mr. Rapps finished his address, he left as did many Chinese employees. She didn't hear anybody say, "Fuck you", nor did she witness any physical aggression.

Mr. Richard Copelovitch

[292] Mr. Copelovitch, who is married to Mr. Rapps' niece, has been vice-president of sales at Calego International for the past 13 years. His job functions include sales, notably to the company's largest account Walmart, as well as product procurement which involves travel to China 4 to 6 times a year.

[293] The cosmopolitan staff of Calego consists of people from Greece, Barbados, Syria, Jamaica and China as well as African-Canadians and Québécois, many of whom have been employees for a considerable period of time.

[294] In July 2006, the Calego warehouse was housed in a state of the art facility that had been built in 2003 with the intention of creating a top-notch environment for the workers. In addition to a kitchen of approximately 500 square feet, there was a set of washrooms in the front office and in the back, all of which could be used by all employees.

[295] Due to the large volume of work during Calego's peak season, from April to July, the small number of front office support staff was supplemented by the warehouse workers who were not direct employees of Calego but were hired by a contractor, Mr. Vincent Agostino who used another agency to recruit the workers. The Witness believes that in July 2006, all the contract workers were of Chinese origin.

[296] After lunch on July 11, 2006, when walking through the warehouse on his way from the parking lot to his office, Mr. Copelovitch noticed a significant stench emanating from the kitchen, where he saw garbage piled onto the lid of the garbage can that had been overturned as well as garbage and food on the floor. In addition to a large number of small flies hovering around the garbage can, the tables were noticeably dirty with leftover food.

[297] In the men's washroom, the floor was dirty. In addition to a puddle of urine on the floor under one of the urinals, Mr. Copelovitch noticed wadded up towels thrown into the basin that was covered in water. There were footprints on the toilet seats in the stalls as well as an unflushed toilet. The Witness has no recollection if, at the time, there were written signs in the bathroom.

[298] Mr. Copelovitch states, during cross-examination, that he never actually saw the workers dirty the kitchen or bathrooms at Calego.

[299] He proceeded to the front office and, after telling Mr. Rapps what he had seen, he accompanied Mr. Rapps to the back of the warehouse as Mr. Rapps wanted to see the state of the kitchen and the bathroom for himself.

[300] Subsequently, Mr. Rapps asked Mr. Agostino and Judy to gather the warehouse staff for a meeting which would take place at the packing tables. The Witness is not aware of what Mr. Agostino and Judy actually said to the workers when they called them to the meeting.

[301] Mentioning that the front office staff did not attend the meeting, the Witness affirms that those employees who did attend were of diverse national backgrounds and were gathered in two rows in a circle around the packing tables. During cross-examination, he names the non-Chinese staff who attended the meeting, however specifies that almost all present were Chinese as the yearly Calego staff consisted of only 7 or 8 people.

[302] Mr. Copelovitch recalls that Mr. Rapps, angry and upset about the condition of the kitchen and bathroom, told those present that

"[t]his office was our home, that we worked here every day of the week and that it was up to all of us, and we all had a responsibility, to keep it clean. He said that he was very very upset about the fact that it was so dirty and that there was garbage on the floor and that there were open food containers on the table. And he was very upset about the condition of the bathroom. He talked about how we go about keeping the premises clean. We throw our garbage in the garbage can when we're done with it... After we go to the washroom, we clean our hands. After we go to the toilet we make sure that we haven't left anything behind. And if we have, we clean up after ourselves".

[303] Regarding personal hygiene, he said, "We wash our hands in the morning. When we get ready to go to work, we take a shower, we put on deodorant, we brush our teeth".

[304] In addition, Mr. Rapps said that "there are standards of cleanliness in Canada that all Canadians adhere to, and that this was his office and his office was in Canada and he expected us to all adhere to these standards". He ended his speech by telling those present "to keep everything clean and just make sure in the future, that when you use the kitchen or bathrooms, we need to have it kept clean because we're all here every day and we want to work in a clean, sanitary environment...Okay, everybody go back to work".

[305] The speech was translated from English into Chinese, however the interpreter appeared to have difficulty understanding and interpreting the content of Mr. Rapps' address.

[306] Mr. Copelovitch affirms that during his speech Mr. Rapps said, "We are in Canada", however did not say, "We are not in China" nor "You Chinese eat like pigs" nor "We don't eat like pigs".

[307] The following morning, when driving into the parking lot, the Witness was approached by approximately fifteen people who inquired if Mr. Rapps was expected that day. Responding that Mr. Rapps would not be in the office that day as he was at a prearranged off-site meeting, Mr. Copelovitch told the workers "that Stephen and I have actually been to China quite often and have a great respect for the Chinese culture and Chinese people, and we had hoped that they would come back to work".

[308] Mr. Copelovitch was approached by two workers who told him that they would return to work if they were given a letter of apology to which he responded that he did not have the authority to provide an official letter on behalf of the company. The workers then returned to the back of the parking lot and did not return to work. No one was fired.

[309] Mr. Rapps' father, having driven into the parking lot as the meeting was ending, only met with the assembled workers for a brief moment.

Mr. Stephen Rapps

[310] The Defendant, Mr. Stephen Rapps, is co-owner of Calego International along with his wife, his father and his brother-in-law.

[311] With 100% of the company products procured in China and sales to retailers in Canada and distributors in Europe, Mr. Rapps travels approximately 30 times a year for business, including several trips to China. The Defendant, in fact, has traveled to China more than 40 times and mentions that he has long-time friends of Chinese origin.

[312] The workforce of Calego is currently composed of people of diverse origins, including many Chinese employees, among whom are the vice-president of Asian operations as well as the second in charge in the warehouse.

[313] In the summer 2006, the permanent employees at Calego consisted of Jamaicans, Greeks, Algerians, Syrians, Haitians, Guyanese, Barbadians, Chinese, Filipinos, Canadians, Irish, Flemish, African-Canadians and Scottish.

[314] The temporary employees who worked at Calego during its peak season in 2006 were paid by the contract agency, and Mr. Rapps was unaware of both the amount and the manner in which these workers were paid. Calego paid the contract agency in accordance with applicable laws.

[315] At the time, Calego was located in a 100,000 square foot building that was built in 2003, with 85,000 square feet of warehouse and 15,000 square feet of showrooms and offices. There were two 459 square foot kitchens, one in the front office and the other in the warehouse, as well as fifteen bathrooms on the premises, including three in the warehouse. All the bathrooms were open to all the employees.

[316] Mr. Rapps affirms that the signs produced by the defense during the proceedings were those that were in the men's and women's bathrooms in July 2006. The Chinese signs were added to the original French and English signs for the benefit of the Chinese employees who were hired by Agence Vincent at the time.

[317] In addition to the maintenance company, Entretien Euronet Maintenance, who was paid monthly to clean the Calego premises three times a week, Mr. Réjean Girard cleaned the bathrooms and kitchen two to three times a day.

[318] Between 12:40 p.m. and 12:55 p.m. on July 11, 2006, Mr. Rapps was told by Mr. Copelovitch that "[i]t's disgusting in the back. There are so many fruit flies, it's filthy". Mr. Rapps consequently went to the warehouse kitchen where he saw the counter littered with food, 2½ feet of garbage on the overturned garbage lid, including banana peels and fruit, garbage on the floor and open food and waste on the tables.

[319] Concerned about bugs and vermin on the premises and noting the July heat, Mr. Rapps states that he was unhappy with what he had seen.

[320] He then went to the men's bathroom where he observed pools of urine under the urinal and urine on the walls as well as stool and paper in an unflushed toilet in the stall. Disheartened by what he saw, Mr. Rapps proceeded to the women's bathroom where the toilet stalls were in total disarray.

[321] He returned to the office where he told his father about the state of the premises and that he would call everyone. He asked an employee, Leo, to "get everyone in the back...Get over to the packing tables right now. I want to have a meeting". Mr. Rapps said to Judy and Mr. Agostino, "Judy, get everyone at the packing table. Vince, get all your guys and girls, get them over to the packing table, we're having a meeting".

[322] The Defendant affirms that he did not mention any ethnic group in particular and emphatically denies that only the Chinese workers were called to the meeting. He is unaware of what Mr. Agostino and Judy actually said to the workers when they called them to the meeting.

[323] At the meeting area Mr. Rapps was at the packing table with Mr. Agostino to his right and an employee, Mr. Howard Kleinman, to his left, whereas the 55 to 60 contract workers were around the table, interspersed with the 10 warehouse employees. The contract workers happened to have been of Chinese origin, consequently there were mostly Chinese people at the meeting.

[324] Mr. Rapps states that he was talking very forcefully when he said:

"I am not happy, and I don't find this a joke... The place is a pigsty, it's dirty, it's disgusting and I'm not going to take this... The toilets are terrible, we have urinals. Guys, when you go to the bathroom, and you're using a urinal, make sure you urinate in the urinal. I don't want everything on the floor and on the walls... And when you go to the bathroom, flush the toilet. Make sure all the paper is in the toilet, flush the toilet... When you're finished, you wash your hands. You wash your hands very well with water and soap... You wash your hands at all times... Ladies, when you go to the bathroom, and you do whatever you do, again, you flush the toilet. You make sure everything goes down. You check, after that you wash you hands. You use plenty of soap and you wash... We have Canadian standards and in Canada you have to wash your hands after you use the bathroom, before you touch your food, after you touch your food, you wash your hands. You take showers two, three times a week, you take a bath, you wash your hair, you wash your body. These are certain hygiene standards that we use."

[325] Regarding the kitchen, he said:

“The kitchen is disgusting. We have two garbage pails. We have plastics. Put the garbage in the plastic bags. When it’s finished, call someone, we’ll close it up, throw it in the garbage bin that we have. Just close it up. Right now, the garbage is everywhere, the garbage is on the floor, the garbage is on the garbage container, it’s on the counter, it’s on the tables. We don’t eat like pigs, we can’t do this”.

[326] Mr. Rapps denies that he said, “We are in Canada, not in China” or that he said, “When you come to Canada, there are certain standards”. He denies that he spoke of Canadian standards of hygiene in relation to Chinese standards and states that when referring to Canadian standards, he was not comparing them to standards in other countries.

[327] The Defendant explains that one of the reasons that he addressed the question of personal hygiene was that he was in Hong Kong during the Severe Acute Respiratory Syndrome (SARS) outbreak in Hong Kong, China and Toronto, and all the experts, at the time, advised people to wash their hands as a preventative measure.

[328] In addition, after seeing the dirty state of the toilets, he wondered whether those using the toilets were looking after themselves hygienically. He states, “I wanted all the workers to know that they have to wash their hands, they have to be clean. They’re touching products that are going to be used by children. I wanted to make sure that everything is clean so there are no issues with cleanliness or hygiene”.

[329] Mr. Rapps declares that he never mentioned the word Chinese nor the word China during his speech, and did not say, “You Chinese eat like pigs”.

[330] After his last sentence, a person who was standing approximately 15 feet in front of him screamed, “Fuck you, fuck you, fuck you” and moved about 5 to 7 feet towards Mr. Rapps. Mr. Agostino and Mr. Kleinman went towards the man who yelled the profanities; Mr. Agostino grabbed him forcibly by the back of the neck, moved him out of the building holding his shirt collar and said, “Get out of here”. No one was hit during the incident.

[331] Subsequently, there was total disarray and within several minutes the majority of the contract workers walked out. Afterwards, several of the workers who had left returned to the warehouse and told those who had returned to work, “Get out, you’re not working here anymore”.

[332] Mr. Rapps contends that no one was fired subsequent to the incident; all the contract workers were invited to return to work and some in fact did return.

[333] The same afternoon, he apologized for the tone of his voice to those who had remained at work. He states that he had said “I am sorry for the tone of my voice” and adds, “But that was it. I wasn’t apologizing for anything else”.

[334] On July 12, 2006, the Defendant was not present on the Calego premises.

[335] For the two years that followed and until Calego began to work with another contract agency, the contract workers were of Chinese origin.

Mr. Vincent Agostino

[336] The Defendant, Mr. Vincent Agostino, is the owner of the company 91197095 Quebec Inc. which owns Agence Vincent and Ago Liquidation. In addition to other activities, the company employs and supplies manpower to businesses, in other words "rents people", as states the Defendant.

[337] Working with Calego International since 2001, Mr. Agostino was the company's main contractor from 2002 until 2008.

[338] In 2006, as Calego International was among Mr. Agostino's major clients, he worked on the Calego premises 90% of the time and, under the immediate authority of a woman named Judy, he supervised the contractual workers.

[339] Not having the time to hire employees, Mr. Agostino used the services of a sub-contractor, a former employee of Chinese origin who recruited, hired and supplied Mr. Agostino with as many workers as required. Mr. Agostino paid the subcontractor in accordance with applicable laws. The subcontractor in turn paid the workers on an hourly basis.

[340] In July 2006, due to the overflow of people on the Calego premises, the lunchtimes were divided into half-hour intervals in order to avoid the 10 to 15 minute wait to use the microwaves and the resulting fights.

[341] At the time, the Calego kitchen and bathrooms became dirty due to the abundance of people using them at the same time. Mr. Agostino states that this was the situation every summer due to the large volume of people on the Calego premises during its peak season coupled with the heat and the pressure to produce. Although Mr. Girard cleaned as often as possible, he had other works obligations as well.

[342] Mr. Agostino states that on July 11, 2006, it appeared that the garbage in the kitchen was overflowing when in fact the garbage can was empty, however the lid was turned upside down with garbage piled on top it with an odor emanating and lots of fruit flies.

[343] After touring the premises, Mr. Rapps "got one of his excitements... took his fit as usual" and asked that everybody be called to a meeting. Mr. Agostino was asked to gather his employees who worked in the back of the warehouse. He delegated the task of summoning his employees to two people, Leo and Vianne, to whom he specified that all the people in the back should attend the meeting.

[344] When confronted during cross-examination with a signed Version of the Facts submitted to the Human Rights Commission on March 13, 2008, where he stated, "When Stephen Rapps asked me to summon all the Chinese workers..." and "The Filipino person acted upon my request to call upon all the Chinese workers...", Mr. Agostino gives a new version whereby he instructed Vianne to call everyone to the meeting without specifying the Chinese as such. He explains that the mention of "Chinese workers" in his Version of Facts was a manner of speaking as all the people working in the back of the warehouse were of Chinese origin.

[345] Unaware of what Leo and Vianne actually said to the workers when they called them to the meeting, Mr. Agostino mentions that the majority of non-Chinese employees worked at the tables located where the meeting was to take place, therefore they were already present at the meeting area.

[346] Mr. Rapps, talking loudly, spoke about hygiene in Canada, washing hands and so on.

[347] Although Mr. Agostino claims that he did not pay attention to most of what Mr. Rapps was saying as he was laughing with his colleague, he recalls that Mr. Rapps did not say anything about China or the Chinese. He rather used the word "we", saying, "We don't do this, we don't do that, we do this, we do that... In Canada we wash our hands, wash our face." Mr. Agostino also remembers that Mr. Rapps, at the end of his speech, said, "It's my building, it's my property, it's a new one... We don't eat like pigs".

[348] An interpreter, who was translating the content of Mr. Rapps' speech, did not translate Mr. Rapps' last sentence as she was interrupted by the person who yelled the profanities.

[349] Following Mr. Rapps' speech, there was silence in the room. When an employee yelled, "Fuck you, fuck you, fuck you" and began to lunge at Mr. Rapps, Mr. Agostino intervened and told him to leave. As he didn't leave, Mr. Agostino pushed him, grabbed him by the neck and ushered him to the door.

[350] On his way out, the employee was shouting to his co-workers in Chinese; Mr. Agostino, who does not speak Chinese, presumes he was screaming, "He called us a pig", causing the others to react, many of whom didn't understand what was going on.

[351] Mr. Agostino states that he also ushered another employee to the door who was screaming in Chinese, after asking him to politely leave. He does not recall the names of the two people that he escorted to the door, affirming however that one of them was the person who yelled the profanities.

[352] There was no one fired subsequent to the incident and all the workers were invited to return to their jobs.

3. QUESTIONS AT ISSUE

[353] The questions at issue are the followings:

- Did the Defendants violate the Victims' right to be treated equally without distinction, exclusion or preference based on their national origin, contrary to sections 10 and 16 of the *Charter of Human Rights and Freedoms*?
- Did the Defendants violate the Victims' right to the safeguard of their dignity, without distinction, exclusion or preference based on their national origin contrary to section 4 of the *Charter*?
- Did the Defendants violate the right of Mr. He and Mr. Li to personal security and inviolability without distinction, exclusion or preference based on their national origin, contrary to section 1 of the *Charter*?
- Did the Defendants violate the Victims' right to fair and reasonable conditions of employment which have proper regard for their health, safety and physical well-being, without distinction, exclusion or preference based on their national origin contrary to section 46 of the *Charter*?
- If so, what damages are the Victims entitled to?

4. APPLICABLE LAW

[354] The relevant sections of the *Charter* read as follows:

1. Every human being has a right to life, and to personal security, inviolability and freedom.

4. Every person has a right to the safeguard of his dignity, honour and reputation.

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

16. No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

46. Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.

49. Any unlawful interference with any right or freedom recognized by this *Charter* entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefore. In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

5. ANALYSE ET MOTIFS

5.1 Les victimes ont-elles subi de la discrimination fondée sur leur origine nationale ?

[355] Il incombe à la Commission en tant que partie demanderesse de prouver l'atteinte par les défendeurs aux droits protégés par la *Charte* dont il est question ici.

[356] Selon les principes bien établis par la jurisprudence qui sont bien résumés dans un jugement récent rendu par le Tribunal des droits de la personne, dans la cause *CDPDJ c. Remorquage Sud-Ouest (9148-7314 Québec inc.)* :

58. La preuve de l'existence de discrimination incombe à la partie qui l'invoque: elle doit pour ce faire présenter la preuve des trois éléments suivants² :

une distinction, exclusion ou préférence;

fondée sur l'un des motifs énumérés à l'art. 10 et ;

qui a pour effet de détruire ou de compromettre le droit à la pleine égalité dans la reconnaissance et l'exercice d'un droit ou d'une liberté de la personne.

59. La protection contre la discrimination ne trouve application que dans l'exercice des droits ou libertés prévus à la Charte et que dans la mesure où une distinction est préjudiciable. En l'espèce, en plus de l'article 10 de la Charte, c'est l'article 4 qui est invoqué par la Commission.

60. La partie demanderesse doit donc prouver que le droit de la victime d'être traitée en pleine égalité, sans distinction ou exclusion fondée sur sa race et sa couleur, protégé par l'article 10 de la Charte, a été compromis par le comportement et les propos du défendeur en portant atteinte à son droit à la sauvegarde de sa dignité prévu à l'article 4 de la Charte.

61. Pour s'acquitter de son fardeau de preuve, la Commission doit administrer une preuve qui rende l'existence des gestes et des propos discriminatoires allégués, plus probable que leur inexistence, selon les règles bien établies en matière de preuve.³

² *Forget c. Québec (Procureur général)*, [1988] 2 R.C.S. 90; *Ford c. Québec (Procureur général)*, [1988] 2 R.C.S. 712; *Devine c. Québec (Procureur général)*, [1988] 2 R.C.S. 790; *Commission scolaire régionale de Chambly c. Bergevin* [1994] 2 R.C.S. 525.

³ *CDPDJQ c. Remorquage Sud-Ouest (9148-7314 Québec inc.)* 2010 QCTDP 12, J.E. 2010-1787.

[357] Dans l'arrêt *Law c. Canada (Ministre de l'Emploi et de l'Immigration)*, la Cour suprême traite de la dignité en ces termes :

[...] La dignité humaine signifie qu'une personne ou un groupe ressent du respect et de l'estime de soi. Elle relève de l'intégrité physique et psychologique et de la prise en main personnelle. La dignité humaine est bafouée par le traitement injuste fondé sur des caractéristiques ou la situation personnelle qui n'ont rien à voir avec les besoins, les capacités ou les mérites de la personne [...].⁴

[358] C'est en appliquant ces principes que le Tribunal analyse l'ensemble de la preuve afin de trancher ce litige.

[359] Le Tribunal retient des témoignages des quinze travailleurs d'origine chinoise qui assistent à la réunion convoquée par M. Rapps, le 11 juillet 2006 en début d'après-midi, que ladite réunion est tenue afin qu'il s'adresse aux travailleurs chinois.

[360] Les services d'une interprète sont retenus pour faire la traduction de l'anglais au mandarin. Avant de commencer à s'adresser aux travailleurs, M. Rapps a demandé si tous les Chinois étaient présents.

[361] L'ensemble des propos tenus par M. Rapps s'adressait aux travailleurs chinois.

[362] Il ressort des témoignages des travailleurs chinois, notamment ceux de M. Jun Cai Wang, Mme Yong Mei Sun, M. Yong Huo et d'autres qui maîtrisent la langue anglaise, qu'ils ont compris que M. Rapps, en s'adressant à eux, aurait tenu ces propos : « *This is Canada, not China. We take shower and shampoo every day, wash hands with soap, flush the toilet after use. Don't piss on the floor... This is my kitchen, not yours. My kitchen, I want it clean. You Chinese eat like pigs.* »

[363] Quant aux autres travailleurs, ils ont compris essentiellement ces mêmes propos à travers la traduction instantanée effectuée par l'interprète.

[364] Le refus de l'interprète de traduire la dernière phrase où les mots « *eat like pigs* » sont prononcés par M. Rapps, la réplique spontanée d'un des travailleurs, M. Zhan Hong Hou, qui a lancé à trois reprises « *Fuck you* », la réaction spontanée des autres travailleurs chinois qui ont décidé d'arrêter de travailler et de sortir à l'extérieur de l'entrepôt et la démarche qu'ils ont effectuée le jour suivant en retournant sur les lieux pour exiger des excuses formelles, sont des éléments convaincants qui rendent l'existence des gestes et des propos discriminatoires allégués plus probables que leur inexistence.

Les remarques de M. Rapps peuvent-elles être qualifiées de propos blessants, humiliants ou dégradants ?

⁴ *Law c. Canada (Ministre de l'Emploi et de l'Immigration)*, 1999 CanLII 675 (C.S.C.), 1999 CanLII 675 (C.S.C.), [1999] 1 R.C.S. 497, par. 53.

[365] Peu importe l'angle sous lequel les propos de M. Rapps sont analysés, les termes utilisés, la référence au standard canadien qui contient implicitement la comparaison à d'autres standards, les propos infantilisants sur l'hygiène corporelle adressés aux travailleurs chinois sur un ton arrogant et condescendant, peu empreint de respect, sont des propos blessants, humiliants et dégradants reliés à l'origine nationale de ces travailleurs chinois, et ce, pour les motifs qui suivent.

[366] Le Tribunal canadien des droits de la personne dans la cause *Hinds c. Canada (Employment and Immigration Commission)*, traite des effets que des propos à connotation raciale sont susceptibles d'avoir sur les personnes qui les subissent:

L'effet que peut avoir ce genre d'insultes racistes n'est jamais bien compris de ceux qui n'en ont pas fait l'expérience directe. La personne se trouve dépouillée de sa dignité et bafouée dans son estime de soi, d'une façon irréparable peut-être. [...]⁵

{Soulignements ajoutés}

[367] Dans l'affaire *Dhanjal v. Air Canada*⁶, le Tribunal canadien des droits de la personne présidé par Me Daniel Proulx écrit :

In order to give a human rights act an appropriately broad and generous construction, there is growing agreement that the seriousness of the impugned conduct must be perceived from the perspective of the victim.

However, to protect employers against unwarranted complaints by hypersensitive employees and avoid the opposite pitfall of tolerating offensive conduct because most people would consider it acceptable, the objective test of the "reasonable victim".

[...]

We are therefore of the opinion that, in the case of a complaint of racial harassment, a tribunal must strive to examine the impugned acts and conduct from the perspective of a reasonable person belonging to a racial minority, putting aside the stereotypes entertained in good faith by the majority.

[368] Le Tribunal fait siens ces raisonnements qui sont applicables en l'espèce.

[369] Le Tribunal souscrit à la méthode retenue par l'honorable L'Heureux-Dubé, de la Cour suprême, recensée par l'auteur Daniel Proulx, laquelle avec adaptation est applicable en l'espèce, pour définir la « personne ou victime raisonnable » :

⁵ *Hinds c. Canada (Employment and Immigration Commission)*, (1989) 10 C.H.R.R. D/5683, p. D/5697.

⁶ *Dhanjal et Air Canada*, (T.C.D.P., 1996-04-04), SOQUIJ AZ-96149201, D.T.E. 96T-753, 28 C.H.R.R. D/367, [1996] C.H.R.D. No. 4 (Q.L.) ; confirmé par la cour d'appel fédérale, [1997] CAF1599.

Selon la méthode suggérée par la juge L'Heureux-Dubé dans l'arrêt Egan et que l'on pourrait appeler la perspective du «demandeur raisonnable». Cette approche comporte un volet subjectif et un volet objectif. Côté subjectif, le tribunal doit essayer de se placer du point de vue du demandeur. Ainsi, s'il s'agit d'une allégation de discrimination fondée sur le sexe déposée par une femme, la question de l'atteinte à sa dignité doit être examinée dans une perspective féminine. Côté objectif, le tribunal ne doit pas considérer le point de vue de la demanderesse elle-même, dont la sensibilité peut être exacerbée dans un cas donné, mais celui de la «femme raisonnable», c'est-à-dire «objective et bien informée des circonstances».

Ainsi, l'optique retenue n'est pas celle de la «personne raisonnable», être abstrait qui pourrait correspondre au point de vue de l'homme raisonnable ou de la majorité raisonnable, mais bien celle du «demandeur raisonnable», être abstrait également, mais qui ferait partie du groupe exclu en tant que femme (ou sidéen, autochtone, musulman, etc. selon le cas) et qui examinerait l'impact d'une mesure dotée de cette caractéristique⁷.

{Références omises}

(Soulignements ajoutés)

[370] Une personne raisonnable d'origine chinoise se serait-elle sentie véritablement humiliée ou blessée par les propos de M. Rapps ?

[371] La réponse est affirmative selon le Tribunal car les réactions spontanées des travailleurs chinois ne laissent aucun doute sur cette question.

[372] Bien qu'ils étaient, en tant que nouveaux arrivants au Canada, dans une situation de vulnérabilité exacerbée par la précarité de l'emploi temporaire, ils ont exigé des excuses et ils ont refusé de retourner travailler chez Calego après qu'on leur ait refusé ces excuses quant aux propos discriminatoires tenus par M. Rapps à leur endroit.

[373] Les démarches subséquentes entreprises par ces travailleurs en se plaignant à l'agence qui les a référés à Calego, en s'adressant à des organismes pour leur venir en aide, en participant à l'enquête effectuée par la Commission suite à la plainte déposée par le CRARR, appuient leur position d'avoir été sérieusement offensés et blessés par les propos discriminatoires tenus par M. Rapps à leur endroit sur un ton condescendant, peu empreint de respect, ce qui suffit pour établir une atteinte à leur dignité en rapport avec une distinction reliée à leur origine nationale soit un des motifs visés par l'article 10 de la *Charte*.

Le contexte social

⁷ Daniel PROULX, «Les droits à l'égalité revus et corrigés par la Cour suprême du Canada dans l'arrêt Law: un pas en avant ou un pas en arrière?» (2001) 61 (1), *Revue du Barreau* 185.

[374] Dans un jugement récent, le Tribunal des droits de la personne, dans l'affaire *CDPJ c. Lusk*, traite du contexte social en ces termes :

[219] Selon les enseignements de la Cour suprême dans l'arrêt *R. c. S. (R.D.)*, le juge peut se faire une idée claire du contexte ou de l'historique, ce qui est essentiel pour rendre justice, il peut aussi se faire une idée sur sa propre compréhension et son expérience de la société au sein de laquelle il vit et travaille. Ce processus d'ouverture est non seulement conforme à l'impartialité, il peut aussi à juste titre être considéré comme une condition préalable essentielle.

[220] La Cour suprême dans ce même arrêt cite avec approbation l'énoncé du juge de Grandpré dans l'arrêt *Committee for Justice and Liberty* voulant qu'une personne raisonnable est censée connaître le passé de discrimination dont ont souffert les groupes défavorisés de la société canadienne que protègent les dispositions de la *Charte* relatives aux droits à l'égalité. Il s'agit de facteurs dont le juge peut prendre connaissance d'office.

[221] Appliquant ces enseignements de la Cour suprême, le Tribunal estime nécessaire de jeter un regard sur le contexte social existant au moment où surviennent les incidents au cœur de ce litige.

[...]

[232] Le contexte social qui permet de situer l'environnement sociétal existant dans lequel surviennent les gestes discriminatoires reprochés est un facteur, parmi d'autres, que le Tribunal prend en considération, tout en respectant les règles de preuve applicables⁸.

[375] Il n'est pas inutile de citer l'auteure Danielle Pinard qui commente l'approche retenue dans *R. c. S. (R.D.)* par les juges L'Heureux-Dubé et McLachlin en ces termes :

Dans *S. (R.D.)*, les juges L'Heureux-Dubé et McLachlin ont, dans une opinion conjointe, rappelé l'importance de la considération du contexte dans l'art de juger, notamment pour l'interprétation et l'application des lois. « Il n'est pas inusité, écrivent-elles, que le juge examine le contexte factuel, social et psychologique dans lequel naît le litige. De fait, l'examen délibéré du contexte est maintenant reconnu comme une mesure favorisant l'impartialité du juge. » Les juges L'Heureux-Dubé et McLachlin se sont aussi prononcées sur certaines sources d'informations relatives au contexte que seraient les témoignages d'experts, les ouvrages de doctrine, et les perceptions et l'expérience de la juge.

À ces sources, elles ajoutent la connaissance d'office de faits notoires, comme, en l'espèce, l'existence du racisme à Halifax⁹.

[376] Le Tribunal partage l'opinion de l'auteure Danielle Pinard et ses conclusions sur l'application de la méthode contextuelle :

⁸ *Commission des droits de la personne et des droits de la jeunesse c. Lusk*, 2010 QCTDP 17.

⁹ Danielle Pinard, «La Méthode contextuelle», 81 *Revue du Barreau Canadien*, 365-366.

Malgré ses humbles origines la méthode contextuelle a été appelée aux plus hauts sommets. Son développement fulgurant s'explique certainement en partie par sa correspondance à un mouvement social plus large, par l'autorité respective de son auteure et de sa principale défenderesse, et, surtout, par la marge de manœuvre considérable qu'elle donne à l'acte de juger.

Dans la mesure où la méthode contextuelle manifeste une saine préoccupation d'intégration du droit dans le réel, on ne peut que se réjouir de sa célébration jurisprudentielle. Le droit est le produit de forces sociales, sur lesquelles il influe à son tour. Le mouvement de formation des juges à la réalité sociale, initié par le Conseil canadien de la magistrature, participe de cet heureux mouvement de réalisme juridique.

Le monde du droit a cependant ses impératifs propres, relevant notamment de l'ordre de l'équité, qui se manifestent particulièrement lors de sa mise en oeuvre devant les tribunaux. Des règles président en effet à l'organisation du débat contradictoire, comme celles relatives à l'impartialité judiciaire, à la répartition des fardeaux de preuve, et au droit d'être entendue.

Si le principe de la pertinence du contexte pour le monde du droit peut être facilement accepté, c'est le mode d'établissement de ce contexte devant les tribunaux qui pose problème¹⁰.

{Références omises}

[377] Dans l'arrêt *Corbiere c. Canada*¹¹, la Cour suprême enseigne que l'évaluation contextuelle doit se faire en lien avec une caractéristique de l'identité personnelle et qu'un tribunal doit procéder à l'examen de l'importance d'une telle caractéristique pour une personne humaine et que cela ne pourrait se faire sans avoir recours au contexte général qui fait appel aux faits sociaux généraux.

[378] Historiquement, les travailleurs chinois ont été l'objet de discrimination au Canada et au Québec. C'est ce qui ressort de l'analyse de la discrimination raciale dans la société canadienne effectuée par Me Tamara Thermitus :

C'est dans les années 1880 qu'au Canada arrivèrent en grand nombre de jeunes hommes chinois afin de construire le chemin de fer du Canadien Pacifique. Ces travailleurs, beaucoup moins rémunérés que les descendants d'Européens, se voyaient assigner les tâches les plus difficiles et les plus dangereuses. Ainsi, plusieurs travailleurs chinois périrent lors de la construction du chemin de fer.

Les Chinois étaient perçus non pas comme des membres à part entière de la société, mais comme des étrangers de passage. Le Premier ministre sir John A. Macdonald, en 1882, soulignait que les Chinois sont d'une race étrangère, incapable de s'intégrer à la population canadienne: « the alien race... would not and could not be expected to assimilate with our Aryan population... » On

¹⁰ Précitée.

¹¹ [1999] 2 R.C.S. 203, parag. 60.

comprend alors aisément qu'à l'époque, plusieurs gouvernements provinciaux adoptèrent des lois visant à isoler les Asiatiques de la majorité canadienne.

[...]

Les Asiatiques ont, eux aussi, subi de la discrimination au Québec. Le racisme envers la communauté chinoise, particulièrement en matière d'emploi, force celle-ci à se réfugier dans des emplois et commerces spécifiques: les restaurants et les buanderies. La « Ligue anti-péril jaune », fondée au Canada en 1907, avait également des branches à Montréal et à Québec et s'opposait ouvertement à la présence d'immigrants asiatiques. Les préjugés véhiculés sur les Chinois combinés à la concurrence des buanderies tenues par les Chinois, dont les tarifs étaient grandement inférieurs au marché, contribuèrent à renforcer l'hostilité des Québécois envers les membres de cette communauté¹².

{Références omises}

[379] Bien que la discrimination basée sur la race, l'origine nationale et ethnique soit formellement interdite au Québec depuis longtemps, dans la réalité, les pratiques et les mentalités n'ont pas nécessairement suivi l'évolution législative, c'est ce qui se dégage d'un document de consultation publié par le ministère des Communautés culturelles et de l'Immigration du Québec en 2006¹³ :

Nonetheless, some scholars estimate that discrimination is the greatest obstacle to the integration of immigrants. According to a study done in June 2005 for the Ministère de l'Immigration et des Communautés culturelles, one Quebecer in five from cultural communities said he was the object of discriminatory acts during the year preceding the survey.

According to the Ethnic Diversity Survey, individuals from all visible minorities across Canada feel they are victims of discrimination or unjust treatment. Hindus, Muslims, Buddhists, Sikhs and Jews also declared that they had been victims of discrimination. With the exception of Jews, almost all of these respondents also belong to visible minorities.

According to the same survey, second-generation immigrants express the feeling of being victims of discrimination more often than first-generation immigrants, no matter how long the latter have been settled in Canada. The obstacles encountered cannot be attributed to the migration process since they were educated in Canada and are fluent in one or both official languages. Difficulties finding a job matching their qualifications or finding housing, for example, are therefore interpreted in terms of prejudice and discrimination.

¹² Tamara Thermitus avec la collaboration de Marie-Pierre Olivier « Les fantômes du passé hantent-ils toujours nos tribunaux ? Une analyse de la discrimination raciale dans la société canadienne et le système judiciaire, Barreau du Québec », Développements récents en profilage racial 2009, Cowansville, Yvon Blais, 2009.

¹³ For the full participation of Quebecers from cultural communities; Towards a government policy to fight against racism and discrimination, Government of Québec, 2006; ISBN: 2-550-47495-3, Bibliothèque et Archives nationales du Québec, 2006.

Consequences of prejudice and discrimination

In general, prejudice, stereotypes and discrimination contribute to the dehumanization of individuals. They hinder the development of their sense of belonging to Québec and contribute to the development of identities based on community membership, a result that is attributed, sometimes wrongly, to immigrants. Thus, Black, Arab, Latino, and Asian, at the symbolic level, cultural communities are excluded from the collective imagination. And yet, certain studies show that the founding and history of Quebec were significantly marked by the immigration of people of diverse origins.

(Références omises)

{Soulignements ajoutés}

[380] Quand surviennent les incidents au cœur de ce litige, en 2006, un citoyen québécois-montréalais ordinaire raisonnable, de vieille souche ou de souche récente, peu importe son origine, sa race, sa couleur ou son groupe ethnique, est conscient des normes anti-discriminatoires garanties par la *Charte* qui reflètent les valeurs de la société en 2006 au Québec, il est conscient également de l'obligation de respecter la dignité de la personne, il est aussi conscient de l'existence de préjugés ou de pratiques discriminatoires chez certains de ses concitoyens.

[381] Ce citoyen a les caractéristiques décrites par l'auteur Raymond Brown qui s'est livré à un vaste examen de la jurisprudence canadienne et étrangère et a résumé ainsi la notion de citoyen ordinaire :

Le tribunal suppose que la personne raisonnable ordinaire est une personne réfléchie et informée, dotée d'une intelligence moyenne. Ces personnes possèdent une compréhension générale du sens des mots et, dans leur évaluation des imputations, elles font montre du sens de la justice et appliquent des normes morales et sociales reflétant les vues de la société en général.¹⁴

[382] Ce même citoyen, en tant que personne raisonnable, aurait considéré discriminatoires les propos tenus par M. Rapps envers les travailleurs chinois. Selon le Tribunal, en regard de la trame factuelle propre à cette affaire, il est tout simplement difficile de croire le contraire, sans ignorer le contexte social contemporain en application des normes juridiques applicables qui reflètent les valeurs du Québec et du Canada en 2006.

[383] L'égalité fait partie des valeurs bien connues au Québec et au Canada en 2006 que ne pouvaient ignorer M. Rapps et son entreprise Calego.

[384] Sur la question de l'égalité, les auteurs DesBiens et Labrèche écrivent d'ailleurs :

¹⁴ R. Brown, *The Law of Defamation in Canada*, 2nd ed. (feuilles mobiles), vol. 1, p. 5-45 et 5-61.

Plus qu'une simple aspiration visant à opérer des changements d'attitude, l'égalité constitue donc une norme expresse au contenu spécifique. En plus d'être consacrée dans de multiples instruments internationaux, elle est explicitement garantie dans la Constitution du Canada, à l'article 15 de la Charte canadienne des droits et libertés. Celle-ci ne vise que l'action gouvernementale. L'article 10 de la Charte québécoise fait de même à un niveau quasi-constitutionnel, mais étend le champ d'application du droit à l'égalité à la sphère des relations privées¹⁵.

{Soulignements ajoutés}

[385] Pour l'ensemble de ces raisons, le Tribunal conclut que peu importe que les propos de M. Rapps soient analysés sous la perspective de la victime raisonnable¹⁶ ou de la personne raisonnable ordinaire¹⁷, les termes utilisés, la référence au standard canadien qui sous-entend la comparaison à un autre standard, les propos infantilisants sur l'hygiène corporelle adressés aux travailleurs chinois sur un ton arrogant, condescendant et irrespectueux, sont en effet des propos blessants, humiliants, dégradants reliés à l'origine nationale de ces travailleurs chinois, en conséquence, discriminatoires au sens de l'article 10 de la *Charte*.

[386] La preuve des défendeurs qui se limite à nier et à nuancer les propos de M. Rapps est insuffisante pour contrecarrer la preuve prépondérante de la demanderesse.

[387] Les versions disparates de Messieurs Agostiono et Copelovitch affaiblissent la version de M. Rapps.

[388] Selon l'explication fournie par M. Rapps : « one of the reasons that he addressed the question of personal hygiene was that he was in Hong Kong during the Severe Acute Respiratory Syndrome (SARS) outbreak in Hong Kong, China and Toronto, and all the experts, at the time, advised people to wash their hands as a preventative measure ». Cette explication ne supporte pas la prétention des défendeurs que les propos de M. Rapps sur l'hygiène et le standard canadien n'avaient rien à voir ou n'étaient pas reliés à l'origine nationale des travailleurs chinois.

[389] Les défendeurs minimisent la nature des propos tenus par M. Rapps. Ils suggèrent que le terme « Canadian standards » ainsi que les termes « We don't eat like pigs » sont neutres. Ils n'ont aucune connotation raciste ou discriminatoire, ils soulèvent que M. Rapps n'a utilisé ni le mot « Chinese » ni le mot « China ».

[390] L'analyse des propos reprochés doit se faire dans la globalité du discours de M. Rapps et non pas en examinant des phrases, chirurgicalement extraites de l'ensemble, comme le suggèrent les défendeurs. Les termes « We have Canadian standards » ne

¹⁵ Me Jean-François Gaudreault-DesBiens, Me Diane Labrèche, *Le contexte social du droit dans le Québec contemporain, Éthique, déontologie et pratique professionnelle*, Collection de droit 2008-2009, Volume 1, Cowansville, Yvon Blais, 2008.

¹⁶ *Précités* note 6 et note 7.

¹⁷ *Précité*, note 14.

peuvent pas être dissociés de l'ensemble du discours de M. Rapps. Ils doivent être conjugués avec les propos infantilisants sur l'hygiène corporelle adressés aux travailleurs chinois sur un ton arrogant et condescendant, ils doivent aussi être conjugués avec la conclusion « We don't eat like pigs ».

[391] Le Tribunal, après avoir procédé à l'analyse contextuelle des déclarations de M. Rapps, conclut qu'il s'agit d'une situation où des propos à connotation ouvertement discriminatoire, stigmatisante et vilipendante sont adressés à des membres d'un groupe vulnérable et historiquement discriminé en raison de leur origine nationale.

[392] Il y a suffisamment de preuve pour établir que les propos de M. Rapps ont pour effet de perpétuer des stéréotypes, de dévaloriser et de marginaliser chacun des travailleurs en raison d'une caractéristique personnelle soit d'être d'origine chinoise.

[393] Dans l'arrêt *Janzen c. Platy Enterprises Ltd*¹⁸, la Cour suprême réitère le principe qu'il n'est pas nécessaire de démontrer la faute et la mauvaise foi pour conclure à un acte discriminatoire :

Puisque la Loi s'attache essentiellement à l'élimination de toute discrimination plutôt qu'à la punition d'une conduite antisociale, il s'ensuit que les motifs ou les intentions des auteurs d'actes discriminatoires ne constituent pas une des préoccupations majeures du législateur. Au contraire, la Loi vise à remédier à des conditions socialement peu souhaitables, et ce, sans égard aux raisons de leur existence [...].¹⁹

[394] La prétention des défendeurs voulant que la Commission n'ait pas démontré une preuve *prima facie* de discrimination n'est pas fondée car elle n'est pas supportée par la preuve.

[395] En effet, la preuve présentée par la Commission qui consiste dans les témoignages clairs, convaincants et crédibles des quinze victimes, est suffisante pour démontrer par prépondérance de preuve que le comportement et les propos du défendeur Rapps reliés à l'origine étrangère ou non canadienne des travailleurs chinois ont porté atteinte à leur droit d'être traités en pleine égalité sans distinction, exclusion ou préférence fondée sur leur origine nationale. Il y a aussi atteinte discriminatoire à la sauvegarde de leur dignité.

[396] Selon l'interprétation des tribunaux, l'atteinte à la dignité se manifeste, entre autres, par le mépris et le manque de respect, ce qui est le cas ici²⁰. Le Tribunal partage, sur cette question l'opinion de l'auteur Me Christian M. Tremblay, aujourd'hui juge à la Cour du Québec :

¹⁸ [1989] 1 R.C.S. 1252.

¹⁹ *Robichaud c. Canada (Conseil du Trésor)*, [1987] 2 R.C.S. 84, p.10.

²⁰ *Québec (Commission des droits de la personne) c. Centre d'accueil Villa Plaisance*, [1996] R.J.Q. 511, p. 522, (QC T.D.P.), *Québec (Commission des droits de la personne) c. Beaulé*, 2009 QCTDP 25, par. 43.

Le droit à la sauvegarde de sa dignité peut être atteint de façon illicite de plusieurs manières, soit aussi par des propos ou autres avis. Il constitue un droit distinct et se doit d'être protégé au même titre que tout autre droit et demeure porteur en soi de réparation. Cette reconnaissance s'intègre au droit à la non-discrimination englobant également le droit à l'égalité, et le tout en accord avec les chartes des droits canadienne et québécoise de même que par les pactes et conventions internationaux pertinents dont le respect de la dignité humaine constitue leurs fondements²¹.

[397] On est ici en présence de discrimination fondée sur l'origine nationale car il y a preuve suffisante de violation du droit des travailleurs chinois protégé à l'article 10 de la *Charte*, en lien avec la violation de leur droit à la sauvegarde de leur dignité protégé par l'article 4 de la *Charte*. Par ailleurs, la preuve n'est pas concluante pour établir la violation alléguée de l'article 16 de la *Charte* concernant le renvoi et les conditions de travail.

[398] Le fait d'être contrarié en raison de la perte d'un important contrat, la colère, la mauvaise humeur et le mauvais caractère, ne constitue pas des motifs valables pour exonérer M. Rapps de l'obligation de ne pas porter atteinte aux droits et libertés protégés par la *Charte*. Les excuses pour le ton inapproprié utilisé ne bonifient pas la situation des défendeurs, elles n'atténuent en rien le caractère discriminatoire des propos tenus et leurs effets.

[399] Les faits en l'espèce se distinguent des faits dans les causes citées par les défendeurs²².

[400] Le Tribunal conclut que la responsabilité du défendeur Rapps et celle de la défenderesse Calego dont il est l'âme dirigeante, est engagée envers les quinze travailleurs chinois. Le principe établi par la Cour suprême dans l'arrêt *Gauthier c. Beaumont*²³ qu'il y ait une volonté présumée ou imputable à un organisme de porter une atteinte intentionnelle à l'intégrité et à la dignité de la victime, lorsque le dirigeant de cet organisme est lui-même condamné à des dommages punitifs, est applicable avec adaptation en matière de dommages moraux, dans la mesure où le dirigeant a posé des gestes discriminatoires lors d'une intervention à titre de dirigeant de l'organisme ou de la société, ce qui est le cas ici.

La responsabilité de Agence Vincent et de son président Vincent Agostino

²¹ Le Recours collectif visant le propos discriminatoire comme atteinte à la dignité et au droit à l'égalité, Barreau du Québec, Développements récents en recours collectifs 2009, Cowansville, Yvon Blais, 2009.

²² *Zuper Direk v. Coffee time Donuts*, [2009] H.R.T.O 1887; *William Xie v. Sharon Kan* [2009] H.R.T.O. 1868 ; *Campbell and Abraham v. Krizmanich* [2009] B.C.H.R.T.D No. 5 ; *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A), p.357 ; *Burns v. Lakeland Medical Clinic and Clark (No. 2)* [2008] B.C.H.R.T 367 ; *Montréal (Ville de) c. Cabaret Sex Appeal Inc.* (C.A) 1994 R.J.Q. 2133 à 2143 ; *Michaud c. Angenot* (C.A.) REJB 2003-47561.

²³ *Gauthier c. Beaumont*, [1998] 2 R.C.S. 3.

[401] Vu la conclusion à laquelle en arrive le Tribunal quant à la responsabilité des défendeurs Rapps et Calego;

[402] Compte tenu que tous les travailleurs chinois impliqués dans ce litige sont embauchés par l'intermédiaire de l'Agence Agostino dont le président M. Vincent Agostino qui a convoqué les employés chinois à la réunion dans l'entrepôt à laquelle il a participé avec M. Rapps;

[403] Compte tenu du lien existant entre les sociétés Calego et Agence Agostino dont le président Vincent Agostino est sur place à l'entrepôt chez Calego d'où il supervise les prestations des travailleurs chinois qu'il a dirigés vers la réunion en question pour entendre les propos de M. Rapps;

[404] Compte tenu qu'il n'y a aucune preuve au dossier à l'effet que M. Vincent Agostino aurait fait des efforts pour empêcher M. Rapps de prononcer les propos discriminatoires à l'endroit des travailleurs chinois qu'il loue à Calego, selon son propre dire. En effet, M. Agostino n'a rien fait comme dirigeant de l'Agence Vincent pour mettre un terme ou contrôler les agissements discriminatoires de M. Rapps. Il affirme candidement qu'il riait durant le discours de M. Rapps;

[405] Compte tenu que M. Agostino n'a rien fait pour que soient enlevées les pancartes écrites seulement en langue chinoise placées sur les portes des toilettes;

[406] Compte tenu qu'il existe, en vertu des dispositions de l'article 1525 C.c.Q., une présomption de solidarité entre les défendeurs qui exercent une activité économique organisée consistant dans la production de biens;

[407] Considérant que la présomption de l'article 1525 C.c.Q.²⁴ n'est pas reversée;

[408] Vu les dispositions prévues à l'article 1526 C.c.Q.²⁵ qui énoncent que l'obligation de réparer le préjudice causé à autrui par la faute de deux personnes ou plus est solidaire;

[409] Le Tribunal conclut que la responsabilité de l'Agence Vincent et de son président M. Vincent Agostino doit être engagée au même titre que les deux autres co-défendeurs Calego et M. Rapps²⁶. Par ailleurs, les défendeurs n'ont pas fait de représentation sur la question de leur condamnation solidaire.

5.2 L'atteinte au droit à l'intégrité de la personne

²⁴ *Code civil du Québec*, L.Q., 1991, c. 64. art. 1525.

²⁵ Précité, art. 1526.

²⁶ *Commission des droits de la personne et des droits de la jeunesse c. Centre maraîcher Eugène Guinois Jr inc.*, J.E. 2005-779, [2005] R.J.Q. 1315, parag. 180, 182.

[410] The CRARR contends that Defendants' physical assaults on Mr. Wei Li and Mr. Yong Shan He violated their right to personal security and inviolability without distinction based on their national origin, contrary to section 1 of the Charter.

Incident impliquant M. Yong Shan He et M. Vincent Agostino

[411] Il est en preuve que M. Agostino aurait agrippé M. Yong Shan He par le cou pour le sortir de l'entrepôt après que celui-ci se soit dirigé vers M. Rapps. M. Agostino explique qu'il aurait agi ainsi afin d'empêcher M. He de s'en prendre à M. Rapps.

[412] M. He relate qu'après avoir entendu le patron dire : « *Ceci est très sérieux. On est au Canada. Ceci est ma cuisine. À tous les jours, on doit se laver avec du savon. Vous les Chinois vous mangez comme des cochons.* », la réunion est devenue chaotique.

[413] Il s'est approché de M. Rapps pour lui dire que la raison pour laquelle la cuisine est malpropre est le manque d'entretien, que la cuisine n'est pas utilisée seulement par les Chinois et que c'est très injuste de les tenir responsables du mauvais état de cette cuisine. Au même moment, le défendeur Vincent Agostino l'a agrippé par le collet et lui a indiqué la porte.

Incident impliquant M. Wei Li et M. Vincent Agostino

[414] Le témoignage de M. Wei Li sur cet incident se résume dans les termes suivants : « He returned into the warehouse in order to find the main door and from there his bus to go home. Seeing that several Chinese co-workers were talking to Mr. Rapps and Mr. Agostino, he became angry and yelled, Vous êtes appelés des cochons et vous continuez à travailler ? Mr. Agostino and another person, each on either side of him, then shoved him towards the exit, holding his arms and pushing his back. »

Incident impliquant M. Zhan Hong Hou et M. Vincent Agostino

[415] Voici l'extrait pertinent du témoignage de M. Zhan Hong Hou, un autre travailleur qui a eu une altercation avec M. Agostino :

After he heard Mr Rapps, pronouncing these words: "*This is Canada, not China. You have to take a shower, the kitchen, you Chinese eat like pigs*", he replied: "Fuck you". He was very upset. M. Agostino came and grabbed him by his neck and, in a very nice manner, said, "My friend, get out of here". Mr. Agostino and several women then escorted him out of the warehouse.

[416] Après s'être fait expulser de la réunion, escorté par M. Agostino et deux personnes de sexe féminin, il est resté à l'extérieur une dizaine de minutes.

[417] Ses amis sont sortis et, 10 minutes plus tard, M. Agostino est sorti pour leur demander de retourner à leur travail.

[418] Les victimes n'ont pas accepté de reprendre le travail. Ils ont décidé de quitter pour revenir le lendemain afin de formuler leur demande en quatre points mentionnés

précédemment, qui ne fait pas mention de l'atteinte à l'intégrité subie par certains travailleurs.

[419] Aucune plainte ni accusation pénale n'a été portée concernant ces incidents.

En quoi consiste la protection du droit à l'intégrité de la personne énoncée à l'article 1 de la *Charte*?

[420] Dans l'arrêt *Québec c. Syndicat national des employés de l'hôpital St-Ferdinand*²⁷, la Cour suprême enseigne que la protection de cet article s'étend au-delà de l'intégrité physique. Il vise à la fois l'intégrité physique, psychologique, morale et sociale.

[421] Dans l'affaire *CDPDJ c. Laverdière*²⁸, le Tribunal applique la définition de l'intégrité établie par la Cour suprême dans l'arrêt *Hôpital St-Ferdinand*. Le défendeur et quatre de ses amis ont suivi la victime (un homme de race noire), l'encerclent et se mettent à le frapper. La victime a dû subir une opération et a été hospitalisée pendant quatre jours. Suite à ces incidents, le défendeur a plaidé coupable à une accusation de voies de fait graves et a été condamné.

[422] Le Tribunal a conclu que le défendeur a porté atteinte au droit de la victime à la reconnaissance et à l'exercice, en pleine égalité, de ses droits à la sûreté et à l'intégrité de sa personne en l'insultant et en l'agressant physiquement pour des motifs racistes contrevenant ainsi aux articles 1 et 10 de la *Charte*.

[423] Dans l'affaire *CDPDJ c. O'Toole*²⁹, le Tribunal a conclu que des actes violents discriminatoires motivés par des considérations raciales ont été commis. Une des défenderesses a lancé son verre de bière en direction de la victime, un homme originaire de l'Inde, tandis que l'autre l'a frappé au ventre. Une fois qu'il était au sol, il a reçu des coups de pied. Les défenderesses ont plaidé coupables aux accusations portées contre elles et ont été condamnées. Le Tribunal a retenu que « les défenderesses ont commis un geste non seulement dont elles sont redevables criminellement, mais également civilement et socialement ».

[424] Le Tribunal estime qu'en l'espèce, la preuve présentée est insuffisante pour établir qu'il y a eu atteinte à l'intégrité physique car la preuve n'est pas concluante que M. Agostino aurait fait l'usage d'une force excessive à l'endroit des travailleurs auprès de qui il est intervenu pour les expulser de l'entrepôt dans une atmosphère de chaos. C'est ce qui se dégage des témoignages de M. Li et M. He indiquant qu'ils ont été plutôt agressés par les propos discriminatoires de M. Rapps.

²⁷ *Québec (Curateur public) c. Syndicat national des employés de l'hôpital St-Ferdinand*, 1996 CanLII 172 (C.S.C.), [1996] 3 R.C.S. 211 [*Hôpital St-Ferdinand*] paras. 95-98.

²⁸ 2008 QCTDP 15 (CanLII).

²⁹ *Commission des droits de la personne et des droits de la jeunesse c. O'Toole*, 2006 QCTDP 21 (CanLII).

[425] Nous ne sommes pas non plus devant une situation similaire à celles des affaires *Laverdière* et *O'Toole* mentionnées précédemment où il y a eu agression physique motivée par des considérations raciales.

5.3 Y a-t-il eu violation de l'article 46 de la *Charte*?

[426] Lors des incidents, les quinze travailleurs chinois impliqués dans ce litige sont de nouveaux arrivants au Canada. Certains étaient à leur première expérience de travail au Canada. Ils font partie des travailleurs les plus vulnérables.

[427] Il est en preuve que la plupart des victimes sont payées en argent comptant, quelques-unes sont payées en dessous du salaire minimum. Hormis l'état de malpropreté de la cuisine et des toilettes, aucune preuve n'est présentée quant à l'état de l'entrepôt où travaillent les victimes.

[428] Après leur arrêt de travail, les revendications formulées par les travailleurs portent sur l'assignation d'un contremaître, les excuses et l'entretien des toilettes et de la cuisine.

[429] Le Tribunal retient de la preuve qu'avant l'arrivée de ces travailleurs, la cuisine n'est utilisée que par un petit groupe d'employés.

[430] La cuisine est devenue très achalandée suite à l'arrivée de travailleurs contractuels. Ladite cuisine n'est pas conçue pour recevoir autant d'usagers.

[431] Les contenants à déchets se remplissent rapidement et débordent. Il y a présence de mouches et d'insectes.

[432] La version des témoins des défendeurs attribuant la malpropreté de la cuisine et des toilettes aux travailleurs chinois est contredite par les témoignages concordants et crédibles des travailleurs chinois à l'effet qu'ils n'ont jamais vu personne nettoyer ces lieux.

[433] Il y a preuve suffisante pour démontrer que la malpropreté de la cuisine et des toilettes mises à la disposition des travailleurs chinois est attribuable au surachalandage dû à l'arrivée de nombreux travailleurs contractuels et que Calego n'a pas pris les mesures adéquates pour y maintenir la propreté. On attribue à tort, de manière discriminatoire, la malpropreté des lieux aux travailleurs chinois en raison de stéréotypes.

[434] Cette preuve est par ailleurs insuffisante pour établir que l'état des lieux et les conditions de travail ne respectaient pas la santé, la sécurité et l'intégrité des travailleurs dont la plupart n'utilisait pas la cuisine et les toilettes qui ont été décrits comme étant comparables aux toilettes publiques. La Commission de la santé et de la sécurité du travail aurait été par ailleurs le forum approprié pour traiter de l'atteinte potentielle à la santé et la sécurité de ces travailleurs.

[435] La preuve est aussi insuffisante pour permettre d'établir, au sens de l'article 46 de la *Charte*, l'inexistence de conditions de travail justes et raisonnables en lien avec l'origine ethnique et la nationalité des travailleurs chinois.

[436] Le Tribunal reconnaît que l'application des dispositions de l'article 10 de la *Charte* peuvent être conjuguées avec les droits énoncés à l'article 46 de la *Charte* afin d'assurer que l'article 10 réalise son objectif d'élimination de discrimination interdite.

[437] Cependant, la preuve présentée au soutien des moyens soulevés par le CRARR, en vertu de l'article 46 de la *Charte*, est insuffisante pour démontrer une violation de l'article 46 de la *Charte*.

[438] Par ailleurs, les manquements reprochés à l'employeur semblent relever surtout de l'application de la *Loi sur les normes du travail (L.N.T.)*³⁰ qui établit des conditions minimales de travail afin d'éviter l'exploitation et la marginalisation d'une partie de la main-d'œuvre vulnérable. Ces conditions minimales obligatoires à l'égard de tout salarié visé par la *L.N.T.* sont d'ordre public. Les normes minimales établies dans cette loi répondent à une mission sociale impérative qui est d'assurer une vie économique décente à la collectivité des travailleurs vulnérables, non organisés, comme c'est le cas des victimes en l'instance.

6 LES DOMMAGES

[439] Les défendeurs, ayant porté atteinte au droit des travailleurs et travailleuses chinois, Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie, d'être traités en toute égalité et avec dignité, il y a lieu de déterminer les dommages auxquels ils ont droit.

6.1 Dommages moraux

[440] Le préjudice moral affecte l'être humain dans son fort intérieur, dans les ramifications de sa nature intime et détruit la sérénité à laquelle il aspire, il s'attaque à sa dignité et laisse l'individu ébranlé, seul à combattre les effets d'un mal qu'il porte en lui plutôt que sur sa personne ou sur ses biens. Le fait qu'il soit plus difficile à cerner, ne diminue en rien la blessure qu'il constitue³¹.

[441] La preuve révèle que les victimes ont été grandement affectées par les remarques de M. Rapps.

[442] Lors de l'audience, chacune des victimes semble encore être affectée en relatant les propos discriminatoires tenus par M. Rapps qui l'a choquée et l'a profondément marquée.

³⁰ *Loi sur les normes du travail*, L.R.Q., c. N-1.1.

³¹ *Bou Malhab c. Métromédia CMR Montréal inc.*, 2003 CanLII 47948 (C.A.).

[443] Le Tribunal estime approprié de reprendre ici des extraits pertinents des témoignages de chacune des victimes.

[444] Mr. Huo testifies that every time he recalls the incident, he feels very bad. He states, « I suffered a lot inside... If the physical suffers it can be recovered, finally it can be recovered, but inside you never recover. This is the worst humiliation I suffered in my life...the worst one ».

[445] Mr. Li felt greatly humiliated by the way in which he was treated. Following the incident, he didn't dare seek employment. At the time, he was enrolled in a technical training program. As the end of his training approached, he became increasingly wary of looking for work and, consequently, did not do the required internship and dropped out of the program.

[446] Mr. Zhou testifies that, subsequent to the incident, he has lost the pleasure of eating. When he eats, he recalls the humiliating episode of July 11. He is afraid to eat in public places and in front of non-Chinese people as he is scared that he will be insulted once again, being accused of eating like a pig. This has developed into an obsession.

[447] Referring to the incident, Mr. Zhou states, «This hurt my heart». He still cries when he thinks of it, as he did when he returned home on the day that it had occurred.

[448] In tears, Ms. Xie, testifying that her dignity was violated by the manner in which she had been treated, says, « C'est la plus grave humiliation que j'ai subie de ma vie ». She states that she could accept not having money or work, but she could not accept being treated with disrespect.

[449] During the first few months following the incident, Ms. Xie affirms that she suffered from insomnia. In January 2007, she returned to China as she didn't want her children to undergo the kind of hurt and humiliation that she had experienced. After approximately two months, however, she returned to Canada, realizing that she had to face her emotions. As she retained the feeling of being scared, she could never bring herself to do the same kind of work that she did at Calego. Furthermore, she found it difficult to overcome the psychological obstacles that she was facing.

[450] Mr. Hu affirms that he is pained by the manner in which he was treated by the Defendant, specifying that he had always been an upright and honest man, respectful of and respected by his entourage. Be it at his high-level job in China, at the companies where he worked prior to Calego, or at the technical school where he had studied, the relationships with his colleagues and with the management had always been good.

[451] Describing the events of July 11, 2006, he states, « J'ai plutôt vécu une expérience d'humiliation la plus grave de ma vie ». When he thinks or talks about the incident, he gets headaches and can't sleep.

[452] Ms. Sun affirms that she feels extremely upset, deeply hurt and abused by the incident. Having children, she worries about the kind of world they live in. The incident

has stayed with her ever since, and she claims that she cannot get past it without an apology from the Defendant.

[453] Mr. Wu considers that he was treated in a discriminatory manner because the content of Mr. Rapps' speech was exclusively directed at the Chinese employees in addition to being degrading and prejudiced.

[454] Following the incident, he felt humiliated and outraged by the treatment he had received and, consequently, did not work for a long time afterwards.

[455] Ms. Ma affirms that she and her co-workers at Calego were newly arrived immigrants and it was their first job experience in Canada. Consequently, they were not sufficiently prepared to deal with the kind of treatment they had received from the Defendant, which she qualifies as unbelievable and terribly hurtful.

[456] Ms. Ma affirms that, subsequent to the incident, she could neither sleep nor eat, adding that, « C'était comme blanc dans ma tête... Il n'y a rien qui se passait dans la tête. Il n'y avait plus d'idées, il n'y avait plus de pensées ».

[457] Ms. Zhao affirms that she felt very sad after the events of July 11, 2006. Crying, she testifies that, at the time, she was a new immigrant and believed that Canada was a country that was respectful of human rights. She had only been doing her job and could not understand why she was the object of humiliation and discrimination.

[458] She felt psychologically broken and helpless, wondering about and even regretting the kind of life she had chosen for herself and her child. Not knowing how to protect herself from this kind of situation, she asked herself how she would protect her innocent child who was also Chinese.

[459] Ms. Hu felt humiliated by the way she and the Chinese people in general were treated by Mr. Rapps, notably by his statement that the Chinese eat like pigs. She found his comments particularly degrading.

[460] Very hurt by the events, she subsequently became frightened that the same kind of incident would repeat itself elsewhere.

[461] Trembling after the incident, Mr. Li felt humiliated, saddened and angry. It was the first time he had been treated in such a manner, and was subsequently depressed for a considerable period of time.

[462] Mr. Hou was surprised and very insulted by the Defendant's comment, "The Chinese eat like pigs". He has continually felt nervous subsequent to the incident.

[463] Mr. Su claimed to have been traumatized by the incident, which he thought about for a long time afterwards. He had immigrated to Canada where he believed that all were treated equally. However consequential to the treatment received at Calego, he essentially questioned his decision to have come to Canada.

[464] Describing the event as tragic, Mr. He states that, following the incident, he found himself unemployed and experienced financial difficulties.

[465] Mr. Wang felt very bad as well as deeply insulted and angry by the comments of Mr. Rapps; no one had, in his 41 years, accused him of eating like a pig.

[466] Il y a preuve suffisante pour établir que chacun de ces travailleurs, qui étaient pour la plupart des professionnels en Chine avant d'immigrer au Canada, a été dépouillé de sa dignité et bafoué dans son estime de soi, alors qu'il se retrouve en situation de vulnérabilité en tant que nouvel arrivant en période d'intégration sur le marché du travail au Québec.

[467] Chacune des victimes est vexée avec raison car son droit d'être traitée avec dignité, pudeur, égards et déférence³² a été bafoué.

[468] Dans l'arrêt *R. c. Williams*, la Cour suprême enseigne que les préjugés raciaux et leurs effets sont tout aussi attentatoires et insaisissables que corrosifs³³, ce qui est le cas ici.

[469] Le Tribunal estime que l'expérience discriminatoire humiliante imposée à chacun de ces travailleurs et à ce groupe d'immigrants est de nature à marquer chacune de ces victimes, qui s'attendait d'immigrer dans un pays, le Canada, où leurs droits n'allaient pas être bafoués en raison de leur origine chinoise. Leur rêve et leurs attentes d'immigrer dans un pays exempt de discrimination fondée sur la race, l'origine nationale et ethnique, se sont évanouis.

[470] En regard du contexte propre à cette cause, l'humiliation infligée à ces travailleurs dont la fierté et l'estime de soi ont été et demeurent grandement affectées au moment où ils se retrouvent contre leur gré en situation de vulnérabilité et d'emploi précaire, milite en faveur de l'octroi de dommages substantiels, plus importants que ceux réclamés.

[471] Bien que la quantification des dommages moraux comporte un volet discrétionnaire, elle demeure régie par des principes, notamment celui de la proportionnalité par rapport à la gravité du préjudice qui est, entre autres, un facteur à considérer dans un dossier où il y a plusieurs victimes, comme en l'espèce.

[472] La suggestion de l'avocat des défendeurs de limiter le montant des dommages moraux à 500 \$ pour chacune des victimes ne peut pas être retenue car elle aurait pour effet de banaliser la violation des droits fondamentaux protégés par la *Charte* et de minimiser les conséquences pour ceux qui choisissent d'ignorer et d'enfreindre ces

³² Québec (*Commission des droits de la personne et des droits de la jeunesse*) c. *Transport en commun La Québécoise inc.*, 2002 QCTDP 9226 (CanLII), paragr. 31; *Commission des droits de la personne et des droits de la jeunesse* c. *9113-0831 Québec inc. (Bronzage Évasion au soleil du monde)*, 2007 QCTDP 18 (CanLII); *Commission des droits de la personne et des droits de la jeunesse* c. *Dion*, 2008 QCTDP 9 (CanLII).

³³ *R. c. Williams*, [1998] 1 R.C.S. 1128, para. 22.

droits. Cette suggestion s'écarte de l'évolution de la jurisprudence au Québec en matière de discrimination.

[473] Le Tribunal estime que, dans l'état de la jurisprudence au Québec, le montant de 7 000 \$ réclamé en l'instance à titre de dommages moraux pour chacune des victimes se situe dans la fourchette des montants accordés par le Tribunal des droits de la personne, notamment pour la violation des droits garantis par la *Charte* en raison des propos racistes ou discriminatoires³⁴.

[474] En regard de la preuve présentée, le Tribunal estime raisonnable d'accorder le montant de 7 000 \$ réclamé par la Commission, à titre de dommages moraux, à chacune des quinze victimes : Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie. Pour les motifs exposés précédemment, les quatre défendeurs sont solidairement condamnés à verser ce montant à chacune des victimes.

[475] L'argument des défendeurs voulant que les victimes aient été manipulées et leur suggestion qu'il s'agit d'un coup monté pour faire un coup d'argent n'est pas retenue car il ne trouve pas assise dans la preuve qui supporte plutôt l'existence d'une atteinte sérieuse à la dignité des travailleurs chinois.

[476] Pour les motifs déjà exprimés, aucun montant ne peut être accordé pour agression physique réclamé pour les deux travailleurs Wei Li and Yong Shan He.

6.2 Dommages punitifs

[477] Le second alinéa de l'article 49 de la *Charte des droits et libertés de la personne* permet l'octroi de dommages punitifs lorsqu'il y a eu une atteinte illicite et intentionnelle à un droit protégé par la *Charte*.

[478] Dans l'arrêt *Métromédia CMR Montréal inc. c. Johnson*³⁵, la Cour d'appel enseigne :

[108] La fonction préventive des dommages punitifs est fondamentale; ils visent un double objectif de punition et dissuasion mais ne peuvent excéder ce qui est suffisant pour atteindre ces objectifs. [...] « c'est (...) vers l'avenir que le juge doit se tourner pour chiffrer un montant qui empêchera la récidive ». Il ne s'agit pas d'indemniser le demandeur mais de punir le défendeur comme il le mérite, de le décourager, lui et d'autres, d'agir ainsi à l'avenir et d'exprimer la réprobation de tous à l'égard de tels événements.

[479] Selon la Cour suprême, dans l'arrêt *de Montigny c. Brossard (Succession)*³⁶:

³⁴ *Commission des droits de la personne et des droits de la jeunesse c. Remorquage Sud-Ouest (9148-7314 Québec inc.)*, J.E. 2010-1787.

³⁵ *Métromédia CMR Montréal inc. c. Johnson*, [2006] R.J.Q. 395 (C.A.).

³⁶ *de Montigny c. Brossard (Succession)*, 2010 CSC 51.

[47] Contrairement aux dommages compensatoires, dont la raison d'être est la réparation du préjudice résultant d'une faute, les dommages exemplaires existent, quant à eux, pour une autre fin. L'octroi de ces dommages a pour but de marquer la désapprobation particulière dont la conduite visée fait l'objet. Il est rattaché à l'appréciation judiciaire d'une conduite, non à la mesure des indemnités destinées à réparer un préjudice réel, pécuniaire ou non. Comme l'exprime le juge Cory :

On peut accorder des dommages-intérêts punitifs lorsque la mauvaise conduite du défendeur est si malveillante, opprimante et abusive qu'elle choque le sens de dignité de la cour. Les dommages-intérêts punitifs n'ont aucun lien avec ce que le demandeur est fondé à recevoir au titre d'une compensation. Ils visent non pas à compenser le demandeur, mais à punir le défendeur. C'est le moyen par lequel le jury ou le juge exprime son outrage à l'égard du comportement inacceptable du défendeur (Hill c. Église de scientologie de Toronto, [1995] 2 R.C.S. 1130, par. 196)

[...]

[52] Comme nous l'avons vu, la dénonciation a été décrite par le juge Cory comme « le moyen par lequel le jury ou le juge exprime son outrage à l'égard du comportement inacceptable du défendeur » (Hill, par. 196). Cette indignation s'exprime par l'imposition du paiement d'une somme d'argent, importante ou symbolique, souvent assortie d'une déclaration, et qui, ensemble, visent à communiquer l'opinion de la justice à propos du caractère particulièrement répréhensible d'une conduite. En ce sens, la dénonciation constitue un objectif servant à la fois les fonctions rétributive et utilitariste du régime des dommages exemplaires. La fonction rétributive, d'abord, est servie par l'opprobre qui s'attache à la personne du fautif et qui constitue en soi une forme de punition pour sa conduite. [...]

(Soulignements ajoutés)

[480] Appliquant ces principes aux faits en l'espèce, le Tribunal estime qu'il y a lieu d'accorder ici des dommages punitifs.

[481] Le caractère illicite des remarques discriminatoires de M. Rapps qui a planifié et tenu la réunion pour s'adresser aux travailleurs chinois est démontré par la preuve.

[482] Quant au caractère intentionnel, M. Rapps ne pouvait pas ignorer l'impact de ses remarques et la manière de les communiquer, allant jusqu'à insister pour que la traductrice traduise sa dernière remarque «We dont eat like pigs » qui a déclenché le chaos.

[483] L'interprète n'a pas été appelée comme témoin devant le Tribunal. L'avocat des défendeurs réfère à sa déclaration devant la Commission (pièce D-1) dans laquelle, elle mentionne que le terme Pigs est utilisé par M. Rapps et qu'elle ne se rappelle pas du verbatim exact de la dernière phrase du discours de M. Rapps. L'avocat de la Commission soumet avec justesse que ladite déclaration de l'interprète doit être lue

dans son ensemble car il y est aussi mentionné que l'interprète était choquée par les propos de M. Rapps.

[484] Il y a atteinte intentionnelle lorsque l'auteur a un état d'esprit qui dénote un désir, une volonté de causer les conséquences de sa conduite fautive ou encore s'il agit en toute connaissance des conséquences négatives, immédiates et naturelles ou au moins extrêmement probables³⁷, ce qui est le cas ici.

[485] L'expérience discriminatoire, traumatisante, humiliante et préjudiciable imposée aux victimes aurait pourtant pu être évitée, si seulement M. Rapps s'était soucié de respecter les droits protégés par la *Charte* qui reflètent pourtant les valeurs bien connues au Québec et au Canada réputé à l'étranger comme étant un pays où les droits et libertés de la personne sont protégés et respectés.

[486] La Commission a réussi à démontrer que les deux critères de l'article 49 (2) de la *Charte*, soit : Atteinte illicite et intentionnelle, sont rencontrés.

[487] La responsabilité de M. Rapps pour des dommages punitifs est engagée. Il en est de même pour celle de la Calego dont il est le dirigeant. Le Tribunal applique l'enseignement de la Cour suprême dans l'arrêt *Gauthier c. Beaumont*³⁸ voulant qu'il y ait une volonté présumée ou imputable à un organisme de porter une atteinte intentionnelle à l'intégrité et à la dignité de la victime, lorsque le dirigeant de cet organisme est lui-même condamné à des dommages punitifs.

[488] Quant aux deux autres défendeurs Vincent Agostino et l'Agence Vincent, les deux critères de l'article 49 (2) de la *Charte*, soit atteinte illicite et intentionnelle ne sont pas rencontrés, en conséquence, des dommages punitifs ne peuvent pas être accordés contre ces défendeurs.

[489] En regard de la preuve présentée, le Tribunal estime raisonnable d'accorder le montant de 3 000 \$ réclamé par la Commission, à titre de dommages punitifs, à chacune des quinze victimes : Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie.

7. ORDONNANCES

[490] La Commission demande au Tribunal d'ordonner aux défendeurs de mettre sur pied un programme favorisant l'intégration dans l'entreprise Calego des travailleurs immigrants dont les travailleurs d'origine chinoise, afin de prévenir toute discrimination fondée sur l'origine ethnique et nationale en milieu de travail.

³⁷ Jean-Louis BAUDOUIN et Patrice DESLAURIERS, *La responsabilité civile*, 5^e éd., Cowansville, Éditions Yvon Blais, p. 190; paragr. 260.

³⁸ *Précité*, note 23.

[491] Dans l'affaire *Systematix*³⁹, le Tribunal traite de la question d'émission d'ordonnance à titre de mesure réparatrice en ces termes :

131 Dans l'arrêt *Doucet-Boudreau c. Nouvelle-Écosse (Ministère de l'Éducation)*⁴⁰ la Cour suprême enseigne :

[...] les dispositions réparatrices doivent être interprétées de manière à assurer « une réparation complète, efficace et utile à l'égard des violations de la *Charte* », « puisqu'un droit, aussi étendu soit-il en théorie, est aussi efficace que la réparation prévue en cas de violation, sans plus.

132 Dans l'arrêt *Québec (Commission des droits de la personne et des droits de la jeunesse) c. Communauté urbaine de Montréal*⁴¹, l'honorable Lebel, de la Cour suprême, se référant à l'arrêt *Doucet-Boudreau*, écrit :

[...] la jurisprudence de notre Cour a insisté sur la nécessité de la flexibilité et de la créativité dans la conception des réparations à accorder pour les atteintes aux droits fondamentaux de la personne. [...] Il faut parfois mettre fin à des comportements ou modifier des usages ou des méthodes incompatibles avec la Charte québécoise, même en l'absence de faute au sens du droit de la responsabilité civile.

[...]

Ainsi, dans le cadre de l'exercice des recours appropriés devant les organismes ou les tribunaux compétents, la mise en oeuvre de ce droit peut conduire à l'imposition d'obligations de faire ou de ne pas faire, destinées à corriger ou à empêcher la perpétuation de situations incompatibles avec la Charte québécoise.

[...]

134 L'émission d'ordonnance en matière de discrimination dans l'emploi peut servir à mettre fin à l'atteinte, elle peut, lorsque la situation le justifie faire aussi partie de la réparation⁴², ce qui est le cas ici.

[492] Ces Principes s'appliquent en l'espèce.

[493] La preuve présentée est suffisante pour établir que l'approche appliquée par la société Calego laisse transparaître un manque flagrant de respect et de sensibilité

³⁹ *Commission des droits de la personne et des droits de la jeunesse c. Systématix Technologies de l'information inc.*, 2010 QCTDP 18, J.E. 2011-414.

⁴⁰ *Doucet-Boudreau c. Nouvelle-Écosse (Ministère de l'Éducation)*, [2003] 3 R.C.S. 3, paragr. 24.

⁴¹ *Québec (Commission des droits de la personne et des droits de la jeunesse) c. Communauté urbaine de Montréal*, [2004] 1 R.C.S. 789, 2004 CSC 30.

⁴² Sylvie GAGNON, « Quelques observations critiques sur le droit à une réparation selon la Charte des droits de la personne », *La Charte des droits et liberté de la personne*, pour qui et jusqu'au, Ed. Yvon Blais, Cowansville, 2005, p. 261 et ss.

envers des travailleurs chinois, au point de créer un environnement de travail malsain empreint de préjugés et de stéréotypes, terrains fertiles pour créer des tensions entre les travailleurs de différentes races, différentes ethnies et nationalités qui travaillent chez Calego.

[494] La Commission a réussi à démontrer qu'un programme d'intégration antidiscriminatoire est requis dans cette affaire.

[495] Le Tribunal conclut que les critères sont rencontrés pour émettre en l'espèce l'ordonnance recherchée et ordonner à M. Rapps et à Calego de mettre sur pied un tel programme.

[496] Dans le cadre de l'élaboration et de la mise en place d'un programme d'intégration anti-discriminatoire, Calego pourra bénéficier de l'assistance de la Commission.

[497] Nous ne sommes pas ici en matière de diffamation, les conclusions recherchées pour la publication d'excuses dans les journaux visant l'ensemble de la communauté chinoise n'est pas un remède approprié, en regard des manquements reprochés dans le contexte où les propos discriminatoires sont tenus.

[498] Quant à l'ordonnance pour une lettre d'excuse à chacune des victimes, le Tribunal estime que cette sanction est aussi inappropriée car le défendeur Rapps ne reconnaît pas avoir tenu des propos vexatoires et discriminatoires à l'endroit des travailleurs chinois. M. Rapps et son entreprise Calego maintiennent leur refus de présenter des excuses aux victimes. Émettre une telle ordonnance dans ce contexte aurait pour effet de forcer Calego et son président d'écrire contre leur gré une lettre mensongère, ce type de sanction a été qualifié par la Cour suprême du Canada comme étant totalitaire et, par conséquent, étranger à la tradition des pays démocratiques comme le Canada⁴³.

[499] Le Tribunal estime qu'une ordonnance pour une lettre d'excuses et pour la publication d'excuses dans les journaux n'est pas de nature à mettre fin à l'atteinte au droit des victimes. Les réparations accordées à titre de dommages moraux et punitifs ainsi que l'ordonnance de mettre sur pied un programme favorisant l'intégration des travailleurs immigrants sont suffisantes pour compenser les quinze victimes de l'atteinte à leurs droits et pour dissuader les défendeurs de continuer d'enfreindre les droits protégés par la *Charte*.

[500] **POUR CES MOTIFS, LE TRIBUNAL :**

[501] **ACCUEILLE** en partie la demande;

[502] **CONDAMNE** solidairement les défendeurs Calego International inc., Stephen Rapps, Agence Vincent et Vincent Agostino à verser à chacune des quinze (15)

⁴³ B.C.N. c. Union des employés de commerce, [1984] 1 RCS, 269.

victimes Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie le montant de sept mille (7 000) dollars à titre de dommages moraux;

[503] **CONDAMNE** solidairement les défendeurs Calego International inc., Stephen Rapps, à verser à chacune des quinze (15) victimes Ai Hong Su, Jun Cai Wang, Li Li, Li Ming Zhou, Nai Guang Wu, Wei Li, Xiang Ma, Xin Hu, Yong Huo, Yong Li Zhao, Yong Shan He, Zhan Hong Hou, Zhong Mei Hu, Yong Mei Sun et Xiang Huan Xie, le montant de trois mille (3 000) dollars à titre de dommages-intérêts punitifs en raison de l'atteinte intentionnelle à leur droit;

[504] **ORDONNE** aux défendeurs Calego International inc. et Stephen Rapps de mettre sur pied un programme favorisant l'intégration dans l'entreprise Calego International des travailleurs immigrants, dont les travailleurs d'origine chinoise, afin de prévenir toute discrimination fondée sur l'origine ethnique et nationale en milieu de travail, ce programme devant être transmis à la Commission pour approbation;

[505] **LE TOUT**, avec intérêts au taux légal et l'indemnité additionnelle conformément à l'article 1619 C.c.Q. depuis la signification de la proposition de mesures de redressement pour les dommages moraux et depuis la date du jugement pour les dommages punitifs;

[506] **LE TOUT**, avec dépens.

DANIEL DORTÉLUS, J.T.D.P.

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