

**Federal Court of Appeal**



**Cour d'appel fédérale**

[ENGLISH TRANSLATION]

**Date: 20161012**

**Docket: A-77-16**

**Citation: 2016 FCA 249**

**CORAM: GAUTHIER J.A.  
BOIVIN J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**NAIM RAHMANI**

**Respondent**

Heard at Ottawa, Ontario, on October 12, 2016.

Judgment delivered at Ottawa, Ontario, on October 12, 2016.

**REASONS FOR JUDGMENT BY:**

**DE MONTIGNY J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT**

**(Delivered from the Bench at Ottawa, Ontario, on October 12, 2016.)**

**DE MONTIGNY J.A.**

[1] After having reviewed the file and heard the applicant's submissions, this Court is of the view that this application for judicial review should be dismissed.

[2] The applicant has not convinced us that the member broke the rules of procedural fairness. First, all of the documents that the witnesses have submitted had been shared with the parties well before the hearing. Second, the applicant did not make any new requests for production to the member during the hearing, and the testimonies of the physicians were essentially based only on the documents shared with the applicant. Lastly, the member was able to consider the need to protect the respondent's privacy, and invoked solely the evidence of record in her reasons. Moreover, the applicant failed to convince us that it had suffered any detriment in this case.

[3] As regards the decision to substitute a suspension of 22 months without pay for termination, this Court is not satisfied that this is not one of the possible acceptable outcomes considering the facts in this case. The applicant argued that the member had erred in ruling that there had been provocation; however, from a careful reading of her reasons, it can be inferred instead that she did not give as much weight to this factor as the applicant suggests (paragraphs 82, 85 and 93), and we do not find that this file lends itself to an in-depth analysis of the concept of provocation. Even if we assume that the member could not take into account a "certain provocation," her decision is based on other mitigating factors supported by the evidence of record.

[4] With regard to discrimination, the member did not err in concluding that "[t]he prohibited ground of discrimination does not have to be the only factor in the termination; it is enough that it is one" (paragraph 104). That conclusion is consistent with the recent pronouncement of the Supreme Court in the *Bombardier* decision, *Quebec (Commission des droits de la personne et*

*des droits de la jeunesse*) v. *Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39. The evidence shows that the employer was well aware of the respondent's state of health and refused to take it into account, as the member noted in paragraph 112 of her reasons. Contrary to the applicant's argument, the member's decision does not indicate that an employer cannot terminate an employee who allegedly committed a violent act; at most, we can infer that such a decision cannot be made without consideration of the state of health of the employee at fault (paragraph 108).

[5] For all of these reasons, the application for judicial review will be dismissed, with costs.

“Yves de Montigny”

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J.A.

Certified true translation  
François Brunet, Revisor

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-77-16

**Application for judicial review concerning decision no.: 2016 PSLREB 10, by Marie-Claire Perreault, Member of the Public Service Labour Relations and Employment Board, on February 5, 2016.**

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. NAIM RAHMANI

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 12, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** GAUTHIER J.A.  
BOIVIN J.A.  
DE MONTIGNY J.A.

**DELIVERED FROM THE BENCH BY:** DE MONTIGNY J.A.

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