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## The Alberta Court of Appeal and the Test for Discrimination

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### Cases commented on:

*Lethbridge Regional Police Service v Lethbridge Police Association*, [2013 ABCA 47](#), leave to appeal denied, June 20, 2013, Supreme Court of Canada.

A couple of months ago I posted a blog on the uncertainty over the test for discrimination under human rights legislation, particularly in Alberta (see [here](#)). In the Supreme Court's most recent human rights decision, *Moore v British Columbia (Education)*, [2012 SCC 61](#), the Court appeared to return to the traditional *prima facie* approach to discrimination first set out in *Ontario Human Rights Commission and O'Malley v Simpsons-Sears*, [1985] 2 SCR 536. Yet in *Lethbridge Regional Police Service v Lethbridge Police Association*, the Alberta Court of Appeal declined to cite *Moore*, and applied a restrictive test for discrimination in the employment context. This approach operated to the detriment of Lester, a probationary police constable whose claim of discrimination was dismissed because the Lethbridge Regional Police Service appeared to have at least some non-discriminatory reasons for not extending his contract, and because there was found to be no evidence of stereotyping or egregious discrimination (see para 37). The Court of Appeal took a similarly restrictive approach in *Wright v College and Association of Registered Nurses of Alberta (Appeals Committee)*, [2012 ABCA 267](#), in which the Supreme Court declined to grant leave to appeal (see [2013 CanLII 15573](#) (SCC)). On June 20, 2013, the SCC also denied leave to appeal in the *Lethbridge Police Association* case. As is the usual practice, the panel (Justices LeBel, Karakatsanis and Wagner) did not provide reasons for decision. This is an unfortunate development given the need for clarity over the test for discrimination. Until the Supreme Court decides to tackle that issue head on, it is to be hoped that the Court of Appeal will follow the Supreme Court's direction in *Moore*, and cease its inclination to impose onerous burdens on human rights claimants.

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