

In the Court of Appeal of Alberta

Citation: EPCOR Utilities Inc v International Brotherhood of Electrical Workers, 2026 ABCA 191

Date: 20260612
Docket: 2603-0095AC
Registry: Edmonton

Between:

EPCOR Utilities Inc.

Applicant

- and -

**International Brotherhood of Electrical Workers, Local 1007 and
Alberta Labour Relations Board**

Respondents

**Reasons for Decision of
The Honourable Justice Kevin Feth**

Application for Permission to Appeal

**Reasons for Decision of
The Honourable Justice Kevin Feth**

[1] The applicant, EPCOR Utilities Inc (the “Employer”), seeks permission to appeal a decision of the Alberta Labour Relations Board dated March 27, 2026, which dismissed an application to review an arbitration award: *EPCOR Utilities Inc v International Brotherhood of Electrical Workers, Local 1007*, 2026 ALRB 44 (CanLII) [Board Decision].

[2] The Employer and the respondent, the International Brotherhood of Electrical Workers, Local 1007 (the “Union”), are parties to a collective agreement.

[3] Two grievances were filed by the Union against the Employer in 2022. The grievances claimed the Employer discriminated against two unionized employees based on family status by declining to accommodate the employees’ requests to modify their scheduled work hours to facilitate parenting responsibilities.

[4] Both employees were married with children. The children at the time of the grievances were between the ages of 4 and 10. Because of assigned work hours, prior to October 2022 both employees had their children walk home after school and remain alone for approximately 15 minutes until the employees arrived at home after work. Neither employee requested accommodations during this time, although both expressed unhappiness with the arrangement.

[5] In August 2022, the Employer informed the employees that, as of October 2022, they would be assigned to work from a different location, with slightly different hours. The change in work location and hours, coupled with a change in the children’s school schedules, meant the children would be required to walk home and remain alone for roughly half an hour after school.

[6] In September 2022, the employees both requested accommodations for childcare reasons, but the Employer declined those requests stating the need for accommodations had not been substantiated. The Union then initiated grievances on behalf of the employees based on the Employer’s refusal to accommodate.

[7] A grievance hearing was held and on November 14, 2024, an arbitration tribunal issued an award allowing the two grievances after finding the employees had established *prima facie* discrimination on the basis of family status resulting from the changes in work location and scheduled hours of work that occurred in October 2022: *Epcor Utilities Inc v International Brotherhood of Electrical Workers, Local No 1007*, 2024 CanLII 119276 (AB GAA) [Arbitration Award].

[8] The Employer applied to the Alberta Labour Relations Board for review, and on March 27, 2026, the Board found the Arbitration Award was reasonable and dismissed the application. It declined to address whether the legal test for *prima facie* discrimination in family status cases

includes a requirement to consider the materiality of a claimed adverse impact: Board Decision at paras 3, 37, 69.

[9] The Employer now seeks permission to appeal the Board Decision to this Court. The Board did not make submissions and took no position on the application for permission to appeal.

[10] The application is brought pursuant to s 145.1(1) of the *Labour Relations Code*, RSA 2000, c L-1, which provides that “an appeal lies from a decision of the Board on a question of jurisdiction or law after permission to appeal has been obtained.”

[11] The Employer proposes the following question on appeal: In family status discrimination cases does the application of the accepted legal test to determine if *prima facie* discrimination has occurred include adopting a “materiality” threshold to decide if an adverse impact has been suffered by a complainant?

[12] In determining whether to grant permission to appeal, the Court must consider whether the proposed question merits review by a panel of the Court of Appeal. The factors to be considered include whether:

- (i) the question is of significance to the practice;
- (ii) the question is of significance to the action;
- (iii) the appeal is *prima facie* meritorious; and
- (iv) the appeal would unduly hinder the underlying action.

United Food and Commercial Workers Union, Local No 401 v Sofina Foods Inc, 2019 ABCA 418 at para 26, citing ***Equus Rea Ltd v Alberta (Utilities Commission)***, 2019 ABCA 277 at para 12.

[13] Having reviewed the record and the arguments of the parties, the Employer has not met the test for permission to appeal. In particular, the requirements for *prima facie* discrimination have been determined by the Supreme Court of Canada. This Court recently and definitively confirmed that those requirements are common to all discrimination claims, so a materiality component unique to family status claims is precluded. As a result, there is no *prima facie* merit to the proposed appeal, and it is not significant to the practice.

[14] The three requirements for *prima facie* discrimination were established in ***Moore v British Columbia (Education)***, 2012 SCC 61 at para 33, [2012] 3 SCR 360 [***Moore***]. To demonstrate *prima facie* discrimination, a complainant must be able to show:

- (i) they have a characteristic protected from discrimination;
- (ii) they experienced an adverse impact on account of the challenged norm; and
- (iii) the protected characteristic was a factor in the adverse impact.

[15] This Court’s decision in *United Nurses of Alberta v Alberta Health Services*, 2021 ABCA 194 at para 3 [*United Nurses*], leave to appeal dismissed 2022 CanLII 3791 (SCC) provides a complete answer to the question for appeal proposed by the Employer. In Alberta, unlike other jurisdictions such as British Columbia, the *prima facie* test for discrimination in family status cases is the same as all other protected characteristics, with no modifications or additional burdens. No “materiality” threshold applies in determining whether an adverse impact has been suffered by a complainant of family status discrimination.

[16] The law was confirmed in *United Nurses*, where this Court concluded:

[7] In our view, the nature of human rights and the rule of law, require one uniform and consistent test for determining *prima facie* discrimination in all cases. That test was laid down by the Supreme Court of Canada in *Moore*. There is no legal justification for the imposition. . . of an additional, burdensome element of proof on family status claimants at the *prima facie* discrimination stage. Imposing a more onerous self-accommodation burden in this manner perpetuates rather than ameliorates human rights inequality. Inequality undermines the rule of law: *Fraser v Canada (Attorney General)*, 2020 SCC 28, 450 DLR (4th) 1.

...

[108] Under *Vavilov*, the test for *prima facie* discrimination is a question of central importance to the legal system, to be reviewed on a standard of correctness. The three-part test established by the Supreme Court of Canada in *Moore*, sets a low threshold and is to be applied consistently in all claims of discrimination. This includes family status cases.

[109] The test for *prima facie* discrimination in *Moore* does not require a claimant to prove self-accommodation. There is no justification for requiring a family status claimant to prove an additional element of self-accommodation at the *prima facie* stage of the inquiry. To do so would unfairly and unjustly elevate the burden of proof on family status claimants, perpetuating rather than ameliorating human rights inequality. . . . [Emphasis added]

See also paras 96-99, 110.

[17] *United Nurses* addressed the additional threshold of “self-accommodation” but the reasoning also prohibits the “materiality component” now advanced by the Employer.

[18] As the Board Decision explains, the arbitration tribunal relied on *United Nurses* to reject the Employer’s argument that the assessment of “adverse impact” should be robust, and found that this Court had determined the test, which is the *Moore* framework, and “rejected the adoption of qualifiers – such as ‘substantial’ parental obligations and ‘serious’ adverse impacts – in the *prima*

facie discrimination assessment”: Board Decision at paras 16-19, referring to the Arbitration Award at para 15. The Board at paragraph 18 also referred to the following statement of the law from ***United Nurses*** in the Arbitration Award at paragraph 15:

[77] While it is accurate to say that the test for *prima facie* discrimination ought to be *applied* flexibly and contextually, the legal test must remain the same; there is no justification for changing the test when the complaint is family status discrimination. ***Johnstone*** cites ***Campbell River*** for the requirement that a “serious interference with a substantial parental or other family duty” must be proven, however no such qualifiers are applied to findings of *prima facie* discrimination on other prohibited grounds. Proving that one has sought out “reasonable alternative childcare arrangement unsuccessfully”, is also neither justified nor required by the test set down in ***Moore***. In this manner, respectfully, ***Johnstone*** is fundamentally flawed.

[19] The Employer argues that these comments are confined to “self-accommodation”, which was advanced in ***United Nurses*** as a possible fourth requirement for the ***Moore*** framework. However, the reasoning in ***United Nurses*** is incompatible with that argument.

[20] This Court was opposed to additional “evidentiary embellishments” that would “hold family status claimants to a higher standard than other kinds of discrimination”. The test for *prima facie* discrimination “ought to be exactly the same” for all prohibited grounds. “Different tests, or evidentiary gradations of the same test, beget inequality” [emphasis added]: ***United Nurses*** at para 99. The application of a materiality threshold to one of the existing requirements in ***Moore***, or as an additional requirement, would impose an evidentiary embellishment or gradation unique to family status claims. That approach is contrary to the express reasoning in ***United Nurses*** and ignores this Court’s concern that imposing a more onerous burden on family status claimants “perpetuates rather than ameliorates human rights inequality”, which “undermines the rule of law”.

[21] The Employer contends the proposed appeal is an opportunity for this Court to clarify its judgment in ***United Nurses*** and provide important guidance to labour arbitrators and human rights adjudicators going forward about how to assess family status claims. However, nothing remains to be clarified. ***United Nurses*** settled the law to “bring certainty about the applicable test for labour arbitrators and the Human Rights Tribunal of Alberta, and any other decision maker that may have to address this issue” (paragraph 6). The three-part test in ***Moore*** is not to be modified by qualifiers unique to family status claims, so a family status claimant is not required to prove an additional threshold to meet the test for *prima facie* discrimination. A “materiality” component is such a qualifier or threshold.

[22] The Employer argues that the law has evolved since ***United Nurses***. Specifically, in ***British Columbia (Human Rights Tribunal) v Gibraltar Mines Ltd***, 2023 BCCA 168, the British Columbia Court of Appeal applied a materiality threshold for *prima facie* discrimination in family

status claims, which the Employer asserts “was consistent with the articulation of the legal test this Court endorsed in [*United Nurses*]”, being the *Moore* framework.

[23] In British Columbia however, an additional qualifier has long existed: there must be a “serious interference with a substantial parental or other family duty or obligation” in order to establish *prima facie* discrimination based on family status: see *Health Sciences Assoc of BC v Campbell River and North Island Transition Society*, 2004 BCCA 260 at para 39; *Envirocon Environmental Services, ULC v Suen*, 2019 BCCA 46 at paras 30-32.

[24] The British Columbia interpretation of the *Moore* framework was expressly considered and rejected by this Court in *United Nurses* at paras 42-46, 68-71, 77-78. After acknowledging the “inconsistency in the case law as to the test for *prima facie* discrimination in family status cases”, including authorities from British Columbia and the Federal Court of Appeal in *Canada (Attorney General) v Johnstone*, 2014 FCA 110 at para 88, [2015] 2 FCR 595, this Court preferred the reasoning underlying a universal standard for the requirements in *Moore*, and leave to appeal to the Supreme Court of Canada on the issue was dismissed.

[25] The “materiality” threshold proposed by the Employer is akin to the “serious interference with a substantial parental or other family duty or obligation” in the British Columbia authorities rejected in *United Nurses*. Granting permission to appeal would perpetuate the uncertainty this Court sought to eliminate just five years ago and would disregard its direction that “the debate must end”: *United Nurses* at para 99.

[26] Permission to appeal is denied.

Application heard on June 10, 2026

Reasons filed at Edmonton, Alberta
this 12th day of June, 2026

Feth J.A.

Appearances:

C.W. Neuman, KC
for the Applicant

D. Christianson
for the Respondents International Brotherhood of Electrical Workers, Local 1007

K. McGreer
for the Respondent Alberta Labour Relations Board