

# Top Court Rejects Re-hearing of Alberta Hutterites Photo-ID Case

The Supreme Court of Canada rendered judgment on October 15, 2009 on a motion to re-hear the dispute between the Hutterian Brethren of Wilson Colony and the Government of Alberta. Wilson Colony had sought to argue the case again in a new trial. The Court dismissed the motion without reasons, so its July 24 decision in the case stands.<sup>[1]</sup> A change to a provincial regulation in 2003 required all Albertans to have their photographs taken on applying for a driver's licence. Previously, the Hutterites of Wilson Colony had the benefit of an exemption, which accommodated their religion's prohibition on having one's picture taken voluntarily.<sup>[2]</sup> Arguing that their freedom of religion had been infringed without reasonable justification, Wilson Colony took its case to the Alberta Court of Queen's Bench and won. They won again in a split decision of the Alberta Court of Appeal.<sup>[3]</sup> In a split (4-3) decision, a majority of the Supreme Court overturned the rulings of the lower courts, emphasizing that the Alberta government's concern to prevent identity theft was a "pressing and substantial" goal, "rationally connected" to the change in the regulation.<sup>[4]</sup> Although the 2003 regulation infringed freedom of religion under section 2(a) of the *Charter*, the majority concluded that "a limit on a right that exacts a cost but nevertheless leaves the adherent with a meaningful choice" can be justified.<sup>[5]</sup> The Hutterian Brethren of Wilson Colony filed a motion for "an order returning the case to court of first instance, a stay of execution and re-hearing of the appeal" a month after the decision. The governments of Alberta and Canada, along with two Christian organizations, filed responses. A seven-judge panel of the Supreme Court - including the three judges who dissented in the July 24, 2009 decision - unanimously dismissed the motion.<sup>[6]</sup>

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<sup>[1]</sup> News release, "Judgments in Appeal, Motion for Re-hearing of Appeal and Leave Applications" *Supreme Court of Canada* (15 October 2009) at 2; [Alberta v. Hutterian Brethren of Wilson Colony](#), 2009 SCC 37 ("Wilson Colony"). <sup>[2]</sup> Jim Young, "Alberta v. Hutterian Brethren of Wilson Colony (2009)" *Centre for Constitutional Studies* (31 July 2009). <sup>[3]</sup> *Ibid.* <sup>[4]</sup> [Wilson Colony](#) at paras. 47-48. <sup>[5]</sup> *Ibid.* at para. 95. <sup>[6]</sup> News release, *supra* note 1; "SCC Case Information, Docket 32168" *Supreme Court of Canada* (15 October 2009).