Hutterite Colony Successfully Challenges Photo Requirement for Drivers' Licences

On May 20th, 2003 the Alberta Operator Licensing and Vehicle Control Regulation was amended to require that all drivers' licences must include photo identification, regardless of the license-holder's religious beliefs. "The change in policy was a reaction to new risks of fraud and to public safety, as well as to the availability of facial recognition software".[1] Prior to this amendment, an exception to the photo requirement was available to individuals with religious objections.

Members of the Wilson Hutterian Colony in Southern Alberta (the applicants) launched a constitutional challenge to the amendment, arguing that it violated their ss. 2(a) (freedom of religion) and 15 (equal treatment) Charter rights. The argument was founded on the applicants' religious belief that consenting to have their photograph taken is a sin. The applicants further argued that they could not maintain their communal way of life without continuing to drive, and were thus being forced to choose between two sincerely religious held beliefs.

The Alberta government did not dispute that the photo requirement was an infringement of the applicant's Charter rights but argued that the infringement could be justified under s. 1 of the Charter, which allows the government to pass legislation limiting rights if the limits, "can be demonstrably justified in a free and democratic society".[2] The Alberta Court of Queen's Bench disagreed with the government's stance, and decided the requirement was inconsistent with the Charter and thus of no force or effect. The Alberta government appealed the decision to the Court of Appeal.

The Court of Appeal upheld the Queen's Bench decision. The majority judgement concluded that, although the legislation had a pressing and substantial objective, it was not rationally connected to the problem it sought to address, did not minimally impair the applicants' rights, and created a negative impact that was not outweighed by its positive effects. The majority of the Court of Appeal held the requirement was not justified under s.1 and reaffirmed the lower court's decision to declare the legislation in question or no force or effect.

The decision was not unanimous; Justice Slatter wrote a dissenting judgement in which he found the photo requirement could in fact be justified under s. 1, on the condition that the Alberta government extend certain alternatives which they had previously proposed to accommodate the applicants. The alternatives would allow individuals with a religious objection to either (A) carry a photographic licence in a sealed wallet, or (B) carry a licence without a photograph but have a digital image recorded for storage in the facial recognition database. The dissenting judgement pointed out that other democratic jurisdictions have

upheld similar photo requirements, and also that the applicants would be able to uphold their religious beliefs by hiring drivers for the colonies.

The Alberta government has indicated it may appeal the decision to the Supreme Court of Canada; however, in the interim the Registrar cannot compel individuals without a genuine religious objection to include photographs on their licences.

Sources

- Daryl Slade and Jason Fekete, "Province may appeal Hutterite licence photo ruling" Calgary Herald (18 May 2007).
- Hutterian Brethren of Wilson Colony v. Alberta, 2006 ABQB 338 (CanLII), 57 Alta. L.R. (4th) 300. (Queen's Bench).
- Hutterian Brethren of Wilson Colony v. Alberta, 2007 ABCA 160 (CanLII). (Court of Appeal)
- Operator Licensing and Vehicle Control Regulation, Alta. Reg. 320/2002.

Further Reading

- "Hutterites exempt from driver's licence photos: Appeal court" CBC News (17 May 2007).
- "Hutterites win right to drop photo ID" The Toronto Star (18 May 2007).
- "Photos and freedoms" The Globe and Mail (22 May 2007) A14.

---

1. Hutterian Brethren of Wilson Colony v. Alberta, 2007 ABCA 160 (CanLII) at para. 60.
2. Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s.1.