Nathan Gorham: The court did not 'side with the criminals' on mandatory minimums for gun crimes

NP Nathan Gorham, National Post | April 22, 2015 3:22 PM ET
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On April 14, the Supreme Court of Canada struck down the mandatory minimum sentences for possession of loaded prohibited and restricted firearms (handguns, assault weapons and some rifles). Since May 2008 the minimum sentences for this offence under Section 95 Criminal Code had been three years in prison for a first offence and five years for a second or subsequent offence. Now there is no mandatory minimum sentence. For some, this may beg the questions: Are Canadian courts soft on crime? Are we now less safe as Canadians? Did the Supreme Court "side with the criminals"? The answers to all three questions is no.

First, Canadian courts are not soft on firearm crime. When these mandatory minimum sentences were first presented to Canadians as part of the Tackling Violent Crime Act, they were billed as a necessary effort to clamp down on violent criminals roaming the streets with loaded firearms. Who could argue with that logic? Carrying a loaded firearm in a busy public place — ready to shoot it if the need arises — is an exceedingly dangerous and outrageous act of criminality. People who commit that kind of act deserve significant jail sentences.

The problem with the government's position was that, well before the Tackling Violent Crime Act,

Peter MacKay slams Supreme Court for quashing mandatory minimum gun sentences

Justice Minister Peter MacKay has publicly denounced the Supreme Court's decision to strike down mandatory minimum gun sentences, arguing that the country's highest court was relying

appeal courts across Canada had already established a range of sentence between two to four years imprisonment for a first offence and five to seven years for a second or subsequent offence. In other words, Canadian courts were already sending a strong message concerning the illegal possession of loaded firearms in public places.

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on a "far-fetched hypothetical scenario" to mandate how Canada deals with armed criminals.

In a 6-3 decision last week, the Supreme Court quashed three-year minimum sentences for gun criminals on the grounds that the law could unwittingly target law-abiding duck hunters who were caught putting away their shotguns with cartridges still in the magazine.

No such duck hunter has ever been slapped with a mandatory minimum sentence, however — and the scenario was dismissed as "speculative" by the three dissenting justices.

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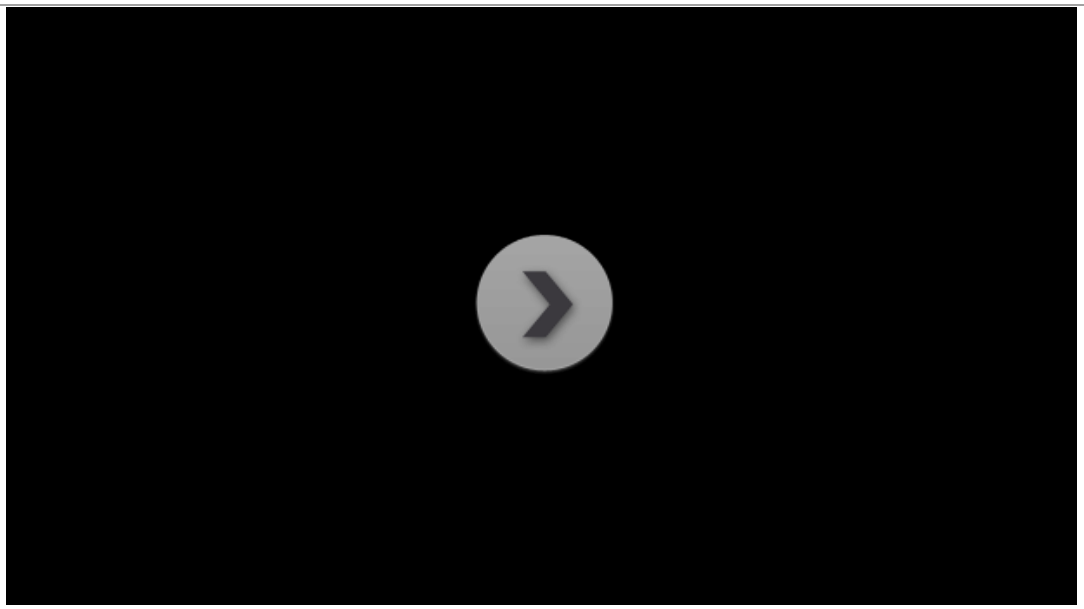
Second, Canadians are presently just as safe as they were before the Supreme Court struck down the mandatory minimum sentences. The decision confirms that courts should continue to impose severe sentences for those who would endanger the public by carrying illegal loaded firearms. At its core the judgment simply says that people should not go to jail for long periods of time when they have not endangered the public. Further, according to Statistics Canada, crime across Canada generally, including violent firearm offences, has declined significantly over the last 30 years.



Third, the Supreme Court did not "side with the criminals" — a popular turn of phrase with the current government — when it declared the mandatory minimum sentences unconstitutional. It simply held that the punishment should fit the crime. Those who commit dangerous or violent offences with a firearm should get severe sentences. Those who possess guns in relatively harmless ways should not go to jail.

The problem with the mandatory minimum sentences under Sec. 95 was that they applied to both violent criminals who carry a loaded gun in public, as well as to people who possess guns in circumstances that pose very little or no risk of harm to others. For example, a person who safely stores a licensed and registered handgun at their cottage (a secondary residence) was subject to the three-year mandatory minimum jail term. A hunter who went hunting with a semi-automatic rifle that had an 18-inch barrel would also get three years in jail for the offence. His friend who took the same firearm — but the model with an 18.5-inch barrel — would not even be guilty of an offence under Sec. 95, much less go to jail for three years. The Supreme Court did not side with the criminals; rather, it simply held that jail sentences in Canada must not be grossly disproportionate to the severity of the offence.

On a simple cost-benefit analysis the mandatory minimum sentences for possessing a loaded

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restricted or prohibited firearm were not worth it. They added little benefit to the protection and safety of the public because courts were already imposing severe sentences where appropriate.

On the other hand, they came at a heavy price. The Canadian taxpayers funded the legal bills while this matter worked its way to the Supreme Court as well as the cost of incarcerating people serving sentences longer than they deserved. The financial costs, however, pale in comparison to the toll suffered by our democracy when people receive disproportionate jail sentences because the government chose to advance a political agenda rather than heed the objective evidence weighing against its position.

We are a now at a crossroads regarding mandatory minimum sentences for possession of loaded restricted and prohibited firearms. Traditionally, the post-Charter Canadian democracy has been marked by a dialogue between the Supreme Court and Parliament. In many instances where the Supreme Court has declared legislation unconstitutional, Parliament has responded with new legislation. Reason, principle and the available evidence all auger against a legislative response that includes another attempt at mandatory minimum sentences under Sec. 95 of the Criminal Code.

National Post

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Topics: **Full Comment**, **Canada**, **Criminal Law**, **Law**, **Mandatory Sentencing**, **Supreme Court Of Canada**

Steve Richards → Gardiner Westbound · a month ago

Agreed. Anyone who carries an illegal handgun should be doing at least five years in jail. Anyone who even pulls it out in public regardless of whether they pull the trigger should get 10 years. Shooting it in public should be an automatic twenty. If that bullet so much as grazes someone it should be thirty in addition to whatever other charges are tacked on.

3 ^ | v · Share ›

snufflupagus · a month ago

Thank you Mr. Gorham for pointing out that mandatory minimums for serious gun crimes have existed since 1995.
I don't know whether you accidentally omitted a significant detail, or if you did so on purpose.

The existing minimums were included in the great Liberal fuster-cluck known as bill C-68, the Firearms Act. Interesting that there was no hue and cry about the constitutionality of them then, at least not from "progressives".
And complaints about other constitutional violations in the Act (right to privacy, presumption of innocence, protection against unreasonable search and seizure) went unaddressed... because they were from gun owners, who were cast by the Liberals and their media allies as Public Enemy #1 after Polytechnique.

The opposition parties seem shy to mention it as well... Maybe it doesn't fit their narrative, or yours.

5 ^ | v · Share ›

harringm · a month ago

The larger point is that the Court should not be deciding cases on the basis of wild hypotheticals. It should decide the case before it, which is that two career criminals were subject to mandatory miniumums. As for how the law might affect innocent violators of licensing laws? Wait until that case comes along and deal with it then. That is judicial modesty. This case was judicial over-reach, and indeed judicial hubris.

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PeerReview · a month ago

"The Supreme Court did not side with the criminals; rather, it simply held that jail sentences in Canada must not be grossly disproportionate to the severity of the offence."

But they should have waited for the proper case to come before them. The two cases that were before them both involved dangerous career criminals who were looking to shoot and kill people at the point they were arrested.

3 ^ | v · Share ›

electronik → PeerReview · a month ago

Yes, and their sentences were unchanged because they were appropriate. What's the problem?

1 ^ | v · Share ›

bchunter · a month ago

I know of one instance in Northern Ontario in which a man broke into a rural store (the owners lived upstairs) and was carrying a gun, duct tape and biding wire, but served NO time because the crown didn't prove the gun was carried with intent to hurt anyone. And how was he to know the owners lived upstairs...so obviously it wasn't a "dwellling place." Yeah, I bet a non-Native would have receive the same gentle treatment by the judge.

This is why we legitimate gun owners are just fine with mandatory minimums for cases where the public is in actual danger.

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cjcraig → bchunter · a month ago

You don't speak for all legitimate gun owners.

4 ^ | v · Share ›