**The Canadian Press. “Feds to defend mandatory minimum sentences as constitutional. 5-judge panel for Ontario's Court of Appeal considering gun-crime laws in 6 cases.” CBC News. Posted: Feb 19, 2013 9:42 AM ET . Last Updated: Feb 19, 2013 2:33 PM ET**

[*Read 279 comments279*](http://www.cbc.ca/news/politics/story/2013/02/19/pol-cp-mandatory-minimums-ontario-court.html#socialcomments)A small group of people might be harmed by mandatory minimum sentences for gun crimes, but Parliament is entitled to deference in how it tries to enhance public safety, the federal government argues.

The point is one of many Ottawa is making in support of the thorny issue of mandatory minimums, as Ontario's highest court gets set to hear a number of landmark cases.

A special five-judge panel of the Court of Appeal for Ontario will consider the constitutionality of minimum sentences for several gun-crime laws in six cases that are set to be heard together from Tuesday to Friday.

**'Parliament, however, is entitled to take a sterner view of the seriousness of this offence, based on its appreciation of evolving social conditions and values...'***—Federal government submission*

The mandatory minimums were struck down in one case and upheld in the rest — though narrowly in one — and hearing all of them at the same time gives the court the opportunity to send a uniform message in a currently fragmented landscape.

Ontario's attorney general has carriage of the prosecution of these cases, but the federal government is adding its voice to the fight as an intervener.

The Canadian Civil Liberties Association, the African Canadian Legal Clinic and the John Howard Society are also intervening.

**Mandatory minimum struck down in Smickle case**

The Department of Justice arguments, as laid out in court documents, focus on the three-year mandatory minimum sentence for unlicensed possession of a loaded restricted or prohibited gun — weapons such as handguns, machine-guns and sawed-off shotguns.

The penalty, enacted in 2008 as part of a Conservative omnibus crime bill, raised the minimum sentence from one year.

An Ontario Superior Court judge [struck down the law last year](http://www.cbc.ca/news/canada/toronto/story/2012/02/13/ontario-judge-mandatory-minimum-firearm.html) as unconstitutional, ruling that it constituted cruel and unusual punishment for Leroy Smickle, who was caught alone in his boxers in his cousin's apartment posing with a loaded handgun while taking pictures of himself to post on Facebook.

Critics in the legal community say mandatory minimums don't reduce crime and do more harm than good.

**Six appeals before the court**

**R v. Leroy Smickle**

Smickle was posing for a photo with a loaded handgun in his cousin's house when police burst in with a search warrant for the cousin, who they believed had illegal firearms. He was convicted of possession of a prohibited firearm, but the judge ruled that it would be cruel and unusual to send the first-time offender to prison for a "very foolish" act for three years.

**R v. Hussein Nur**

Nur pleaded guilty to possession of a loaded prohibited firearm. The judge ruled that if the mandatory minimum did not exist, he would sentence Nur to 2 1/2 years, so the three-year mandatory minimum was not grossly disproportionate. The judge did raise several scenarios in which the mandatory minimum would be inappropriate. Nur challenged the law on the basis that the two-year gap between the maximum summary conviction sentence and the minimum on an indictable offence was arbitrary and contrary to the Charter. The judge agreed, but dismissed the challenge on a technicality.

**R v. Frank Meszaros**

Meszaros used a loaded shotgun to threaten two people who were fishing in his private trout pond. He was convicted of assault and using a firearm in the commission of an indictable offence. Meszaros challenged the one-year mandatory minimum sentence as violating the Charter, but the judge dismissed it.

**R v. Matthew Rocheleau**

Rocheleau was convicted of robbery with a firearm, along with a slew of other offences. He argued it's unconstitutional that mandatory minimum sentences for robbery with a firearm and using a firearm while committing an indictable offence must be served consecutively. The judge upheld the mandatory minimum.

**R v. Ian Chambers**

Chambers was convicted of possession of a restricted firearm. Since he had previous gun possession convictions, the mandatory minimum sentence was five years. Chambers was sentenced to six years, but his lawyer argued that the mandatory minimum serves as an "inflationary floor" and Chambers deserves at most four-year sentence.

**R v. Sidney Charles**

Charles pleaded guilty to several firearm offences after a loaded gun was found in his bedroom at a rooming house. He was subject to the five-year mandatory minimum sentence for a second offence, but he challenged the law about what constitutes an earlier offence. The judge found there was no Charter breach.

The federal government concedes in court documents that one of the potentially harmful effects of the law is that a "small number of offenders" will have to spend longer in prison than they would without the three-year minimum.

"Parliament, however, is entitled to take a sterner view of the seriousness of this offence, based on its appreciation of evolving social conditions and values," it wrote in court documents.

"It is also entitled to limit judicial discretion in pursuit of that goal. Parliament has sought to enhance public safety by deterring criminal misuse of firearms, and it is entitled to deference in pursuit of that objective."

**Licensing and registration 'an important safety function'**

In its court documents Ottawa details the rules and regulations surrounding gun ownership, particularly the very strictly regulated handguns.

"Licensing and registration of restricted and prohibited firearms serve an important public safety function because police have ready access to records kept in the Canadian Firearms Registry," the government lawyers wrote.

"This allows police to know whether or what kind of registered firearm might be present at a given place."

That argument is one that was used by police chiefs in support of keeping the long-gun registry, which the Tories scrapped last year. The registry still captures other firearms.

The mandatory minimums were enacted in response to the scourge of illegal handguns, the federal government says in its court documents. The three-year penalty is not cruel and unusual, Ottawa argues, because anyone convicted had to knowingly possess a loaded, prohibited or restricted gun either without authorization or without a license.

"This offence therefore criminalizes conduct that creates a real and imminent risk of serious bodily harm or death to individuals," government lawyers argue.

The Appeal Court arguments will likely centre around the cases of Smickle and Hussein Nur, who were convicted of the same offence. Nur pleaded guilty after he was found outside a community centre with a gun. The judge upheld the law in Nur's case on a technicality, but warned it was vulnerable to being struck down.

Both men deserve the three-year sentence, the governments argue — in fact, Ontario argues that Smickle deserves up to four years.

"The loaded handguns they possessed could have easily discharged when they dropped or mishandled the handguns, killing a neighbour or police officer," Ottawa says in its court documents.

In Smickle's case, Judge Anne Molloy's conclusions about what Smickle was doing with the gun — she called it no more than "adolescent preening" — weren't based on the facts, Ontario argues.

The evidence in the case didn't support her conclusion that Smickle found the gun in his cousin's apartment coincidentally right before police burst in looking for his cousin, provincial lawyers say.

"This cannot reasonably be the most likely explanation for the respondent's possession of the firearm," they say in court documents. "Rather, it is a far-fetched scenario that pushes the boundaries of plausibility."

**Court considering different scenarios**

When weighing if a law is unconstitutional, a judge may consider not just the case at hand, but also what's termed "reasonable hypotheticals."

In Nur's case the judge considered several. A police officer's 18-year-old son who shows off a loaded handgun at a party he was hosting. A family member who brings a loaded handgun to a shooting range for a relative who is too busy to get their own gun from home. A man who forgets to register a gun after buying it in the U.S.

The last example is real and involved former Ontario cabinet minister John Snobelen, who was charged after his wife told police about the gun during marital difficulties. He received an absolute discharge.

That was because in his case the Crown proceeded summarily. Summary convictions are treated less seriously and with less jail time than indictable offences.

The gun possession crime at issue is a hybrid offence, meaning the Crown can choose to proceed summarily or by indictment. The penalty for it on summary conviction can range from an absolute discharge to one year in jail.

While the minimum sentence on indictment was raised from one year to three, the penalties for the offence on a summary conviction didn't change.

The judge in Nur's case ruled that none of those hypotheticals made the law unconstitutional because the Crown likely would choose to proceed summarily in those cases, so they would not be subject to a minimum three-year sentence.

However, he warned, the law was one unwise choice away from being invalidated.

The federal government disagrees. The people in those hypotheticals — Snobelen included — should all face the minimum three-year sentences, Ottawa argues.

"There is no question that a three-year mandatory minimum sentence is a severe sentence for the foregoing conduct," federal lawyers say.

"However, given the danger to which the hypothetical offenders subject the public through a deliberate act, the sentence is not grossly disproportionate."