Ontario Court Confirms No Right to Bear Arms in Canada; Supreme Court Will Not Hear Appeal

The second amendment of the United States Constitution establishes the right to bear arms. Born out of violent revolution, the United States in 1791 was a place where it seemed essential to the survival of the nation that gun ownership be enshrined in its bill of rights. By contrast, Canada's constitutional bill of rights, the *Canadian Charter of Rights and Freedoms*, came into being under much different circumstances. In 1982, Canada's evolution from colony to modern sovereign nation was at its culmination. There was no external threat to Canada's existence. It never occurred to the framers of the *Charter* to include a right to bear arms. There is at least one Canadian, however, who believes that the *Charter*'s silence on gun ownership is irrelevant. Bruce Montague, a firearms manufacturer and dealer in Ontario, was charged with several weapons violations. Executing a search of Montague's home, police found more than 200 firearms and 20,000 rounds of ammunition.[1] Montague had declined to renew the registrations on his cache of weapons. He believed that he had a constitutional right to bear arms without government interference or regulation. In defence to 53 criminal charges, Montague asked the court to strike down the sections of the *Firearms Act* that deal with requirements to register firearms.[2] He argued that the right to bear arms has always been a part of Canada's Constitution. His arguments failed to convince the trial court.[3] The Ontario Court of Appeal upheld the lower court's ruling that there is no constitutional right to bear arms in Canada.[4] Montague tried to appeal the case one more time, to the Supreme Court of Canada. On September 16, 2010, the Court announced that it would not hear the appeal. As a result, the ruling that there is no Canadian right to bear arms is settled constitutional law for the foreseeable future. The Supreme Court said in 1993 that "Canadians, unlike Americans do not have a constitutional right to bear arms."[5] Montague will not have a chance to change the Court's mind.

The English Bill of Rights, 1689

Monague argued that he had "a constitutional right to possess firearms for self defence" derived from the Constitution of Britain.[6] He pointed to the preamble of the *Constitution Act, 1867*, Canada's founding constitutional document, which prescribes "a Constitution similar in Principle to that of the United Kingdom." This phrase alludes to a variety of constitutional principles, such as parliamentary democracy. In Montague's view it also imported the English Bill of Rights of 1689, including article 7 which says: "The subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law." Montague further argued that in 1982, this historical right was shielded from any ordinary legislation by section 26 of the *Charter*, which reads: "The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence

of any other rights or freedoms that exist in Canada." The Ontario Court of Appeal rejected this line of reasoning on two grounds. First of all, the wording of article 7 clearly does not permit an unconstrained liberty to bear arms. Rather, it provides that the freedom to bear arms must conform to what is "allowed by law." This means that Parliament always had the ability to pass laws that restricted the right to bear arms.[7] Secondly, it really doesn't matter what article 7 or any other part of the 1689 Bill of Rights says because it "has neither directly nor indirectly been incorporated into Canada's constitution."[8] The Supreme Court of Canada has already ruled that the preamble to the *Constitution Act, 1867* cannot be read as the incorporation of specific articles of the United Kingdom's constitution into Canada.[9]

Guns and Security of the Person

Montague also argued that the right to self defence is included in the guarantee of "life, liberty and security of the person" found in section 7 of the *Charter*. He said that the sections of the *Criminal Code* that set stringent requirements on storing and transporting firearms and ammunition effectively deprive him of the right to defend himself with a live weapon.[10] The court did not deny that section 7 provides Canadians with a right of self defence, but it could not accept Montague's view that self defence requires the freedom to carry a dangerous weapon. The Court of Appeal said even if it is accepted that section 7 protects a right to possess firearms, like all other rights and freedoms, it is not absolute. Section 1 of the *Charter* allows for reasonable limits of rights prescribed by law. The court also stressed that the *Criminal Code* provisions for firearms do not prohibit ownership and use of firearms. Rather, the *Code* merely regulates the legal possession of firearms.[11]

The Law and Politics of Guns

Gun ownership has generated plenty of debate in Canada since the implementation of the long gun registry. Opposing sides argue its merits and shortcomings, including its much publicized cost overrun. At trial, Montague testified that the gun registry in ineffective and inefficient. But as the court noted, this is a political question, not a legal question.[12] The court cannot be concerned with the wisdom of the gun registry. The court is only concerned with the question of whether there is exists a constitutional right to bear arms that conflicts with the legislation passed by Parliament. The court could find no such right.

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[1]*R. v. Montague*, 2010 ONCA 141 at paras. 2-6. [2]*Firearms Act*, S.C. 1995, c. 39, ss. 86, 88, 91, 92, 95, 100, 102, 108. [3]*R. v. Montague*, 2001 CanLII 51171 (ON S.C.). [4] *Supra* note 1 at para. 21. [5]*R. v. Hasselwander*, 1993 CanLII 90 (S.C.C.), [1993] 2 S.C.R. 398 at 414. [6] *Ibid*. at para. 6. [7] *Supra* note 1 at para. 14. [8] *Ibid*. at para. 15. [9] *Ibid*. [10] *Supra* note 3 at paras. 23-24. [11] *Supra* note 1 at para. 20. [12] *Ibid*. at para. 10.