

# Gun law

## violates

## privacy,

## court says

Home searches

must not be

'fishing expeditions'

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The Ontario Court of Appeal

has struck down a law intended to prevent gun-related injuries and deaths because it allows police to go on "wholesale fishing expeditions" in people's homes.

In what is being described as an important victory for homeowners' rights, the court declared section 117.04(1) of the Criminal Code unconstitutional by a 3-0 decision. The law gives police the right to conduct sweeping bodily or residential searches for guns or ammunition, even if they have no reason to believe or suspect the person has weapons.

The law has an important purpose in preventing deaths or injuries, said Mr. Justice Michel Moldaver, noting that Parliament has been told that a woman is shot to death in Canada every six days.

But in trying to prevent gun-related violence, the law suffers from "incurable overbreadth" and violates protections against unreasonable search and seizure guaranteed by the Charter of Rights and Freedoms, he said. "It allows for wholesale fishing expeditions in which the police are permitted to invade an individual's privacy in circumstances where they may have no reason to even suspect, let alone believe, that the person of concern has any weapons or other dangerous items in his or her possession," said Moldaver, writing for justices Eleanor Cronk and Eileen Gillies. The court gave Parliament six months to rewrite the law. In the meantime, the court said police who want to obtain search warrants to look for guns should follow proposed draft legislation, submitted to

Yesterdays decision quashes the search warrant used by police to enter [redacted] residence. The appeal court also issued an order requiring the [redacted] Police Service to return the seized items.

However, once the items are turned over to [redacted], the police officer who returned them will be entitled to immediately demand that he produce the required authorization, Moldaver said. Should he fail to comply, police may seize the items again, he said.

the court by the federal and provincial attorneys-general. The legislation requires police to provide some evidence to show they have reasonable grounds to believe that a person has a weapon or ammunition and that it isn't in the interest of public safety for them to possess it.

"What we tried to achieve in the Court of Appeal was to bring this legislation back in line with Canadians' high expectations of privacy in their home," Toronto defence lawyer Adam Boni, who argued the case with lawyer William Trudell, said yesterday.

"This legislation made it very, very easy for the police to walk into anybody's home and rifle through it, pardon the pun for firearms," Boni said, adding that it could also be used as a justification for strip searches. Boni and Trudell represented [redacted], who had 12 firearms, two crossbows, 11 containers of assorted ammunition and a fire-arms acquisition certificate seized when police entered his home on Gainsborough Rd. in London, Ont., on Feb. 2, 2000.

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