

*Star*  
Nov 18/98

# Delays, abuse blamed for failure of justice

Judge takes aim at defence lawyers, police, guards, in scathing report on a breakdown of legal system

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Misconduct by defence lawyers, police and court officials led to a breakdown in the justice system in the Just Desserts case, an Ontario Court judge says.

Mr. Justice Brian Trafford yesterday issued a scathing 60-page report detailing why the case has been delayed in the courts for more than four years since Georgina "Vi-Vi" Leimonis was shot to death during a bungled robbery on April 5, 1994, at the now-closed Just Desserts restaurant on Davenport Rd.

Lawrence Augustus Brown, Gary George Francis and O'Neil Grant have been in custody since their arrests in 1994 in connection with the case. Brown is charged with one count of first-degree murder and 12 counts of robbery. Francis and Grant are each charged with manslaughter and 12 counts of robbery.

Trafford laid blame for most of the delay on the shoulders of the defence team, led by lawyers David Midanik and Karen McArthur.

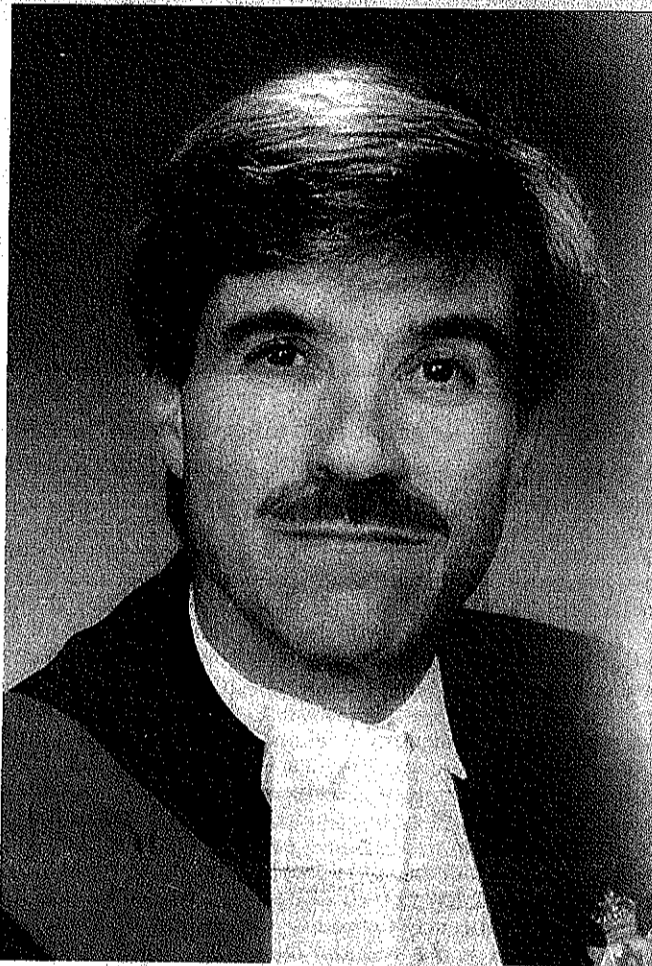
But the judge also said in his report that there was "racial insensitivity" to the three black prisoners by courthouse guards who unlawfully kept them in various forms of leg irons, belly chains and handcuffs during court appearances.

Lawyers for the three accused men had asked the court to free them because of alleged abuses by prosecutors, court officials, police and by the judge at the preliminary hearing. The trial is underway now, but a jury likely won't be selected until next spring.

Trafford tossed out their motion, saying the "societal interest in continuing this trial to a conclusion on the merits significantly outweighs any affront to the fair play and decency caused by the mistreatment of the accused."

Trafford's report said "in my opinion a number of defence counsel misconducted themselves significantly during the preliminary hearing. The effect of this misconduct was to create a confrontation with the court and to undermine the quality of the administration of justice in this case."

The judge also levelled some



## What the judge said

*'In my opinion a number of defence counsel misconducted themselves significantly. The effect of this misconduct was to create a confrontation with the court and to undermine the quality of the administration of justice in this case.'*

The delay in bringing this case to trial is largely explained by the relentless efforts of the defence counsel to scrutinize and attack every component of the administration of justice, including the judiciary, the police, the court officers, the attorney-general and the crown attorneys assigned to prosecute the case.

Approximately 70 to 75 per cent of the delay is attributable to the defence.'

—MR. JUSTICE BRIAN TRAFFORD



**MURDER CASE:** Georgina Leimonis (far left) was killed in 1994. A judge's report is critical of defence lawyers, including David Midanik and Karen McArthur.

damning criticism at the Toronto police, courthouse guards, and other law authorities connected to the case. Included in his comments:

■ There were unlawful strip searches of Francis and Brown, and an attempted cover-up of the search of Brown by court officers at old city hall, which the judge found involved a metal detector wand making contact with his anus.

■ The Toronto police failed to fully investigate the allegations of abuse of the three accused men by court officers.

■ The attorney-general's office failed to fully review the submissions of defence counsel before issuing a "preferred indictment," sending the case directly to trial without a full preliminary hearing.

■ "Benign" misconduct on the part

of Judge Michael Martin at the unfinished preliminary hearing, who placed an improper telephone call to a crown attorney in the absence of defence lawyers.

Trafford's controversial decision to release the ruling came after a day of legal hearings Monday at a University Ave. courthouse, which can't be reported because of a publication ban. But after hearing the arguments, Trafford slightly revised his report.

Several lawyers, including Clay Ruby, who represented Grant, argued against making the report public. They were opposed by lawyers representing The Star, The Globe and Mail, The Toronto Sun and Chum City Ltd.

## Inside

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