

Judge blasts defence for lengthy delays

MURDER from page A1

The case's history includes an aborted preliminary hearing, the dropping of the charges against one of the accused, and a dizzying series of motions, appeals and legal spin-offs that have involved more than 50 members of the bar and racked up legal-aid bills that have been estimated at \$2-million and counting.

Judge Trafford was appointed to the case in 1996 as the trial judge and faced a task that might be considered the judicial equivalent of cleaning up the Chernobyl nuclear reactor site.

His newly released ruling minces no words as it details the causes of this apparent judicial meltdown. He criticizes the police and the Crown for a series of errors and savages courthouse guards for cruel and racist treatment of the accused.

But his harshest criticisms are aimed at the defence lawyers, whom he accuses of professional misconduct and a misguided, combative approach that has added years to the case.

"Approximately 70 to 75 per cent of the delay is attributable to the defence," he writes.

Single out for special criticism are lawyers who have since left the case, particularly David Midanik, an outspoken Toronto lawyer whose client walked free earlier this year after the charges against him were dropped.

"The delay in bringing this case to trial is largely explained by the relentless efforts of defence counsel, particularly Mr. Midanik, to scrutinize and attack every component of the administration of justice."

Judge Trafford's strongly worded ruling joins the already titanic transcript that documents the inching progress of the criminal case.

The 25-year-old hairdresser had gone out for coffee with a friend at the trendy Just Desserts restaurant in Toronto's upscale Annex neighbourhood when it was held up by four men. She died after being hit at point-blank range by a shotgun blast fired by one of the robbers.

The four suspects, whose images were captured on a murky surveillance videotape, were black. Ms. Leimonis was white. The crime sparked a national outpouring of grief and anger — along with an often-ignited debate over the touchy subject of race and crime.

The delays in this case have frustrated virtually everyone involved, including the accused men. Lawrence Brown, 29, accused of killing Ms. Leimonis, last week added his voice to the growing cry for an end to the case.

"I'm saying, let's get it on, let's go," he said in an interview at Toronto's maximum-security East Detention Centre. "I think people should hear the story. No one's heard about what really happened in that restaurant."

Mr. Brown is one of three men still charged in the case. Last January, charges against Mark Jones, now 27, were dropped after the statement of a key witness was ruled unreliable.

The cases of the remaining accused — Mr. Brown, along with Gary Francis and O'Neill Grant, both 28 — are still before the courts. The three are accused women by their years in the prisoner's box.

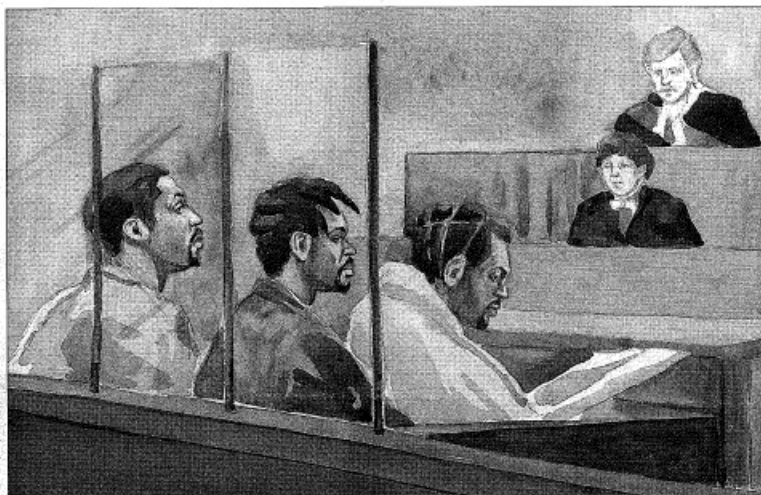
Officially, the trial before Judge Trafford began in October, 1996, but the case's legal baggage soon dogged it down — Crown and defence lawyers presented Judge Trafford with a long list of motions that had to be resolved before a jury could be selected.

One of the motions requested that the charges be dropped. Among the issues raised were the "public outrage resulting from the tragic death of Ms. Leimonis," the "insensitivity to the racial origins of the accused," and repeated violations of the accused men's constitutional rights that included illegal strip searches and the cancellation of their preliminary hearing.

One of the key arguments made by the defence was the length of the legal proceedings — they said the accused men's constitutional rights had been violated by the "unreasonable delay" in bringing the case to trial.

Instead, Judge Trafford's ruling blames most of the delays on the defence lawyers themselves: "While defence counsel have, on occasion, said the accused want a speedy trial, in reality, the last thing the accused want in this case."

Also criticized in the ruling were court guards who kept the accused men shackled hand and foot for months on end. In their motion to

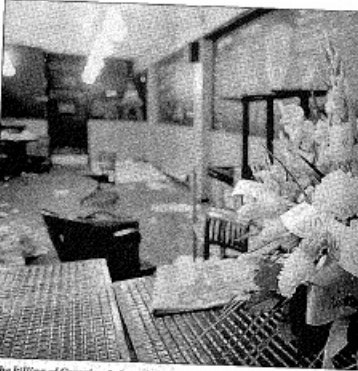


Mr. Justice Brian Trafford ruled yesterday that charges against Lawrence Brown, left, Gary Francis, centre, and O'Neill Grant in the killing of Georgina Leimonis in 1994 would not be dropped.

"The accused... made a number of inappropriate comments... These comments were sometimes made in profane terms and were of a contemptuous nature. Similar profane remarks were made to the Crown attorneys prosecuting the case by one or more of the accused. This misconduct adversely affected the orderliness of the preliminary hearing and presented additional difficulty for the police and the court."

"The use of restraints on the accused... was the result, in part, of a cultural insensitivity towards black people."

"While defence counsel have, on occasion, said the accused want a speedy trial, in reality, the last thing the accused want in this case."

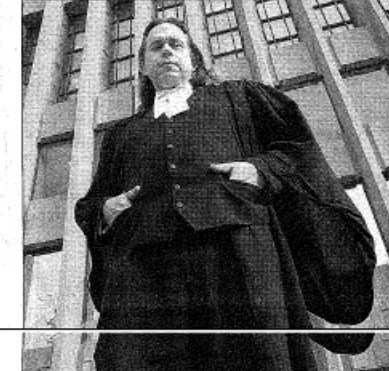


The killing of Georgina Leimonis in a Just Desserts restaurant captured the attention of the country in a case that has become one of the most complicated criminal matters to hit a Canadian court.

bring the charges, defence lawyers had charged that the restraints were unconstitutional. Judge Trafford agreed that the restraints represented a significant issue, and asked: "Did the conduct of the accused warrant such action by the police? Were the accused provoked into misconducting themselves?"

In answer to his own question, Judge Trafford ruled that the restraints had been illegal, and in one case, unconstitutional. "The use of leg irons and belly chains on Mr. Grant as of May 23, 1995, and of leg irons and belly chains and another set of handcuffs on him as of May 2, 1995, was unlawful and contrary to... the Charter."

Although the shackling of the accused men had been defended by the Crown, who pointed to a series of confrontations with guards, Judge Trafford's ruling questioned whether the confrontations would have taken place if the accused men had been treated better. "At trial, the accused have, with some exceptions, conducted them-



Defence lawyer David Midanik, whom Mr. Justice Brian Trafford said played a key role in the lengthy delays in the case, says he conducted himself properly.

the defence to be an important factor in this case without expressly raising the issue in the cross-examination of the court officers. This approach has led to an exceptionally confrontational trial on every point raised for the consideration of the court."

Judge Trafford said some defence lawyers created a courtroom atmosphere that had damaged the case.

"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 and to undermine the quality of the administration of justice in this case."

"The questioning of some witnesses by Mr. Midanik, Karim McArthur and others was done in flagrant disregard of the privileges of the witness... It was a persistent and calculated course of action that was contrary to their obligations as officers of the court. It was a marked and substantial departure from the standards of the bar in Ontario."

After the ruling, Mr. Midanik said he was unimpressed for the way he had handled the case and noted that his efforts had resulted in the charges against his client being dropped.

"As a lawyer, it is part of my job to fearlessly represent my client's interests. Despite the judge's criticism, I did that. Judge Trafford's ruling also criticized aspects of my handling of several aspects of the case, including delays in providing disclosure of their investigative materials to the court. In my opinion, there were a number of errors made by the police over the history of the case that are of constitutional or other legal significance."

Judge Trafford pointed a picture of a case caught up in its own complex internal workings, and noted that ruling on the application to stay the charges took a year of court time and forced him to examine thousands of pages of transcripts and other legal documents involving matters reaching back to the very beginning of the case.

A BRIEF HISTORY

April 5, 1994: Georgina (Viv) Leimonis, 23, is shot to death during an evening robbery at Just Desserts, a trendy restaurant in Toronto's Annex neighbourhood. The four robbers, whose images were captured on a hidden video camera, are black. Ms. Leimonis is white. The case ignites a storm of debate over urban violence and the touchy subject of race and crime.

April 11: Lawrence Brown, a 25-year-old who came to Canada from Jamaica as a child, is identified as a suspect. Mr. Brown was raised in a low-income, government-subsidized neighbourhood officially known as Lawrence Heights but often referred to as the Jungle. On the same day, Ms. Leimonis is buried at a heavily publicized funeral, wearing a white wedding dress. Some members of the black community charge that this was done to emphasize her "whiteness," increasing the racial tension surrounding the case.

April 14: Mr. Brown surrenders to police and is later charged with first-degree murder and 12 counts of robbery. Three other men — Gary Francis, O'Neill Grant and Mark Jones — are arrested in the days and months that follow and are charged with manslaughter and robbery. All are from the Lawrence Heights neighbourhood. All are black. All are denied bail.

Nov. 15: A preliminary hearing for the four accused begins at Toronto's Old City Hall. Within weeks, it erupts in a war over the admissibility of a single piece of evidence. The hearing with the jury absent lasts until the following June. June 22, 1995: The preliminary hearing is halted after defence counsel David Midanik charges that Judge Michael Martin made legal errors and exhibited bias against the accused during the hearing. Dec. 6: Mr. Midanik begins eight days of argument before Mr. Justice Edward Then of the Ontario Court's General Division on an application to stay the proceedings.

May 21, 1996: Judge Then releases his ruling on the bias charge. He says that Judge

Martin made legal errors and that his actions constituted a "reasonable apprehension of bias," but refuses to stay the charges against the accused. May 29: The Attorney General orders the four accused sent straight to trial in a rarely used procedure known as a preferred indictment.

Oct. 28: The trial opens in Toronto before Mr. Justice Brian Trafford of the General Division, a former Crown attorney with a reputation for brooking no nonsense.

Oct. 14, 1997: After spending more than three years in jail, Mark Jones is released on bail after new developments in the case.

Jan. 5, 1998: Mr. Jones goes free after the charges against him are stayed due to a lack of evidence. The decision follows a ruling that includes the statement of a key Crown witness. The trial is then adjourned so that Judge Trafford can concentrate on an application by the remaining accused to stay the charges. Ms. Leimonis's brother Tom speaks of the frustration of watching the case grind to an apparent halt.

"We'd like to know what happened in April, 1994. We'd like to know who killed my sister."

Nov. 2, 1998: Judge Trafford hands down a 655-page ruling plus a 62-page "executive summary." He says the accused must stand trial but issues a long list of legal errors and judgments by virtually all concerned. The ruling blames defence lawyers 70 to 75 per cent of the delays. The decision is covered by a publication ban and can't be reported.

Nov. 11: Mr. Brown gives his first interview since he was jailed in April of 1994, in Toronto's maximum-security East Detention Centre, he tells The Globe and Mail he's innocent. "I'm nothing like people think I am. I'm just a normal guy... I love women. I love to go to a show. I never shot nobody."

Nov. 17: After days of argument, Judge Trafford repeats his ruling in edited form and lifts the publication ban, allowing the public to hear for the first time why the case has run so long and become so complicated. Peter Cheney