

## Judge in restaurant shooting has shown bias, lawyer says

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Courts Reporter

TORONTO — Lawyers for four men charged in the fatal shooting of a woman in a Toronto restaurant are asking a superior court to quash their preliminary hearing on grounds that the presiding judge has shown bias against the accused.

Lawyer David Midanik, representing two of the accused, advised a judge of the Ontario Court's General Division last week that Judge Michael Martin of the court's Provincial Division refused to hear oral submissions from the defence on a successful bid by the Crown to admit evidence despite hearing three days of arguments from the Crown.

On receiving the defence application, Mr. Justice Michael Moldaver formally suspended the preliminary hearing until at least July 17, when the matter will be raised again in court, and set Aug. 21 as a target date for the issue to be argued.

In a notice to the court, Mr. Midanik alleged a "reasonable apprehension of bias" and contended that the judge's conduct of the hearing has

precluded his clients, Emile Jones and Gary Francis, from being able to make "full answer and defence" to the charges they face in the April, 1994, shooting of Georgina (Vivi) Lemonis in a Just Desserts restaurant on Davenport Road.

The two 23-year-old men and Oneil Grant, 22, face manslaughter charges, while Lawrence Augustus Brown, 25, is charged with first-degree murder.

When the preliminary hearing opened on Nov. 15, it was expected to last three weeks. A ban on publication of evidence during the hearing is in place, but Judge Moldaver rejected a bid for a similar ban on last week's proceedings.

In the court notice, Mr. Midanik complained that Judge Martin refused to hear submissions on unusual security measures at the hearing. In an accompanying affidavit, lawyer Stephen Bernstein said Mr. Jones and Mr. Francis "have been in leg shackles inside the courtroom for approximately four months."

Mr. Midanik asked the higher court to prohibit Judge Martin from continuing as the presiding judge.

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