

Lawyers, police fight back against judge's comments

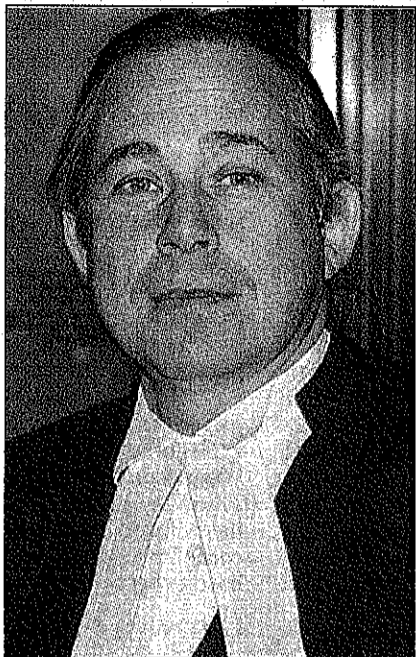
Star Nov 18/98

'It's my job to fearlessly pursue applications on behalf of my clients'

'We deal with 100,000 prisoners a year. We treat everybody equally'



JIM RANKIN/TORONTO STAR



KEN FAUGHT/TORONTO STAR



JIM RANKIN/TORONTO STAR

FIGHTING BACK: Defence lawyers Karen McArthur and David Midanik come to their own defence yesterday after report issued.

FIRM DEFENCE: Superintendent John Dennis, who heads court services for Toronto police, says he has respect for his staff.

Criticism called unfair, unfounded

BY PHINJO GOMBU AND JIM RANKIN
STAFF REPORTERS

Relentless challenges by defence lawyers are the main reason it has taken almost five years for three accused men in the Just Desserts murder case to face a jury and trial, a judge says.

But defence lawyers David Midanik and Karen McArthur, who were singled out by Mr. Justice Brian Trafford of the Ontario Court, general division, call the criticism unfair and unfounded.

Trafford made the comments in a ruling yesterday in which he threw out a motion to stay charges because of alleged abuses by police and court officials and lengthy delays in bringing the case to trial.

In his ruling, Trafford said the brunt of the delay was not caused by the crown attorney, but by defence lawyers such as Midanik and McArthur, who constantly attacked every aspect of the case.

"Approximately 70 to 75 per cent of the delay is attributable to the defence," Trafford wrote.

Midanik fought back.

**Magnet for controversy, B3
Criticism of defence, B5**

"I'd like to think I was relentless in the pursuit of my client's interests," he said yesterday. "As a lawyer, it's my job to fearlessly pursue applications on behalf of my clients."

Midanik successfully fought to have a judge, Michael Martin, removed from a preliminary hearing in the case because of a reasonable apprehension of bias on the judge's part.

In part, the application to have Martin removed was caused by the judge's refusal to deal with the issue of Midanik's clients being shackled in the prisoner's dock in court, the defence lawyer said.

"We were not challenging (Judge Martin,) we were almost begging him to take the shackles off," he said. "Our efforts were geared strictly toward getting the shackles off and making sure our clients were treated properly, so that we could have an orderly preliminary hearing."

☛ Please see Lawyers, B3

Guards' supervisor questions report

BY JOHN DUNCANSON
AND JIM RANKIN
STAFF REPORTERS

Illegal strip searches, racial insensitivity, word of a cover-up among court security guards and a questionable police investigation into it all.

The damning findings, contained in Mr. Justice Brian Trafford's ruling from the Just Desserts case, have prompted an immediate review by Toronto police who oversee court security for the city.

But despite Trafford's words from the bench, no one promised yesterday that anything will be done.

The boss of the court guards says he doesn't agree with some of Trafford's comments.

In fact, he believes his system for disciplining unruly court guards is working just fine.

"I don't necessarily agree with the fact that there was a cover-up or there was illegal searches," Superintendent John Dennis told reporters during a news conference at police headquarters.

Dennis is the head of court services for the force. He also said he took ex-

ception to the judge's remarks that the use of restraints on the accused showed "a cultural insensitivity" towards black people by two of his court supervisors — Detective-Sergeant Rick Awde (now retired) and supervisor Ed Fleming.

"I know the quality of the court officers I have and I have a great deal of respect for them," said Dennis, adding that he has a "multicultural" staff, who take cultural sensitivity courses.

"We deal with over 100,000 prisoners a year. We treat everybody equally and with respect. That is the philosophy of the (court) unit," Dennis said.

Dennis said he doesn't know how long his review will take because it involves ordering court transcripts to find out what his guards said in court.

In his ruling, Trafford found that a custody incident report concerning



FLEMING

☛ Please see Court, B3

Rights of accused were violated, judge finds

Ruling cites six sections of Charter

Toronto police repeatedly violated the rights of Lawrence Brown, Gary Francis and O'Neil Grant charged in the Just Desserts slaying, Mr. Justice Brian Trafford said in a ruling released yesterday that cited breaches

of the following sections of the Canadian Charter of Rights and Freedoms:

SECTION 7

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

SECTION 8

Everyone has the right to be secure against unreasonable search and seizure.

SECTION 9

Everyone has the right not to be ar-

bitrarily detained or imprisoned.

SECTION 10

Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

SECTION 11

Any person charged with an offence has the right

(b) to be tried within a reasonable time;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause.

SECTION 12

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.