

## The Just Desserts case

# Popularity of Mr. Justice Trafford rises, falls

His cases tend to be lightning rods of controversy

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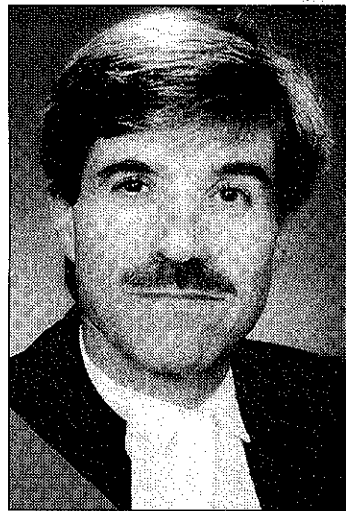
One constant in Mr. Justice Brian Trafford's legal career has been the changing nature of his popularity, his approval rating waxing and waning with each job he's taken on.

At various times, the former crown attorney has been alternately loved or loathed by nearly every segment of the criminal justice system, including defence lawyers, police officers and sometimes fellow prosecutors.

While none could seriously question his intelligence or skill as a legal strategist, Trafford, 52, has had a knack for becoming involved in cases or corners of the justice system that have been a lightning rod for controversy.

Trafford, who graduated from the University of Toronto law school in 1970, spent the early part of his career as a trial lawyer in the Peel crown attorney's office, where his reputation as a hard-nosed prosecutor matched that of the office. He later joined the specialized division of the attorney-general's ministry which handles appeals.

He quickly moved to a new unit set up in 1989 at the minis-

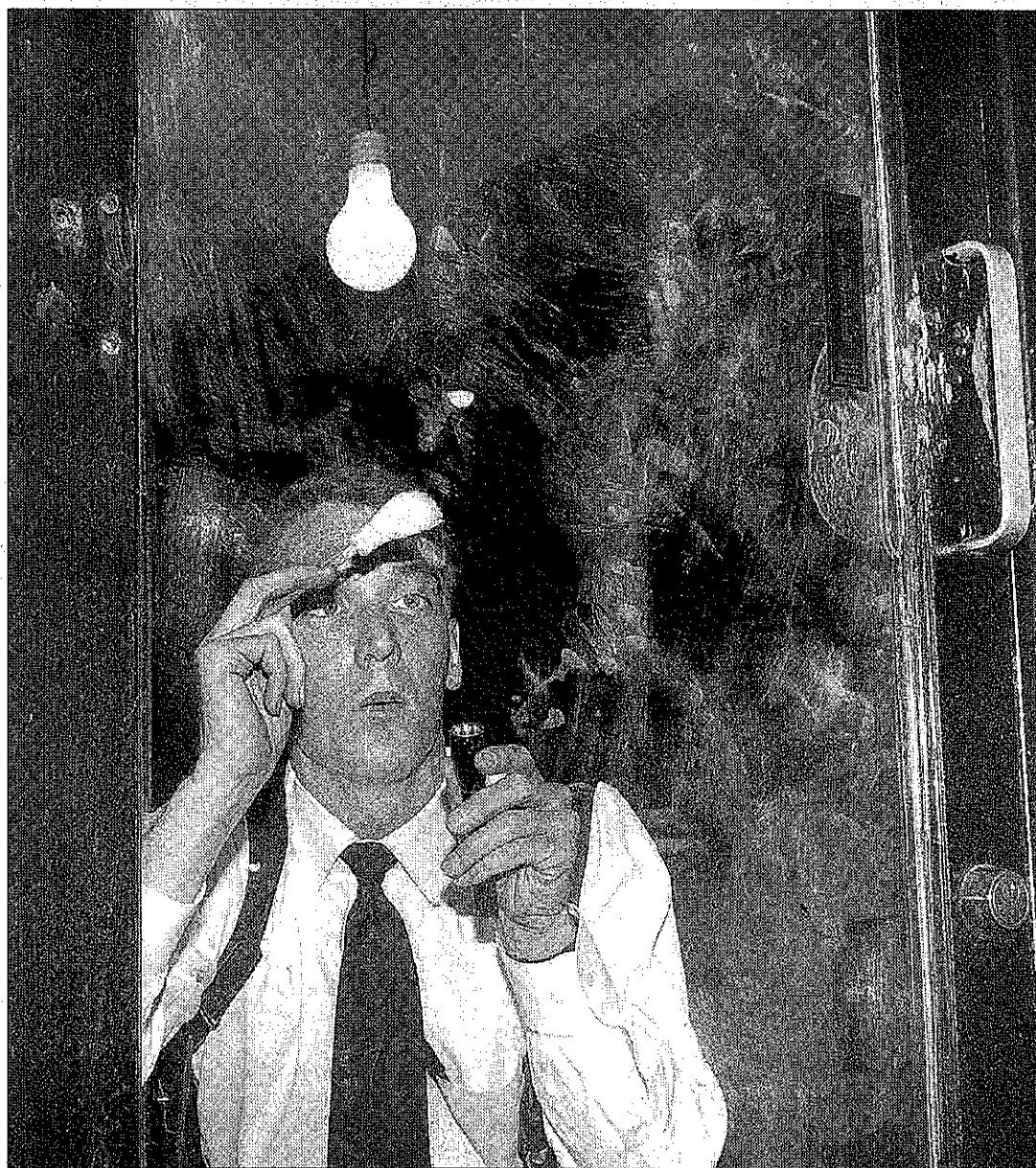


BRIAN TRAFFORD

try's headquarters at 720 Bay St. in Toronto to focus, among other things, on the prosecution of police officers and other officials involved in the administration of justice.

As director of criminal prosecutions for Ontario, Trafford headed up the unit during a period when the unit was routinely pilloried by former Metropolitan Toronto Police Association president Art Lymmer — and confronted by community groups outraged over its limited success in obtaining convictions against officers charged in the shooting deaths of black citizens.

During his time there, Trafford personally prosecuted officers in such high profile cases as that of Constable David De-



PETER EDWARDS/TORONTO STAR FILE PHOTO

**THE AFTERMATH:** A Toronto police officer dusts for fingerprints at Just Desserts cafe on Davenport Rd. in April, 1994 after slaying of Georgina (Vivi) Leimonis.

viney, who was found not guilty of manslaughter in the 1988 shooting death of Lester Donaldson.

He remained with the unit until his appointment to the Ontario Court, general division, in June, 1993.

"I think his time at 720 Bay St. opened his eyes in a very significant way," said one veteran Toronto defence lawyer, speaking on condition of anonymity yesterday.

In the eyes of some defence lawyers, that experience seemed to crystalize in a deci-

sion rendered by Trafford on April 9, 1996 in the case of Ryan Eagle, a Toronto man charged after a sawed-off shotgun, shotgun shells and three grams of cocaine were found in his Kipling Ave. apartment by police acting on an informant's tip.

Trafford threw out the evidence after finding police deliberately violated their own rules governing the use of informants in order to cover up the informant's unreliability, criminal record and the fact he was paid for his information.

"Tragically, this is not a case of incompetence, inadvertent error or momentary lapse of judgment," Trafford wrote. "Rather it is a case of intentional and deliberate disregard for the principles of law."

As an assistant crown attorney in Brampton, he was co-counsel with Leo McGuigan at the 1985 trial of four men charged with attempted murder in connection with the 1983 shooting that paralyzed Barbara Turnbull, then 18, during a robbery at a Becker's store in Mississauga.

# Court guards 'just following procedures'

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the wrongful search of Lawrence Brown, one of the accused, was altered.

Dennis said in the last few years, reporting systems surrounding prisoner restraints have been tightened.

Dennis was asked what he felt about Trafford's comments, which suggested the accused men may seek other legal remedies for what's happened to them.

"It won't be the first lawsuit against court services and it won't be the last," Dennis replied.

While Trafford wrote that the actions of the officers do not affect the trial, he noted the accused could seek remedy through civil action or disciplinary sanctions against the

officers.

The judge also noted that, even though restraints are no longer being used on the accused in court, the officers have behaved properly, with a few exceptions.

## Accused are no longer restrained in court

"One cannot help but wonder whether the same treatment of them at the (previous) preliminary hearing would have better cared for the interests of justice in this case," Trafford wrote.

The court officers and supervisors named in Trafford's ruling can do little but get on with their work, their lawyer Gary Clewley said.

"We are very concerned that they are not going to get a fair shake," said Clewley, who is representing eight of the court officers who are all members of the Toronto Police Association.

"They were just following procedures in very difficult circumstances," Clewley said, describing the job of a court officer as often risky and dangerous.

When reached by The Star, Awde said he didn't know anything about Trafford's ruling and refused to discuss the case.

"I'm not going to comment on anything you've got to ask me," said Awde, who recently retired from the Toronto police.

Karen McArthur represented one of the accused, O'Neil Grant, before withdrawing from the case. She said she kept bringing allegations that

court officers had abused her client to the attention of the court, but was rebuffed.

"I'm faulted because I continued to put this on the (court) record, but those who were supposed to be investigating would just walk away," McArthur said in an interview.

## Accused man 'was trussed up like a chicken'

In fact, the kind of belly chain restraint used on Grant is being used more and more on others, McArthur said.

"He wasn't merely in shackles, the contraption used on him was an impediment to urination, to defecation and eat-

ing, and it continued for 18 months — 18 months of horrific confinement.

"In real terms, it meant he was trussed up like a chicken." McArthur said there is little recourse for any prisoner subjected to the overuse of restraints.

There is no independent investigation of these allegations, she said.

It was an ugly awakening for him — one which conjured up images from *Roots*, the epic television mini-series on the lives of African slaves in America, McArthur said.

"He'd never seen anyone chained up like that except for Kunta Kinte. And he didn't understand why anyone, no matter what colour they are, would be effectively treated worse than a dog."

# Lawyers defend actions in case

Continued from B1

That application added months to the process and effectively ended the preliminary hearing, leading the attorney general to issue a preferred indictment. That meant the case went directly to trial.

A trial is now underway, although a jury likely won't be selected until next spring.

"One wonders why Justice Trafford left those accomplishments of mine out of the ruling when he saw fit to otherwise criticize me personally," said Midanik, who also succeeded in throwing out evidence from an unreliable crown witness.

Midanik said he feels no remorse for using the tools he had to ensure a fair trial, but now he's confused.

He said Trafford has acknowledged that the decision to shackle the three accused was due to racial insensitivity on the part of at least two senior court security officials.

"(Trafford) criticizes me for unduly delaying proceedings by stopping preliminary hearings, in part because of the shackling issue, and then criticizes me for challenging the issue at the preliminary hearing," Midanik said.

"It seems that no matter what the defence does, they're wrong."

Midanik said Trafford criticized him without a hearing.

"He (Trafford) has effectively circumvented the Law Society of Upper Canada, which has a whole procedure in place (to investigate lawyers' conduct)," Midanik said.

"It's more egregious because there's nothing in what he said I did, which would constitute grounds for a charge against me by the law society."

McArthur, the other defence lawyer singled out by Trafford, also had strong words in her defence yesterday.

The Toronto lawyer, who represented O'Neil Grant before withdrawing from the case, said all her client ever wanted was for the case to get to trial.

"His instruction to me was always: 'Get me to trial as fast as possible,'" McArthur said last night.

And she disagreed with Trafford's finding that the defence lawyers on the case are largely to blame for the delays.

"That's his ruling... I act on the instructions of my client."

"I always tried to get this case to trial as fast as possible. I can't make a case go on for 4½ years. I can't do that."

McArthur said the fact there are several accused and several lawyers defending them can complicate matters, and "people got sick, people took vacations, there was down time..."

With files from Nick Pron