



The Brief

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#JusticeforBradyFrancis: “we can — and *must* — do better”

By JOSEPHINE SAVARESE



On May 8, supporters of justice for Brady Francis drove through St. Charles, the site where Francis was hit and killed by a motor vehicle in 2018. Photo used with permission.

COVID-19 has brought certain criminal justice system inequities to the forefront. Advocates across Canada, have demanded, for example, the release of prisoners in provincial and federal jails. Since Indigenous peoples are over-represented among incarcerated people, Senator Kim Pate and others have highlighted their disproportionate susceptibility to this particularly virulent human coronavirus strain while in confinement.

At the other end of the spectrum, Indigenous victims are also impacted by the adverse effects of the corona pandemic. Efforts to address the violence towards Indigenous women and girls – described as a genocide – are ongoing at the community level as recent actions across Canada in May demonstrated. The implementation of a national coordinated strategy has lost impetus in the pandemic response.

Various research reports confirm that Indigenous people are disproportionately represented as victims of crime in Canada. Sadly, Canada’s justice system is often an inadequate mechanism for addressing these tragedies. Advocates argue that crime against Indigenous people is not taken seriously and that investigations often lack diligence. Overall, the pressing need to attend to the human rights of Indigenous peoples to security and safety is likely to be minimized in the current public health crisis.

#JusticeforBradyFrancis

A recent case in New Brunswick involving the tragic death of a 22-year-old Indigenous man, Brady Francis, brings the concerns about the treatment of Indigenous victims to the forefront. Francis was found dead two years ago on February 24, 2018 on a road in Saint-Charles. He was standing by the roadside waiting for his parents to arrive when he was struck and killed by a motor vehicle.

While the victim’s community of Elsipogtog was reported to be on edge in the aftermath of the tragedy, Brady’s family was credited with encouraging cooperation with law enforcement and the justice system. Brady’s family and supporters were heartened when Maurice Johnson was charged in June 2018. Johnson faced a single a charge under section 252 of the Criminal Code which criminalizes the failure to stop at scene of accident. In cases where death results, the crime is a more serious or indictable offence that may be subject to a life penalty.

The family and community’s relief changed to outrage when the accused selected to have the trial proceed in French, a language not spoken or understood by the Francis family. When the trial finally began in January 2020, almost two years after the event, volunteers attempted to provide translation for the family and community in a separate courtroom.

Doubts about the likelihood of justice were reinforced when the New Brunswick Court of Queen’s Bench issued a ruling on April 27, 2020. Madam Justice Denise A. LeBlanc found Maurice Johnson not guilty of the charge. The 70-page decision [R v Johnson, 2020 NBQB 67 (CanLII)] largely summarizes the facts and case law, as well as setting out the evidence, most notably competing interpretations by Crown and defence forensic expert witnesses.

Describing the Crown’s case as “circumstantial,” the presiding Justice maintained that the evidence did not establish that Johnson struck Francis. Therefore, an acquittal was justified in the court’s assessment.

It was determined that the Crown failed to establish criminal behavior or the *actus reus* of the offence beyond the required standard of reasonable doubt, a puzzling finding. Security cameras place Johnson’s truck near the scene. Debris collected after the collision included insignia from a GMC truck, the make of Johnson’s vehicle. Upon reading Facebook reports, the Johnsons self-identified as potential suspects in the fatal hit and run.

Furthermore, Johnson admitted to hitting what he thought was a deer in his warned statement to the RCMP. The April 2020 court decision summarizes Johnson’s statement that he was “chatting” with his wife when “suddenly, something about four feet tall appeared in the middle of the lane.” By his own admission, he yelled out “deer!” Johnson stated he had attempted to “step on the brakes.” He stopped his truck about fifteen feet away “to look around,” yet did not see anything.

The accused’s wife, Jacinthe Johnson, testified the couple was heading home when Maurice Johnson made a sudden movement to the left, forcing her to hold onto their small dog. According to her testimony, Maurice Johnson screamed that he had hit a deer. Furthermore, in the court’s summary, the Justice commented that the accused had consistently “maintained and insisted that he hit or believed he hit a deer.”

Given these statements, the finding against the commission of the *actus reus* is curious: it appears to deny the evidence by both Johnson and his wife that their truck struck a figure on the road, which the Johnson’s alleged to be a deer.

While the Justice held that the criminal act was not committed, she made extensive references to Francis’ level of intoxication throughout her decision. For example, she stressed the importance of testimony that “Francis was staggering when he was walking on Saint Charles Sud Road.” If no impact occurred, then the references to the victim’s state appear unwarranted. There was no claim by the defence that erratic behavior by the victim contributed to the accident. In fact, the court seems to conclude that a fatality of a human being involving the Johnson’s truck never happened, at the standard of reasonable doubt.

In her decision, Justice LeBlanc went on to rule that Johnson also lacked the required mental element or *mens rea*. She determined it was “quite plausible” that, if the accused hit Francis, “he might have thought that he had struck a deer.”

News outlets reported that Madam Justice LeBlanc addressed the former accused at the end of her ruling, expressing her hope that Johnson would be “able to put this tragedy behind [him]” and that he would be “able to move on” from the incident.

Showing a lack of concern for Indigenous victims, it appears that similar assurances or condolences were not extended to the Francis’ family, irrespective of their extreme grief on the loss of their much loved, youthful son. In her evidence, Jessica Perley reported her horror at arriving at the agreed upon pick-

New Brunswick debate on migrant workers leaves a lot to be desired

By RALUCA BEJAN

Stories on seasonal migrant workers have been making headlines since the start of the COVID-19 pandemic. It is a universal story repeated across national sites. For example, migrants from Romania entered Germany in April 2020 to work on asparagus farms, while migrants from Bangladesh and India were asked to continue their construction work in Singapore. And in Canada, it was Jamaicans and Mexicans who were expected to arrive to work on farms.

Temporary foreign workers (TFWs) to Canada are migrants who hold a limited work permit for a specific employer and for a predetermined period of time.

Cross-border travel to Canada has been restricted since mid-March 2020. The federal government, however, has provided exemptions for international seasonal workers willing to disregard the COVID-19 health and safety risks to work on Canadian farms and food-processing plants. It is now asking employers to facilitate self-isolation for workers in accordance with public health guidelines, by providing housing that respects the two-metre social distancing rules; offering adequate sanitation supplies (i.e., soap) and ensuring that those requiring self-isolation are separated from others, particularly those with chronic medical conditions.

Nearly 300 Jamaicans had landed in Halifax by mid-April. A charter flight from Mexico was scheduled to land in Halifax on April 28, carrying TFWs to be placed across farms in Nova Scotia and New Brunswick. In an unprecedented move, defying the lobbying efforts carried out by the seafood and agri-food sectors in favour of the travel exemptions, the New Brunswick government banned the entry of TFWs into the province. To justify the decision, Premier Blaine Higgs mentioned the health and safety risks, and called on residents and TFWs already in the province to fill the vacancies across the agri-food industry.

Higher health and safety risks for migrant workers

The New Brunswick government’s decision originated from a questionable standpoint, one that prioritizes the safety and protection of New Brunswickers from foreigners who might be carrying the virus. It is a position that most likely stems from nationalist grounds and is guided by an exclusionary logic that should have no space in a country that prides itself on its multiculturalism.

Yet the provincial government’s decision might also have had the unintended consequence of protecting TFWs from the further exploitation that would undoubtedly occur during the COVID-19 pandemic. Migrant workers employed in the seafood/agri-food sectors are in a doubly precarious position, in terms of both their work and their immigration status. TFWs are more likely than Canadian citizens and permanent residents to be subject to unsafe occupational practices and to live in substandard and overcrowded conditions. During a pandemic, these conditions might deteriorate further, triggering greater health and safety risks. What happens if a worker falls sick? What type of care will be offered? And what happens in cases of workplace abuse? What protections do workers have?

Farming profitability trumps migrants’ rights

The media response to the decision to close the provincial border has been heavily focused on the profitability of the agricultural sector, raising questions about the losses anticipated from curtailed access to migrant labour, the contribution of the migrant workforce to the economic growth in the province, the exacerbation of economic uncertainty in the sector and the investments of hundreds of thousands of



Evelyn Encalada of Justicia for Migrant Workers in Leamington, Ontario. Photo by Justicia for Migrant Workers.

Debate on migrant workers

dollars already injected for this year’s agricultural season. Yet there seems to be little concern for the rights of the migrant workers themselves.

The community has responded on similar lines. On April 28, the National Farmers Union in New Brunswick, the Agricultural Alliance of New Brunswick and the Really Local Harvest issued a statement condemning the decision to restrict the entry of TFWs into the province. Concerns were raised about the impact of such a decision on the local community: it was pointed out that foreign workers are an integral part of the local food production, and that closing the border will endanger the financial viability of family farms in the province, which already operate on low profit margins. Also thrown into the mix was an argument that migrant workers should be free to decide for themselves whether they want to come work in the province — as if migrants from Mexico and Jamaica were leaving their homes to exercise self-determination and not because of economic constraints resulting from an unequal global distribution of resources; where the well-off nations of the Global North hoard all the wealth, while people from the Global South are forced to look abroad for the higher wages that their home countries cannot provide.

We’re not all in this together

Border closures are usually seen as negatively impacting migrants, yet in an unexpected turn, the closure in New Brunswick has made an exploitative situation no longer viable. What then is the community actually advocating? The opening of the borders, so migrants can get infected by the hundreds? While Canadian employers are required to keep TFWs in self-isolation for 14 days upon arrival prior to starting work, a lack of any system to monitor social distancing could make an already marginalized population even more vulnerable.

This is exactly the result that has already occurred all over the world. At a pork plant in South Dakota, about 800 migrant workers, mainly from Ethiopia, Mexico, South Sudan, Honduras, Myanmar, Somalia and Guatemala, got infected. In Singapore, there has been a growing number of infections in the crowded migrant worker dormitories. And in Alberta, more than 900 cases of COVID-19 were confirmed at the Cargill meat plant in High River, which was already notorious for its reliance on TFWs. Everywhere you look, migrant workers are being exploited during this crisis.

The underlying issue is that TFWs are doing jobs across the country that many Canadian nationals are unwilling to do, even in emergency times, when the public is being inundated with messages of “solidarity” and “all being in this together.”

The debate in New Brunswick brings the exploitation inherent to the TFW system back into public view. Either workers should have access to permanent residency and pathways to citizenship so they can benefit from the same rights as the resident population, or the TFW program should be scrapped all together: let Canadians support their communities in times of a pandemic.

The expectation that others should come and labour in your fields for low pay so that you can make a profit and feed the local population, while these very same workers are risking their lives for your safety and comfort, perpetuates a logic that some people are better, more valuable and more deserving of care than others.

If New Brunswickers deserve to be protected from exploitation and asked to stay home, TFWs should have the same protections. The last thing a community should do is to lobby the government to continue this exploitation.

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up point to find her young, once vibrant, son that she had spoken to just shortly before, dead on the road. “That’s my son, that’s my son,” she recalled yelling.

Due to COVID-19 restrictions, members of the public, including Francis family members, were precluded from sitting in the courtroom for the verdict. In a ruling on a fatality, these restrictions appear particularly excessive given that grocery stores, pharmacies and other essential services have remained open while achieving appropriate social distancing.

An appeal of the decision is under consideration; it may provide direction on the correctness of the application of Western criminal law. A prior case, R. v. Prad, 2017 BCPC 168 (CanLII), also resulted in an acquittal when a driver claimed to have hit a deer rather than a cyclist on a rainy, foggy night. Prad consistently maintained the absence of any knowledge he had struck a cyclist, even under vigorous interrogation. In his emotional testimony at the trial, Prad stated he stopped at the scene to look for the injured deer, overlooking the human body in the pitch black darkness. The case turned on the mens rea, the absence of willful blindness, rather than the denial of criminal behavior that grounds the April 2020 Johnson ruling.

While not present in the courtroom, the family of Brady Francis and community supporters expressed sadness, shock and outrage at the decision. On Facebook, like many, Brady’s mother Jessica Perley shared her disappointment stating she felt “angry, hurt, lost ... let down.” In a statement delivered in front of the Courthouse on May 1, 2020, Elsipogtog Chief Aaron Sock also expressed disappointment arguing that justice was non-existent for First Nations people in Canada. Sqotewisq Judie Acquin-Miksovsky expressed a commonly held view when she stated on Facebook: “I am fully and completely aware that I can be killed and there will be no consequences and repercussions because I’m First Nation in Canada.”

Dr. Pam Palmater, a lawyer, Mi’kmaq citizen and member of the Eel River Bar First Nation, commented on the case calling for acknowledgment of the biases against Indigenous people in Canadian law and for greater attentiveness to Indigenous law. The acquittals following the deaths of Indigenous youths, Colton Boushie in Saskatchewan and Tina Fontaine in Manitoba, were cited by commentators as proof of the criminal justice system’s indifference to Indigenous lives.

A further acquittal of Bradley Barton in relation to the homicide of an Indigenous mother of three, Cindy Gladue, is also worth remembering as part of the track record of repeated failures of the justice system in its treatment of Indigenous people. Gladue was found dead due to injuries in the bathroom of Barton’s Edmonton hotel room. Barton was charged with first degree murder but acquitted of that charge as well as the lesser included offence of manslaughter. The Alberta Court of Appeal ordered a new trial for murder and manslaughter.

Barton appealed to the Supreme Court of Canada which upheld the decision for a new trial yet only for the lesser offence of manslaughter [(R. v. Barton, 2019 SCC 33 (CanLII)]. While disappointing on the new trial directives, the Supreme Court asserted that the justice system is overrun by discrimination. Canada’s highest, most influential court shared the view that many hold regarding the trial concerning Brady Francis’ tragic death. The court stated: “Trials do not take place in a historical, cultural, or social vacuum. Indigenous persons have suffered a long history of colonialism, the effects of which continue to be felt.”

In the efforts to find justice for Cindy Gladue, the Supreme Court reminded readers of its prior rulings that “acknowledged . . . the detrimental effects of widespread racism against Indigenous people within our criminal justice system.” The Supreme Court justices affirmed the view held by the family and supporters of Brady Francis when they stated: “when it comes to truth and reconciliation from a criminal justice system perspective, much-needed work remains to be done.” The criminal justice system’s promise that “everyone is equally entitled to the law’s full protection and to be treated with dignity, humanity, and respect” was violated in the prosecution for Gladue’s death and other trials.

In conclusion, the Supreme Court of Canada made the following important ruling: “While serious efforts are being made by a range of actors to address and remedy these failings both within the criminal justice system and throughout Canadian society more broadly, this case attests to the fact that more needs to be done. Put simply, we can — and must — do better.”

When Brady’s father, Dana Francis, testified at the trial, he told the court that he sang two verses of a Mi’kmaq song for his son at the side of the road, upon learning that Brady had passed away. Dana Francis planned to sing the last two verses after the trial ended as a prayer for everyone involved, even the offender.

In news reports, there is no information that Dana Francis shared the final verses of the song. His silence, this silence, this inability to bring closure to the proceedings through music, seems to speak loudly on the ways the criminal justice system failed Brady’s memory, the Francis family and Elsipogtog community. It also makes it clear that this time of reconsideration, of concern for medicine and public health, is also a time for a new song for a sick and failing criminal justice system in Canada. After numerous disappointing trials and decades of let-down, Indigenous peoples are waiting to hear and perform this music, this clear sound of justice.

Josephine L. Savarese is a professor in the Department of Criminology and Criminal Justice at St. Thomas University and justice advocate.

COVID-19: A wake-up call for food security/sovereignty in New Brunswick

By HANNAH MOORE

The COVID-19 pandemic should be a wake-up call for governments to address the importance of self-sufficiency and community resilience in New Brunswick.

As for financial barriers, while direct subsidies to farmers can be beneficial, Trealout said he would like to see subsidies going to the consumers of food as well.

But since COVID-19, increased unemployment and delayed financial assistance has left even more New Brunswickers falling through the cracks. Food banks across the Maritimes are struggling to keep up with the recent rise in demand, with some facing increases of approximately 30 per cent over the past month.

Provinces in the Atlantic region have “very vulnerable” food security, according to Sylvain Charlebois, director of the Agri-Food Analytics Lab at Dalhousie University.

More than 90 per cent of New Brunswick’s produce is imported and when systems fail, or pandemics strike, the fragility of our current food system is exposed.

Local food production can be an effective way to address not only food security but also food sovereignty in New Brunswick.

Food security exists when everyone has physical and economic access to nutritious food, but often that food is produced under environmentally destructive or exploitive conditions.

Food sovereignty emphasizes food as not only a commodity but also something that can support sustainable livelihoods, reduce distance between suppliers and consumers, resist dependence on unaccountable corporations, place control in the hands of local food suppliers, reject privatization of natural resources, promote knowledge and skills, all while working with nature in a responsible, productive manner.

Knowing exactly where your food comes from and how it is grown, and maintaining a nutritious diet while supporting local businesses makes uncertain times like this a little less scary.

Locally-based food systems can build community resilience, increase self-sufficiency, benefit the environment and support local economies. This sounds ideal, so why isn’t it already a reality in New Brunswick?

Many barriers prevent people from buying locally-produced food. Local food is often seen as too expensive. The price of local food in New Brunswick reflects the hard work and resources that go into its production, but many people are unable to support local farmers because it is beyond their budget.

Louise Comeau, the Conservation Council’s director of climate change and energy solutions, stated that this is an opportunity for New Brunswick to rebuild and become more resilient.

“Going back to normal isn’t going to make us safer, healthier and more resilient. We’re looking for solutions that are better than normal,” she told the CBC.

So, what could our new normal look like? How can all New Brunswickers start accessing local food and supporting our province’s farmers?

Mark Trealout, farm manager of Hayes Farm in Fredericton’s Devon neighbourhood, had some suggestions from a farmer’s point of view on how the government could support food security and food sovereignty in the province.

Trealout said that for vegetable production, smaller, decentralized farms are the way to go. In contrast, government policy traditionally encourages bigger and bigger farms producing everything and exporting it out of the province.

Smaller, decentralized farms can serve the immediate population around them, creating much more security in the food system. If one farm has problems, many other farms could support it.

As for financial barriers, while direct subsidies to farmers can be beneficial, Trealout said he would like to see more power given to food consumers.

“What would happen if we subsidized the eaters? If the eaters had a choice, and money wasn’t an issue... are they going to buy the cheapest chicken available, or are they going to buy the free-range organic chicken? Let them lead the way,” said Trealout.

COVID-19 is forcing governments to reflect and reconsider most aspects of our society and how it operates. New Brunswick will soon be unrolling a recovery plan, which – if done right – could provide an opportunity for the province to rebuild in a sustainable, supportive and effective way.

Hannah Moore is a recent graduate from St. Thomas University currently working as a Food Security and Regenerative Farming Reporter for the RAVEN project at the University of New Brunswick.



Workers at the Hayes Farm in Fredericton. Left: Author Hannah Moore planting potatoes. Photo by Claire May. Right: Valeria Boquin preparing produce for the Community Supported Agriculture (CSA) boxes for Hayes Farm customers. Photo by Hannah Moore.