

0807A-00280

In The Provincial Court of Newfoundland and Labrador

Judicial District of Grand Bank

Between Her Majesty The Queen

And Reyanne Briand, also known as  
Reyanne Briand-Matthews, first accused

And Earl Lawery Matthews, also known as  
Diangel Matthews, second accused

### **Decision**

1.I have concluded that both defendants have been proven guilty beyond reasonable doubt of the two offences alleged; fraud, and possession of property obtained by the commission of an offence. These are the reasons which led me to that conclusion.

2.In these reasons, first, I will briefly explain the applicable onus and

standard of proof, and then discuss the Canadian law of fraud. Then I will briefly review the evidence, and discuss it in the context of the law.

3. In every criminal case, the same rules apply: the accused are presumed innocent; the burden of proof is on the Crown, and never shifts; and the burden of proof is proof beyond reasonable doubt. While not absolute proof, the standard of proof beyond reasonable doubt is much closer to absolute proof than to the balance of probabilities. In **R. v. Lifchus**, [1997 CanLII 319 \(S.C.C.\)](#), [1997 CanLII 319 \(S.C.C.\)](#), [1997 CanLII 319 \(S.C.C.\)](#), [1997] 3 S.C.R. 320, the Supreme Court of Canada stated, at paragraph 13, that “the onus resting upon the Crown to prove the guilt of the accused beyond a reasonable doubt is inextricably linked to the presumption of innocence...”. At paragraph 36 of **Lifchus**, the Court said that proof beyond a reasonable doubt “does not involve proof to an absolute certainty, it is not proof beyond any doubt nor is it an imaginary or frivolous doubt”. However, in **R. v. Starr**, [2000 SCC 40 \(CanLII\)](#), [2000 SCC 40 \(CanLII\)](#), [2000 SCC 40 \(CanLII\)](#), [2000] 2 S.C.R. 144, at paragraph 242, the Court held that the burden of proof placed upon the Crown, lies “much closer to absolute certainty than to a balance of probabilities”. These are the rules by which I have considered the evidence

and the law in this case.

4. The offence of fraud is codified in section 380 of the Criminal Code. Without reproducing the section, it provides that everyone who, by “deceit, falsehood, or other fraudulent means” defrauds anyone of anything commits an offence. The crime has been summarized as “deprivation by deceit”, although it is broader than that, because instead of deprivation, it includes the risk of loss, or exposure to deprivation, and is also broader than deceit, in that any discreditable conduct which induces the victim to be deprived of (or put at risk of loss of) anything is, in Canadian criminal law, fraud: see **R. v. Olan**, (1978), 41 C.C.C.(2d)145(S.C.C.), **R. v. Long**, (1990), 61 C.C.C.(3d)156 (B.C.C.A.), **R. v. Theroux**, (1993) 79 C.C.C.(3d)449 (S.C.C.).

5. Of course, because Canadian criminal law incorporates *mens rea*, the words “deceit, falsehood, or other fraudulent means” connote an element of deliberate dishonesty: **R. v. Sebe**, (1987) 35 C.C.C.(3d)97(Sask.C.A.).

6. These cases lead to the conclusion that, in order for the Crown to be able to successfully prove fraud, it must prove a deliberate act, or series of acts, by the defendants, of objectively dishonest behavior, which puts the subject of the dishonesty at either risk of loss or actual loss.

7. Now, let me turn to a brief review of the evidence. The accused are a couple. They first lived together in the province of Quebec, and then came here to live in this province. In the former, they set up a web page and touted an investment scheme under the name “G.I.S.P. Aid4Families.com”. Because of the language requirements in Quebec, the scheme was sometimes referred to as “G.I.S.P. AideauxFamilles.com”. Somewhat confusingly, the accused also had a plan referred to as “Aid2Families”, and also another called “Pay4Families”. These were described by the second accused as having different purposes.

8. The G.I.S.P. Aid4Families.com website was set up initially in Quebec, and solicited investors there. The complainants, Michael Koch, and his spouse Ann Koch, found the website in February, made inquiries of the defendants, but did not invest in the plan. Six months later, when the website was still on the Internet, and there having been no adverse publicity about it, the Kochs incorrectly assumed that the investment plan offered by the accused was valid. The Kochs sent money to the accused while they were in the province of Quebec, and, subsequently, to this province.

9. While it is difficult to quantify their losses, the Kochs sent a total of

\$343,500 to the defendants, in four payments. These were two payments, of \$30,000 and \$135,000, to the accused in Quebec, and two more, of \$25,000 and 153,500, to the accused in this province. Subject to legal fees and sheriff's costs, most of these funds have since been recovered. However, the complainants were deprived, at least temporarily, of \$178,500 by the accused while the latter were operating in this province.

10. The accused admit that the complainants were deprived of the \$178,500 which was sent to this province, deposited in the credit union, "frozen", first by the credit union and then by order of the Superintendent of Securities, and then seized by the High Sheriff and returned to the complainants. However, say the accused, there was no fraud, because there is no *nexus* between any representations made to the complainants and the deprivation, however temporary it might have been, of their funds from them. The accused take the position that it was only when the complainants did not receive their October 2 interest payment that they complained, and, that, since there was no *nexus* between the admitted deprivation and any alleged falsehood, then the prosecution has failed in proving fraud.

11. With respect, this is incorrect. The offence of fraud, being the

combination of dishonesty on the one part, and loss, or risk of loss, on the other, was made out as soon as the complainants, relying on the representations made to them by the accused, sent money to the accused. Thus, the offence of fraud was complete before any complaint was made by the Kochs. In fact, it was complete before the Kochs even knew that they had been defrauded.

12. At this point, it is useful to catalog some of the discreditable or dishonest statements used by the accused to induce the Kochs to part with their money. Mrs. Koch listed many of these, and ultimately was of the view that there was little, if anything, true from the G.I.S.P. Aid4Families.com website. I am inclined to agree with her. Let me explain why, with reference to the website, and to the things said by the accused to the Kochs.

13. It is important to remember that the website was fluid, not static. Thus, while exhibit C.A.1 is a “capture” of the website as of October 7, 2007, by Carl Allwood, we know from his evidence that there had been prior changes to the website. However, as late as the web capture was, and it is important to remember that it was **after** the investigation had started, it still contained a number of false representations.

14. The webpage had, in the left hand margin of page 1, the statement “Win a computer lab!” There is no evidence that anyone ever won any computer equipment from Aid4Families.com. Mrs. Koch took the reference to the contest for a computer as making the site seem more “family-oriented”. At page 11, the webpage offers a chance to “Win a computer lab for your school!”

15. Pages 1 and 2 then continue on about why public pension schemes are likely to fail, that “industry bigwigs have pressed judges and regulators to earn their keep by ridding the industry of competition”.

16. On page 3, one finds “Aid4families.com the only entity, public or private, serving the people!”. The next paragraph begins with “Aid4families.com is alone in trying to fight for your right to thrive against public and private corruption. Why does aid4Families.com exist? Because we are the only thing standing between you and financial extinction! If you believe otherwise...don't join, don't call. Simply demand from your government and bank/brokerage that they put their money where your mouth is. Aid4Families.com thrives because the people trust us and we are the only game on earth !”

17.This is followed by “No risk! No fine print! No disclaimer! Just money in your pocket!”

18.On page 4, the webpage says that “aid4families.com is a income assurance program, that pays the largest monthly dividend.” This is to be contrasted with the generally negative remarks about the “crooks” running the finance industry (page 2), “crooks who should be paying bail” (page 6), and banks who “rip off” the public (page 7).

19.On page 15, the webpage says that “we are registered with UK Pension Service, Dun and Bradstreet, GovBenefits.gov, and the Miami Chamber of Commerce”. There is no evidence that any of this is true. Instead, this claim is made there to cloak the aid4Families.com scheme with a credibility which it did not deserve. Similarly, on page 34, there is a photograph of a high-rise office tower, with the caption “Aid4families.com; heart of the Brickell financial district-Miami”. Neither the accused nor their creation Aid4Families.com had any offices in Miami: the picture and caption were also added to the website to give it undeserved credibility.

20.At page 17, the webpage contains a reference to setting up a “Ponzi type program that all insured banks use”. Counsel for the accused says that this

was meant to be a sarcastic statement. Whether meant to be sarcastic or not, it proves that the accused were aware of “Ponzi” schemes, and it also refers to banks being insured. Earlier, I have mentioned that the webpage contained references to “no risk”, “no disclaimer”, and “assurance”. These references were made to soothe any concerns that potential investors might have had about the risk involved in sending money to aid4Families.com.

21. Also on page 17 is a stated question, in bold print: **Aid4Families.com to take control of Canadian Pension Program (C.P.P.) ?** Since the accused had nothing to do with the Canadian government, the only reason that this was put on the webpage was to try to give it an aura of respectability, by suggesting a connection with the stability of the federal government. Certainly, in her evidence, Mrs. Koch made it clear that she believed that Aid4Families.com had some connection with the Canadian government.

22. On page 18 of exhibit CA1, the webpage continues with “Aid4families.com is currently drafting a plan to make Canada the first nation to turn the national pension assets over for private management”. Again, this is both an untrue statement, and also an effort to cloak the Aid4Families.com scheme with the stability of the Canadian government.

23. Pages 27 and 28 of exhibit CA1 contain “testimonials” from purported satisfied investors in the Aid4Families.com scheme. These include “Tom in Chicago”, Terry in Florida”, and “Robert in Detroit”. There is no evidence of any persons by those names, or from those places, having ever depositing any money with Aid4Families.com.

24. Page 28 also contains the following statement:

“Aid4families.com is a banking institution. Aid4Families.com has combined all of the fixed income instruments from financial institutions. This program brings together all of the best elements of stocks, bonds, individual retirement accounts and savings, to create a product known as a G.I.S.P. Government Income Supplement Program. A G.I.S.P. Brings together what until now has been taboo in the world of finance, a high dividend or yield with the guarantee for a fixed period. Your G.I.S.P. Is secured by your deposit....”

25. Every part of the foregoing extract is false. Aid4Families.com is not, and was not, a banking institution. In fact, it was not even a body corporate. It did not combine financial institution instruments. It had nothing to do with government, and had no guarantee of success. This statement is untrue and dishonest.

26. The situation was exacerbated on the same page, when the following was set out:

“So, that's what we do. Insure your deposit for nearly 10 X's as much as

your other bank pay you, pay you 25% quarterly, or 100% per year.”

27. During the evidence, the accused denied having pretended that investments made with Aid4Families.com were insured, and Carl Allwood was repeatedly examined on whether the accused had made such an offer in the Aid4Families.com web site. It is clear from the foregoing that the accused were in fact saying that deposits made with them were insured. That was not true.

28. The potential size of the Aid4Families.com portfolio was described (on page 44) as ranging from personal, corporate, and government accounts of “\$1 million through \$5 million, \$20 million, \$100 million, to \$5 billion”. In the context of spot trading on the foreign exchange market (which was, according to the evidence of the accused, the extent of their “investing”), these remarks are clearly untrue. The use of the words “corporate” and “government” are an effort to inflate the size of the operation: there is no evidence that any corporation or any government body ever sent Aid4Families.com one cent. Nor is there any evidence that Aid4families.com ever had any deposits greater than the \$340,000 received from the Kochs.

29. Page 45 contains an “ad” which says “COMING SOON Payments will

be made via our new aid4Families Visa Card”. While there is no evidence linking Aid4families.com to Visa cards, this is yet another example of a false claim, made to falsely exaggerate the size and breadth of the Aid4Families.com enterprise, to make it seem more stable and reliable as an investment institution.

30. The webpage occasionally used undefined terms. For example, page 44 contains the isolated and undefined term “100% APY”. At the bottom of the same page is a statement “Pays 100% APY 25% every three months.” On page 47, there is the following statement, again using undefined terms: “Government and Bank products will never offer 120% a.p.r. They will never offer a guaranteed rate or return per year for as many years!” Whether APY is meant to suggest “Annual Percentage Yield” is unclear, just as whether “a.p.r.” is meant to represent annual percentage rate. However, there is no doubt that the accused could not live up to any professed “guaranteed” rate of return on investments with Aid4Families.com.

31. Last, and perhaps the lowest form of deceit found on the website is the claim that Aid4Families.com had opened a “charitable branch”. This is accompanied, at pages 58 and 59 with pictures of happy, smiling children,

and a claim that Aid4Families charity, also called “A4FC”, would take 1% of the Aid4Families.com profits and use it to resolve problems like hunger (irrigation, sanitation, roads and greenhouses), poverty (financial grants for business and education), train and pay the homeless and poor to be dispatched around the world, and build homes that respect the traditional culture and meets modern needs.

32. These claims, all of them false, were made in order to induce potential “investors” to believe that Aid4Families.com was a stable, reliable, and ethical institution. Aid4Families.com was neither of these: it was instead a means by which the accused sought to deprive the naive of their funds. The Aid4Families.com website is replete with exaggeration, false promise, and plain lies. It provides ample evidence of dishonest and discreditable behavior on the part of the defendants.

33. Of course, this is not the only evidence of the dishonesty of the defendants. Let me briefly discuss that evidence.

34. In her telephone and email dealings with the complainants, the first accused used aliases: she called herself variously her real name, Breyanne, “Jessica”, and “Amanda”. She denied having used these aliases in any

attempt to falsely inflate the size of the Aid4Families.com operation, just as she insisted that her references to the “wire department”, the “funding department”, or the “back room” were not attempts to falsely give an exaggerated size of the Aid4families.com operation. She said “we were a small corporation”. This in and of itself is false: Aid4Families.com was never incorporated.

35. Her credibility is suspect, not only due to the use of aliases and pretending that there were different “departments” in the scheme. She told the Kochs that her own parents had invested with Aid4families.com, and were happy with it. There is no evidence that her parents had invested with the scheme, nor that they were happy with the results. Further, July Murphy testified, under direct examination and cross examination, that the first accused told her that the cheque for \$153,500 which she was trying to deposit with the Marystown Community Credit Union came from their sale of property in the United States. That evidence is uncontradicted. It clearly shows a deliberate attempt by the first accused to conceal the source of the funds, itself a dishonest act.

36. The second accused's credibility also suffers. He prefaced his *viva voce*

evidence with two digital video disks (dvd) of his own making. These dvds contained an out of court statement, and were therefore of dubious admissibility, but were admitted by consent of counsel.

37. The first dvd contained several items which undermined his credibility. First, it contained his own definition of fraud, which appeared to allow a person to lie to potential clients. Second, it advanced his theory that “money is not real”, and that “gold has a static value”. Third, he alleges that the Federal Reserve System “creates money out of nothing”. Fourth, he alleges that banks operate their own “Ponzi” scheme. Fifth, he suggests that the police are complicit in this, by not investigating the banks. He does this by posing the question “Did BMO call the RCMP and get a busy signal?” That part of the first dvd closes with the second accused posing the question “what have we learned today, boys and girls?” Keeping in mind that the first dvd was prepared by the second defendant in anticipation of his *viva voce* evidence, it is clearly incorrect to refer to its audience as “boys and girls”.

38. Worse than that, however, is the remark which follows it, to the effect that “it is very difficult for a Judge, prosecutor, cop or politician to go against a bank”. This contempt is continued with statements like “bankers don't go to

jail” and “we don't have a justice system”.

39. The second accused's contempt for the judicial system is evident in the second dvd as well. It includes a title called “Banks and the Judiciary: a double standard”. It also purports to be developing a plan whereby Aid4families would have eventually created a banking system along an amalgam of Kiva.org and Grammeen Bank, loaning out small loans to poor people. There is no evidence of any of this from the operations of Aid4Families.com: on the contrary, the only persons who might have benefited from those operations were the accused, and they did not loan one cent to anybody.

40. Let there be no confusion here: the second accused is not being cited for contempt for these offensive and unfounded remarks. However, his obvious contempt for the Judiciary and the justice system does seriously undermine his credibility.

41. But the evidence of the accused is, at the end of the matter, of no import, because they have no onus of proof. Certainly, if their evidence was believed, they would deserve to be acquitted. Even if their evidence was rejected, but the Court was left with a reasonable doubt, the accused would

still have to be acquitted, because it would mean that the Crown had failed to meet its burden, of proof of all elements of the offences alleged beyond reasonable doubt. It is only when the offences have been proved beyond reasonable doubt that a conviction may enter: see **R. v. W(D)**, (1994), 93 C.C.C. (3d) 1 (S.C.C.).

42. As indicated earlier in these reasons, there is ample evidence that the accused, acting together, dishonestly induced the complainants to part with their money. That is fraud. While the accused were in Newfoundland, they had possession of some of the proceeds of that fraudulent behavior, knowing the source and origin of the funds. Both are therefore guilty of knowingly having had possession of property obtained by the commission in Canada of an indictable offence.

43. Convictions are entered, against both defendants, for both offences charged. I will hear from counsel as to a convenient date for sentencing.

Dated at Grand Bank, NL, this 24<sup>th</sup> day of June, 2009.

Porter, P.C.J.

Counsel for the Crown R. Fowler

Counsel for the Accused M. Evans