R v. Legere: *Recollections of a Chief Crown*

by

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My association with Allan Legere began in Moncton when I prosecuted him for a number of burglaries.

After he was convicted of the Glendenning murder, he escaped while on a hospital visit in Moncton. I prosecuted him for offences of kidnapping and a weapons charge arising therefrom.

Both these sets of charges were Moncton matters which is why our office dealt with them. I had no expectation that I would be involved in prosecuting the four murders committed on the Miramichi. When I was asked to lead the Crown team handling them, I was willing and even eager to do so. This was partly because the case, being high-profile and very substantial in size, represented a real challenge. At the same time, having Jack Walsh handling the D.N.A. aspect and Graham Sleeth as further counsel was a great prospect. All in all, it was rather like a hockey player being chosen to play for or even captain Team Canada, a mix of pride, anticipation and concern.

My memories of the case, almost fifteen years in the past, are now somewhat impressionistic. I remember the sheer size of the files and trying to make sense of them for myself so I could try and do the same for others. Fortunately, we had great police officers involved. The lead investigator, Vince Poissonier, was a larger than life character, always full of energy and interest. He and I spent several days touring New Brunswick interviewing witnesses as part of the Crown preparation. Vince's driving habits were, like himself, dashing. He was stopped for speeding several times, but always explained (to the satisfaction of the police concerned) why he was in a hurry.

His main cohort was Ron Charlebois. Where Vince was all excitement, Ron was calm and steady and willing to do the detailed day to day stuff. One of his tasks was unusual. In an attempt to obtain D.N.A. from Legere, he was induced to urinate in a pot. Ron got the assignment of transporting pot and contents to a Lab in Ottawa. I believe he took two seats on the plane, one for him, one for the pot, to avoid any accidental collisions (but this may be a case of a mountie "stretching it" a bit).

After lengthy review of the file, the Crown team approved four murder charges. We decided to ask the Attorney General to authorize a direct indictment because the proceedings were going to be lengthy in any event and we wanted to avoid duplication and as we gave complete disclosure to the defence, the prejudice to them was lessened. We, therefore, arranged it so that on the day of Legere's first appearance in Provincial Court on the Miramichi, there was a Queen's Bench Judge, Mr. Justice Dickson, on the premises, ready to handle the matter. Vince, Ron and I drove up to the Miramichi the night before.

It was snowy, the roads were poor, facts which Vince never allowed to affect unduly his style of driving. It was a great relief to arrive at our motel.

On the morning of Legere's first appearance, his counsel, Weldon Furlotte, asked for disclosure. We took pleasure in passing over to him, in court, the numerous bankers boxes of evidence. He then asked for a change of venue, citing the obvious public feeling on the Miramichi. He, I think, expected us to fight hard on this, but, partly because we felt his point had merit and partly to take the wind out of his sails, we agreed at once. As Judge Dickson lived in Fredericton, he too felt a change of venue, to Oromocto, near Fredericton, was acceptable. As Oromocto was also the newest court facility in the province, it was very convenient.

Judge Dickson, being of the "old school", believed in speedy justice and short trials. Accordingly, he proposed to start the trial in a couple of months. The defence was horrified, and quite rightly. Mr. Furlotte had to go through masses of material, learn about D.N.A., and get a witness or witnesses set up to speak for the defence on D.N.A. Frankly Judge Dickson, who of course knew nothing of the case at that stage, was being unrealistic. Essentially the combined pleas of Crown and defence persuaded him to allow a much longer interval.

It was agreed that there would be a voir dire held and completed with rulings on the issues raised, well before the jury trial began. Obviously, for example, both sides needed to know in advance whether the D.N.A. evidence would be admitted and, if so, to what extent. This involved issues as to admissibility of items seized (hair, bloody tissue, etc.) and rulings on whether the science involved in D.N.A. testing was admissible. Since Jack Walsh was responsible for the D.N.A. aspects of the case, the voir dire was primarily his task. Jack Walsh has written an exhaustive paper on the legal and technical aspects of the Legere trial relative to D.N.A. issues which should be consulted in this regard, both as to the voir dire and the trial.

Graham Sleeth and I basically sat and watched in awe as Jack called his witnesses on the D.N.A. As an outside observer, it seemed to me there were two somewhat distinct aspects. One, which was uppermost in the voir dire, was to explain everything. The theory (what is a double helix), the statistics, and the technology used, all had to be covered thoroughly in order to satisfy the court that it should even be put to the jury. Frankly this was, in many ways, the biggest single problem. If the D.N.A. evidence was excluded, the Crown's case on the first three murders would virtually collapse. Fortunately the witnesses the

Crown called were not only expert scientists, they were also good witnesses, which is quite a different thing. The ability to convey information to others, especially to those not familiar with your subject, and the ability to respond to cross-examination by a skeptical lawyer trying to "cut you down" is not one that all experts possess. Ours, however, did. As a result of their ability and Jack's marshalling of the whole evidence, the judge ruled that the D.N.A. evidence was admissible and that the chance of a random match could be expressed statistically (1 in say 10,000,000), not just verbally (remote, very remote, very very remote). This latter ruling seemed to me, as an "outsider", very helpful since figures convey far more powerfully than words. As a non-statistician also, I found some of the points very illuminating. For example, while at first blush the difference between 1 in 10 and 1 in 100 million seems less than, say, between 1 in 20 million and 1 in 200 million, for practical purposes like ours, it is not. Both amount to the same thing. Expressed as, say, the chance of winning a lottery, both say the same thing...you are not going to win.

One of the most enjoyable aspects of a trial lawyer's work is that you get involved in cases where expertise in some subject is needed. Thus I have, from cases I have done, learned about topics as diverse as the intestinal disorders of lobsters, blood spattering, canine qualities, Munchausen's Syndrome by proxy, entomology, to name but a few. Exposure to a crash course on .DN.A. was very stimulating. It is fascinating to reflect on how quickly the law can change. When the Legere case was on, it took five or six expert witnesses, a long voir dire, a two month trial and defence evidence to handle the D.N.A. aspect. Nowadays it is frequently so uncontested that the evidence can be put in by one witness or even by a written report.

Because the voir dire on DNA was so vital and was Jack Walsh's role, the conclusion of it gave him great pleasure. Rumours that he bought a bottle of Grand Marnier from a liquor store, consumed some of it in the parking lot and the rest of it overnight in his hotel room cannot be confirmed.

Some time later the trial began. Obviously the Crowns involved were in constant touch preparing for it. For example, the opening speech to the jury was prepared by me since I was to deliver it, but Jack and Graham had a lot of input, especially Jack on the D.N.A. We "rehearsed" it together several times.

There were some inconveniences attached to the trial. Living away from home for months at a time was not fun, especially since the New Brunswick meal allowance per day was slightly less than the allowance that the federal

government gave its employees, such as R.C.M.P. officers, per day for dinner alone. However, the mounties were kind and often bought the drinks.

The jury selection was held in a school hall which gave it a very strange atmosphere. Many potential jurors clearly hoped not to be chosen (one, when stood aside, breathed a profound "Oh God, thank you"). It was pouring with rain, the day was gloomy and foreboding; all in all not a great feeling.

Once the trial got underway there was, as is normal in long trials, a great deal of routine evidence to be got through, but there were dramatic moments. One was when the surviving Flam sister testified. She and her sister were in their residence when Legere broke in. She was sexually assaulted, her sister murdered, and she left for dead in a burning house. I was calling most of the non-D.N.A. evidence, but we agreed Jack could call her so she was dealt with by a fellow-Miramichier. At one point in cross-examination, an issue arose about the color of her attacker's pubic hair. To everyone's amazement, and most persons' disgust, Mr. Furlotte suggested his client drop his pants enough to make his pubic hair visible for an "on the spot" comparison. Judge Dickson denied this request. Ms. Flam's bravery in her testimony was very moving.

Also very moving was when witnesses identified jewellery pawned by Legere as coming from the other two murdered sisters. One witness recalled joking with them about it and who would get it if they died. She wept as she related this. At one point, firefighters described how they entered the burning house looking for the occupants to save them and, groping through the darkness and fumes, located, by touch, a body. At such times, one's admiration for those doing that kind of job is tremendous and I kept thinking how much better it is to be a lawyer and just hear about it.

The murder with which I was most concerned was the fourth one, that of Father Smith, since it did not involve D.N.A. at all. It was in fact an old-fashioned circumstantial evidence case.

Some of the evidence in it, notably the prolonged ordeal he underwent at the hands (and feet) of his attacker was shocking. It was clear he had, in effect, been tortured.

The evidence linking Legere to this included evidence that put him in the area at the time, including evidence of a police officer and his dog chasing Legere at night along the banks of the Miramichi river in a scene worthy of

Hollywood. Actually there were several scenes that could have made their way into a Dirty Harry movie. Most exciting of all was the "chase" sequence that preceded Legere's capture. Consider this scenario. A whole town has lived in terror as a mass-murderer on the loose kills three women and a priest. Legere hijacks a taxi from Saint John to return to the Miramichi. There is a snow-storm, but Legere orders the driver to speed on through the white-out till he goes off the road. Another vehicle is commandeered. Unknown to Legere, the driver is an off-duty female mountie. They pull in to gas up. Legere takes the keys and gets out and enters the gas station. Unknown to him the mountie has a second set. She and the taxi-driver consult. Shall they try and drive off, risking Legere's fury if the attempt fails? "Go for it" says the taxi-driver. Off they fly leaving a furious Legere behind. Now, while Legere commandeers a truck from the station, the mountie makes contact with the police. Suddenly the forces of the law know that Legere is in the Sussex area, heading for home. It's an "all-police available on the road" hunt in the still-falling snow. Will they find him or will he do another vanishing act as so often in the past?

Finally the truck is spotted by two mounties and forced to pull over. Of course the mounties who stop it are not sure if this is indeed "it". After moments of suspense, the taxi driver emerges, runs to them and says: "It's him". The mounties order Legere out at gun point and after another moment or two of suspense, out he comes, preceded by a gun. They order him to lie face down in the snow. He does. But he makes a movement which a mountie takes as possibly an attempt to reach the gun whereupon he kicks him. Later, when asked by defence counsel why he did this, he replied, in a cold dead pan way that Clint Eastwood could only hope to emulate: "I felt it necessary to maintain control". Cue the scenes of rejoicing and relief on the "besieged" Miramichi when the news of the capture is in.

Well if Hollywood could beat that, it would be quite a movie.

And later, by a happy trick of fate, the nose bleed that resulted from the kick resulted in a bloody tissue, which, seized by the police, and admitted in evidence, produced the D.N.A. that was used to ensure his conviction for three of the murders. A greek dramatist would like that touch.

Meanwhile back to the trial.

Another important aspect of the evidence in the Father Smith murder was, if not so dramatic, perhaps even more improbable. There was evidence that the

killer stole Father Smith's car and drove to Bathurst. There he parked the car a little distance from the train station then took a train to Montreal. (In fact the train was stopped and searched that night by police looking for Legere. He was not discovered, it appears, because the Quebec police were told to look for a tattoo on one arm and, in error, looked at the wrong arm.)

Later that year, a rail crew was doing work on the line at a bridge over a deep ravine. Someone spotted a card down a bank. Others then looked and more items were found. They were Father Smith's cards. The only explanation obviously was that the killer threw them out or flushed them down the toilet at a place he thought they would never be found, a spot in the middle of vast woods in the depths of a ravine. In truth, the chances that they would be found were remote, probably D.N.A.-statistics remote, but for the chance of a crew being there that summer and the bright eyes of one man, the cards could have lain there forever undiscovered. As it was, their being found at a place where Legere was known to have been soon after the murder was excellent evidence.

Yet another item emerged from the night-flight of a killer. Father Smith's car, as noted, was found in Bathurst. Beside it were a set of workman's boots. Back at the Smith residence the killer had, literally, walked in blood and had left a bloody foot-sole mark at the scene. An R.C.M.P. mountie identification officer and prime expert did a comparison of the kind that is fairly standard and matched the print to the boots beside the car. That was helpful since there was evidence Legere was indeed in Bathurst that night (he was identified buying a train ticket to Montreal).

But the expert went further. On arrest, he took casts of Legere's feet in a substance he got from a florist. He then compared the casts to the inside of the boots and concluded that they matched. The Crown called the mountie and an F.B.I. expert to support this. It raised two issues. Was the foot-cast admissible? The judge admitted it as taken, like fingerprints, pursuant to arrest. Was the theory of matching feet to the <u>inside</u> of footwear acceptable? The judge found it was. As with any match, the extent of the match can vary according to how many features match and how usual or unusual those features are. In this case the size of the feet, the length and shape of the toes, the site and size of the base of the big toe, etc., all fit, but there were no really reliable and generally accepted statistics for whether that could be a coincidence. But one feature was really unusual. There was a nail protruding through the heel of one boot. And behold, in Legere's foot, there was a hole or mark in his heel that matched the nail and was obviously caused by walking in a boot with a nail in it. Statistics do

not exist for that being a chance-match, but even in our numbers-obsessed age, a jury can (and did) use its commonsense.

I do not propose to go into detail, legal or scientific, on the D.N.A. evidence for two reasons. First, I cannot, and second, Jack Walsh already did it. I will merely note a few highlights from a layman's viewpoint.

As I said earlier, all our experts, besides obviously being tremendously knowledgeable in their sphere, were excellent communicators. At least two of them, John Waye and Dr. Kidd, could have made first rate t.v. presenters on popular science shows like "Daily Planet". Dr. Kidd, who Jack Walsh memorably and accurately described as the "Wayne Gretzky of D.N.A. population genetics" was a small man with a Van Dyke facial hair feature. He looked a true academic, a confirmed occupant of a lab in a prestigious university, but his evidence included studies of Amazonian tribes where internal marriage was unavoidable and yet the differences in D.N.A. were there. Suddenly the scene shifted from a cool Saint John riverside courthouse to a steamy rainforest and a local "king" and his wives.

Dr. Kidd was calm, cool, polite and, while firm, not "combative" in cross-examination. By contrast, Dr. Waye, who looked about 28 years old, was, to say the least, "feisty". At one point defence counsel quoted to him, from a paper he had written a year or two before, a statement that perhaps contradicted what he was saying in court. This looked like a clear "hit" for the defence, contradicting a witness using his own words. But Dr. Waye was not troubled. "I realize that in your discipline, law, things change slowly. In science, things can change very quickly so what was accepted yesterday may well not be the case today because of new research."

A frequent problem was that defence counsel, after receiving an answer to a question, would then repeat, or attempt to repeat, the answer as a prelude to his next question by saying: "So you are saying...". Sometimes the repetition was not entirely a successful exercise; this apparently irritated the expert because on one such repetition he said: "That may be what happened when my answer entered your brain and exited your mouth, but it's not what I said".

The defence called one expert witness. Again I will not go over that in detail. As a layman, my best understanding of his evidence was that the statistical odds of a random match given by our experts were wrong; unfortunately the odds the defence expert gave still exceeded the number of adult males in Canada. This, to my untutored mind, made the same point as

noted earlier. Whether the figure is 1 in 100 million or 1 in 10 million really does not matter.

Mr. Legere contributed some moments of drama of his own to the trial. At one point, he made remarks about in-breeding on the Miramichi that were offensive. Certainly they offended Mr. Walsh, a good Miramichi lad himself. Legere initially refused to come into court for the verdict until faced with the two biggest deputies or police officers available, ready and willing to drag him in.

An event that was both unusual, dramatic and legally problematic related to the jury. In mid-trial, we were approached by Vince Poissonier. In the public galley were some women who were self-professed "supporters" of Legere. The police believed they saw signs of a relationship passing between one juror and one "supporter" and notified us of this. Now jurors are near-sacrosanct and any hint of the police "tampering" with them is appalling. On the other hand, the situation could not be ignored. Eventually we dealt with it and one juror was removed; yet more unusual and dramatic developments.

Finally the evidence was all "in". I wrote a closing address. Actually the part of it that related to non-D.N.A. issues was written by me, but Jack and Graham and I revised it time after time; I even had dress-rehearsals to test its effectiveness. One big problem, given the mass of evidence and its often technical nature, was to reduce the address to a length a jury could tolerate. The D.N.A. portion of the address was written by Jack. Once he had it finalized, he made it clear, with terrible threats, that when speaking to the jury, I must not deviate from it by a word. He arranged that if I did so, he would tap a ruler or something to attract my attention and get me back on track. Only once during that long address did I do so and at once there came the remorseless clacking of the ruler.

After the judge's charge, there came that time, known to all counsel involved in jury trials, when one sits and waits. The temptation to do an inquest on how one did the trial is well-nigh irresistible and we did not resist it. We agreed that whatever the verdict, we would show no emotion. The deputy-sheriffs announced there was a verdict. We all assembled. It would be foolish to deny that, as we sat and waited, some hearts (certainly mine) were beating faster. The Crown neither wins nor loses. That is the conventional and correct approach and we live by it. But we are not automatons or robots and emotions do arise when so much time, skill and effort have been invested.

Again, as in all jury trials, the rapidity of the final process is in stark contrast to what went before. All those months of investigation, voir dire, jury trial, then the jury enters the box and seconds later there are four guilty verdicts. While normally sentencing is a slower process, given the only possible sentence for first degree murder, that too was over in what felt like an instant.

The verdicts in, Crown and police retired to our room to congratulate each other. Jack especially, I think, felt great satisfaction. This was partly because, as a Miramichier, he knew the terrible ordeal those months had been for its inhabitants: doors locked, guns ready, business down, a population, especially women, living in fear. Also he had brought D.N.A. evidence to a successful conclusion. The court accepted it; the jury obviously relied on it; all this despite strong attacks from the defence.

We were asked (begged) by the media to say something. At first I was reluctant. Eventually we drafted some sound bite, so anodyne that it could not be objectionable, but it satisfied the media who merely needed to fill a few seconds of reporting time.

It is now over fifteen years since that day, during which I have done many cases, including murders, major sexual assaults and such like. But for its size, its high profile, its drama before and during the trial, nothing compares to *R. v. Allan Legere*. If you compare a trial lawyer's life to, say, mountaineering; with everyday breathalyzers being a walk on the hills; break and enters a climb in the Scottish highlands; murder to climbing in the Alps or Himalaya; well *R. v. Allan Legere* was Mount Everest. It was exhausting, nerve-wracking, exciting and fulfilling, all at the same time for a trial lawyer and I am glad I got the chance (once) to do such a trial.