

SUPERIOR COURT OF JUSTICE

Catherine Mullaly
for the Respondent

[2] I conclude that Justice of the Peace R. Quon erred in law when he held that a licensed and insured paralegal was precluded from appearing by way of a designation of counsel at an early court appearance on the applicant's charges for indictable offences. In issuing a bench warrant with discretion for the arrest of the applicant, he exceeded his jurisdiction. The warrant must therefore be quashed.

1.1 - Overview

[3] The relevant facts are straightforward. The applicant is a young person facing four charges of assault and four charges of forcible confinement. His first appearance was scheduled for April 23, 2009 at the Ontario Court of Justice at 311 Jarvis Street in Toronto.

[4] The applicant did not personally attend court on that date. Instead, a paralegal licensed and insured by the Law Society attended and filed a duly executed designation under *Criminal Code* s. 650.01. The designation appointed Mr. Daniel Stein as his counsel of choice, and designated his “counsel, articling student, or agent acting on his behalf to appear for all proceedings where [his] attendance is not required by law or the direction of the Ontario Court of Justice”.

[5] The Justice of the Peace ruled that only “a student of law or another lawyer” could act on the designation. He then issued a discretionary bench warrant for the applicant.

2.0 – Discussion

(a) “Designations” under S. 650.01 of the *Criminal Code of Canada*

[6] S. 650.01 was enacted in 2002 to help streamline an overburdened criminal justice system by dispensing with the obligation of an accused charged with an indictable offence to attend personally at each court appearance. Unless the court orders otherwise, the provision lets the accused designate counsel to appear on his behalf for any part of the proceedings other than during the presentation of oral evidence, jury selection, on a *habeas corpus* application, or on a plea of guilty.

[7] Prior to the enactment of s. 650.01, an accused charged with an indictable offence could not appear by agent, even if the agent was his lawyer. Moreover, if the court did not act in response to the non-attendance of the accused (for example by issuing a bench warrant) there was a risk of loss of jurisdiction.¹[1]

[8] S. 650.01 benefits the administration of justice by enabling “designated counsel” to appear at routine remand appearances without the personal attendance of the client. Its benefits to the administration of justice include speeding up court appearances and reducing legal costs and inconvenience to accused persons.

(b) Can Paralegals Appear Pursuant to a Designation in the Ontario Court of Justice on an Administrative Remand?

[9] In *R. v. Golyanik*, (2003) CanLII 64228 (Ont. S.C.), Trafford J. held that articling students could attend in the Ontario Court of Justice pursuant to a designation for the purpose of routine remands for indictable offences. In his carefully reasoned decision, he held that in the context of s. 650.01, the definition of “counsel” includes articulated students-at-law and embraces a counsel’s law firm. He held that articling students could appear pursuant to a designation on remands for indictable matters in the Ontario Court of Justice. He did not rule on the issue of the status of paralegals in the same circumstances, because the issue was not before him.

[10] Trafford J. rooted his reasoning in the modern approach to statutory construction, with its emphasis on contextual and purposive interpretation²[2]. In my view, the same reasoning applies to this case.

¹[1] See e.g., *R. v. Hartmann*, [1986] O.J. No. 1097 (Ont. H.C.)

²[2] *Golyanik*, *supra*, at para. 13.

[11] Paralegals are now governed by the Law Society. They are trained professionals subject to similar if not identical standards of ethics and civility as are lawyers and students-at-law. Properly regulated, they make a significant contribution to the administration of justice. Interpreting s. 650.01 in a way that prevents them from attending court in cases like this one would impede rather than enhance the proper and efficient administration of justice. If the purpose of s. 650.01 is to be respected, the definition of counsel demands a broad interpretation that encompasses paralegals and lets them appear in the Ontario Court of Justice on indictable matters pursuant to a proper designation.

3.0 - Conclusion.

[12] When this matter came before the justice of the peace, the applicant's interests were represented by a duly licensed and insured paralegal acting with the express instructions of the applicant's lawyer. The s. 650.01 designation was properly placed before the court. The Justice of the Peace erred in holding that paralegals were not included in the definition of counsel in s. 650.01. There was no evidentiary basis for the issuance of a bench warrant and in doing so, he exceeded his jurisdiction.

[13] The bench warrant issued by Justice of the Peace Quon on April 23, 2009, is therefore quashed.

McCombs J.