

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Butler, 2010 NSSC 284

**Date:** 20100713

**Docket:** CRH 324525

**Registry:** Halifax

**Between:**

Her Majesty the Queen

versus

Mitchell Lawrence Butler

**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** June 24, 2010, in Halifax, Nova Scotia

**Decision:** July 13, 2010 (Orally)

**Written Release  
of Decision:** July 20, 2010

**Counsel:** Susan Bour, for the Crown (June 24, 2010)  
Scott MacKay, for the Crown (July 13, 2010)  
Warren K. Zimmer, for the Defence

**Coughlan, J.:** (Orally)

[1] The issue before the Court is, what information is required in a designation of counsel, pursuant to s. 650.01 of the *Criminal Code*.

[2] The circumstances of this matter are as follows:

[3] Mitchell Lawrence Butler was charged that between September 15, 2008 and September 18, 2008 he had possession of Ecstasy for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*; and of having possession of property not exceeding five thousand dollars, obtained by commission of an offence punishable by indictment contrary to s. 355(b) of the *Criminal Code*.

[4] The matter was scheduled for June 24, 2010 for Mr. Butler to be arraigned and trial dates set. On June 24, 2010, Mr. Warren Zimmer appeared as Mr. Butler's counsel. Mr. Butler was not present. Mr. Zimmer had a document purporting to be a designation of counsel pursuant to s. 650.01 of the *Criminal Code* in the following form:

CANADA  
PROVINCE OF NOVA SCOTIA

IN THE SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF:

HER MAJESTY THE QUEEN

and

MITCHELL BUTLER

DESIGNATION OF COUNSEL OF RECORD  
in accordance with Section 650.01 of the Criminal Code of Canada

TAKE NOTICE that I, MITCHELL BUTLER, of DART (sic), in the County of HALIFAX, Province of Nova Scotia, designate WARREN K. ZIMMER, Barrister and

Solicitor, of 200 - 5162 Duke Street, Halifax, Nova Scotia, B3J 1N7, telephone number (902) 429-7787, to represent me in relation to any and all proceedings pertaining to outstanding charges contrary to the *Criminal Code of Canada*, and any other Federal or Provincial legislation, in Halifax, Nova Scotia.

DATED at Halifax, Nova Scotia, this 17th day of Feb., 2010.

\_\_\_\_\_  
(signed by Mitchell Butler)

\_\_\_\_\_  
(signed by Warren K. Zimmer)

WARREN K. ZIMMER  
Counsel for .....Mitchell Butler.....

[5] I was not prepared to act upon the designation as it did not set out the charges, dates of the alleged offences or any particulars of the matters for which Mr. Zimmer was designated as counsel to act for Mr. Butler. Counsel took the position the designation was in proper form and should be accepted. I informed counsel I was not prepared to accept the designation that day, but was prepared to reserve and give a decision on the issue if he wished. Counsel requested a decision.

[6] Section 650.01 of the *Criminal Code* provides:

**650.01 (1) Designation of counsel of record** - An accused may appoint counsel to represent the accused for any proceedings under this Act by filing a designation with the court.

**(2) Contents of designation** - The designation must contain the name and address of the counsel and be signed by the accused and the designated counsel.

**(3) Effect of designation** - If a designation is filed,

(a) the accused may appear by the designated counsel without being present for any part of the proceedings, other than

(i) a part during which oral evidence of a witness is taken,

- (ii) a part during which jurors are being selected, and
  - (iii) an application for a writ of *habeas corpus*;
- (b) an appearance by the designated counsel is equivalent to the accused's being present, unless the court orders otherwise; and
- (c) a plea of guilty may be made, and a sentence may be pronounced, only if the accused is present, unless the court orders otherwise.

**(4) When court orders presence of accused** - If the court orders the accused to be present otherwise than by appearance by the designated counsel, the court may

- (a) issue a summons to compel the presence of the accused and order that it be served by leaving a copy at the address contained in the designation; or
- (b) issue a warrant to compel the presence of the accused.

[7] A form of designation is not prescribed. Section 650.01(2) requires the designation must contain the name and address of counsel, and be signed by the accused and designated counsel. Otherwise, the section is silent as to what is required in a designation.

[8] In addressing the meaning of “counsel” as it is used in s. 650.01, Trafford, J. of the Ontario Superior Court of Justice commented on s. 650.01 in *R. v. Golyanik* (2003), 173 C.C.C. (3d) 307 at p. 311:

Section 650.01 of the *Code* came into effect on July 23, 2002. The section was not mentioned in any reading or debate of Bill C-15 or Bill C-15A in the House of Commons or Senate. Nor was it referred to in the transcripts of the publicly available minutes of the proceedings of any Standing Committee or any publicly available report of any such committee. However, it was one of a series of amendments to the *Code* enacted to modernize the justice system and to facilitate an efficient and effective use of its resources. This section appeared to be part of a legislative scheme to permit a defendant charged with an indictable offence to limit personal appearances before the court to the most significant proceedings in the criminal process. This amendment was intended to reduce the

number of defendants present in court on a given day. A more efficient use of court resources, including a reduction in court delays and backlogs, was expected to reduce direct and indirect costs to the administration of justice.

[9] Justice Trafford went on to comment on what may be in a designation and provided an example of a possible designation. At p. 316, he stated:

... Better practice would also lead counsel to make an express reference to the information or indictment, by number or date. It may also be helpful to specify the alleged offences and the date of the transaction leading to the charges. This may obviate the need for another designation if a new information or indictment was placed before the court.

Therefore, as an example, a proper designation in this case, in so far as it is affected by the term “counsel”, would have been drafted as follows:

Under section 650.01 of the Code, I, Illya Golyanik/Ali Zamri hereby appoint:

- (a) the law firm of Adler Bytensky:
- (b) Boris Bytensky:
- (c) \_\_\_\_\_, the articling student employed by Adler Bytensky, insofar as he/she is specifically instructed by a lawyer with the firm of Adler Bytensky to appear on an administrative remand; and
- (d) any other lawyer specifically instructed by Boris Bytensky or a lawyer with the firm of Adler Bytensky to act as his/her agent in this matter

to represent me in connection with proceedings on Information No. \_\_\_\_\_ alleging the offences of \_\_\_\_\_ on or about \_\_\_\_\_, 2002.

[10] The purpose of s. 650.01 is to assist with the efficient operation of the courts. When counsel is given a designation, an accused is not required to be present for preliminary or administrative proceedings prior to trial. No particular form of designation is required other than the items specified in s. 650.01(2). However, the designation must identify the charge, charges, dates of alleged

offences or some other particulars of the proceedings for which counsel has been designated so the court may be satisfied counsel has authority to deal with the charges before the court. There could be situations where an accused has outstanding charges arising from different events and counsel has not received instructions concerning all outstanding charges. The court must be satisfied counsel has authority to deal with the particular charges before it.

[11] As the designation filed does not set out the charge, charges, dates of alleged offences or any particulars identifying the matters for which the designation was given, I am not prepared to accept the proposed designation.

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Coughlan, J.