

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. MacFarlane, 2008 NSSC 8

Date: 20080111

Docket: SY 279421

Registry: Yarmouth

Between: Her Majesty the Queen By Her Municipality of the District of Yarmouth

Appellant

v.

James Foster MacFarlane

Respondent

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Judge: The Honourable Justice Glen G. McDougall

Heard: September 6, 2007, in Yarmouth, Nova Scotia

Subject: Appeal from a stay of proceedings granted when the Municipality failed to give notice under section 29 of its Dog By-Law D-048-02.

Summary: The respondent was charged with contravening the Municipality's Dog By-Law. Section 29 of the By-Law allowed the Municipality to give a notice to the alleged offender who, if it was a first offence, could avoid prosecution by paying \$30.00 within 14 days of receiving the notice. No such notice was given to the respondent. The defence brought a preliminary motion to quash arguing that the notice was mandatory. The trial judge accepted the argument and ordered a stay of proceedings.

Issue: (1) Did the Learned Trial Judge err in law in finding that the notice under section 29 of the Dog By-Law was mandatory?
(2) Did the Learned Trial Judge err in law in finding that section 29 of the Dog By-Law was applicable to the case at bar?

Result: The trial judge's decision to grant a stay of proceedings was based on an incorrect interpretation of section 29 of the Municipality's Dog By-Law. The notice was not mandatory. The Municipality had a discretion which it exercised. The trial judge's incorrect interpretation of the By-Law was an error of law. The order granting the stay of proceedings is set aside and the matter returned to the Provincial Court for trial before another judge.

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