

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** MacDonald v. Nova Scotia (Attorney General), 2004 NSCA 48

**Date:** 20040330

**Docket:** CA 208164

**Registry:** Halifax

**Between:**

Colin MacDonald, Michael Mulrooney, John McCurdy,  
Rebecca Bridge, Holly Chandler

Appellants

v.

The Attorney General of Nova Scotia, representing Her  
Majesty the Queen in Right of the Province of Nova Scotia

Respondent

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**JUDGE:** Bateman, J.A. (Orally)

**APPEAL HEARD:** March 30, 2004

**JUDGMENT DELIVERED:** March 30, 2004

**WRITTEN RELEASE OF DECISION:** April 7, 2004

**SUBJECT:** Constitutional law - separation of powers, s. 96, **Constitution Act, 1867**; s. 7, **Canadian Charter of Rights and Freedoms**, Part I of the *Constitution Act, 1982*, being Schedule B to the **Canada Act 1982** (U.K.), 1982, c. 11

**SUMMARY:** A group of ratepayers applied to have a portion of the Municipality of the District of Chester incorporated as the Town of Chester. The Municipality opposed incorporation. The Utility and Review Board (“URB”) declined to hold a plebiscite on the issue and ordered that the Town be incorporated. The Municipality appealed to the Court of Appeal. Before the appeal could be heard the Government of Nova Scotia amended the **Municipal Government Act** to, inter alia, suspend the Board’s order that a Town of Chester be incorporated and require the holding of a plebiscite. The amendment further directs that in the event of a “no” vote, the Board’s order of incorporation would be of no force and effect. Alternatively, if the vote was in favour of town status, then the order of the Nova Scotia Utility and Review Board would be reinstated. The ratepayers applied to the Supreme Court for a declaration of invalidity in relation to the amendment. (pursuant to s. 52(1) of the **Constitution Act, 1982**). Scanlan, J. declined to grant the declaration.

**ISSUES:** Did Justice Scanlan err in dismissing the application in that he failed to find that s. 4 of the *Plebiscite Amendment* violates the constitutional separation of powers under the **Constitution Act, 1867**; violates s. 96 of that same **Act**, and, as well, violates s. 7 of the **Canadian Charter of Rights and Freedoms**?

**RESULT:** Appeal dismissed. The enactment of s. 4, altering as it does, the conditions for the granting of town status, does not “supplant a core function” of the s. 96 Courts. It does not effect a transfer of the superior courts’ inherent supervisory authority to the Legislature or to a provincial tribunal. The effect of s. 4 is to remove from the URB and transfer to the electorate, the ultimate decision on town status. The URB, however, continues to play a role in the application process, which may ultimately lead to a vote, and the Board’s function in that regard is subject to appeal. Pursuant to s. 30 of the **Utility and Review Board Act, S.N.S. 1992, c. 11**, this Court’s power to review the decisions of the URB on matters of law or jurisdiction remains in tact. Nor does the impugned section, by injecting at this stage of the process the

requirement that there be a favourable plebiscite as a condition to town status, violate the appellants' s. 7 liberty interests.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.**