

NOVA SCOTIA COURT OF APPEAL

Citation: *Marshall v. Annapolis County District School Board*, 2011 NSCA 13

Date: 20110204

Docket: CA 323155

Registry: Halifax

Between:

Johnathan Lee Marshall, represented by
his Guardian, Vaughan Caldwell

Appellant

v.

Annapolis County District School Board
and Douglas Ernest Feener and Betty Acker

Respondents

JUDGE: The Honourable Chief Justice Michael MacDonald

APPEAL HEARD: December 1, 2010

SUBJECT: Negligence; motor vehicle pedestrian accident; duty on motorist to pedestrian; duty (if any) of children; civil jury trials; jury charges

SUMMARY: At the age of four, the appellant was seriously injured when struck by a school bus. He sued the bus driver but a Nova Scotia Supreme Court jury found no negligence. He now appeals to this court, alleging, among other things, errors in the judge's charge to the jury.

ISSUE: Did the judge commit reversible error in his charge to the jury?

RESULT: Appeal allowed - new trial ordered. In the absence of the jury, the judge ruled that as a matter of law, the child was too young to be contributorily negligent. Yet, when dealing with the defendant driver's potential negligence, the judge invited the jury to consider the child's responsibility to be that of an adult. This constitutes reversible error.

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 24 pages.