

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** R. v. Malcolm George, 2004 NSPC 28

**Date:** 20040202

**Docket:** 1268090

**Registry:** Kentville

**Between:**

Her Majesty the Queen

v.

Malcolm J. George

**Judge:** The Honourable Judge Alan T. Tufts

**Heard:** December 18, 2003 in Kentville, Nova Scotia

**Written Decision:** May 11, 2004

**Counsel:** Richard Hartlen for the Crown  
Defendant for self

**By the Court (orally):**

- [1] This is the matter of Regina v. Malcolm J. George. The trial of this proceeding occurred on December 18, 2003. The matter was set over for today's date to allow Crown counsel to review the jurisprudence in the area and to provide the Court with any applicable cases. Apparently no such cases could be located.
- [2] Here the defendant is charged under s. 103 of the **Motor Vehicle Act**. It is alleged that he was exceeding the speed limit in a school zone. The issue in this proceeding is whether children inside a building, which building is within 30 metres of the centre line of the highway constitutes “when children are present” as that term is used in s. 103(1) of the **Motor Vehicle Act**.
- [3] Section 103(1) and (2) of the **Motor Vehicle Act** read as follows:

(1) Notwithstanding any other provisions of this Act no person shall drive a motor vehicle at a speed in excess of 50 km/h on any portion of any highway designated as a school area by the erection of a sign when children are present on that portion of the highway or on land adjacent to that portion of the highway.

(2) For the purposes of (1) “land adjacent to that portion of the highway” includes the land within 30 metres of the centre of the travelled part of the highway.

- [4] The facts are undisputed. The defendant was driving west on Highway 1 near West Kings Regional High School at Auburn, Kings County, Nova Scotia. The appropriate signs were present marking the area as a school zone, thereby constituting a 50 km/h zone which was otherwise an 80 kph zone. It is undisputed that the defendant was exceeding 50 km/h but was travelling less than 80 km/h. It is also undisputed that no children were present on that portion of the highway nor outside the school. It is undisputed that the school was in session.
- [5] It is 19.8 metres from the centre line of the highway to the nearest portion of the school. The Crown argues very strenuously that because the children are inside the school and the school is within 30 metres of the highway, *ergo* there were children “on land adjacent to that portion of the highway” as that term is used in the **Motor Vehicle Act**.
- [6] Section 9(5) of the **Interpretation Act** requires that every enactment be interpreted to attain the objects of the enactment. Clearly the object of this

enactment is to protect children who are in relative proximity of school either as a result of a vehicle veering from the highway or guarding against the possibility of children inadvertently getting into the travelled portion of the highway. Obviously the legislature wanted motorists to slow down in such situations and use care when that possibility existed.

[7] In my opinion the object of the legislation did not envision a situation such as this, where the children were inside a school building where the risk to their safety as I described is not too readily apparent. If the legislature wanted to require motorists to slow to 50 kph when school was in session it could have easily and more clearly required that in the statute - it did not. In my opinion “children present on the land” does not include situations where the children are inside the building, even if the building is within 30 metres of the centre line of the highway.

[8] I should also add in this particular situation there is no evidence that while children may have been in the building that they were in that portion of the building which was within 30 metres of the centre line of the highway, in any event.

[9] Having made the above conclusions I find the defendant not guilty.

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ALAN T. TUFTS, J.P.C.