

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Walsh v. Marwood Ltd., 2009 NSSC 15

**Date:** 20090121  
**Docket:** Hfx No. 104865  
**Registry:** Halifax

**Between:**

Larry Joseph Walsh

Plaintiff

v.

Marwood Limited

Defendant

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**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** December 10 - 14, 2007; January 9, 2008, in Halifax, Nova Scotia

**Subject:** A subrogated claim by the Workers' Compensation Board under a provision of the former *Workers Compensation Act*, R.S.N.S. 1989, c. 508 (as amended), that would allow the Board to pursue a claim for injuries caused by negligence if the accident involved the driving of a motor vehicle.

**Summary:** A truck driver was injured when a part of the load he had delivered to the defendant's lumber yard fell on him while it was being off-loaded by one of the defendant's employees. The forklift being used to unload the truck was not registered under the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293 (as amended). The plaintiff argued that the forklift could have been registered as it was capable of being operated on a highway and in fact was used occasionally on the private access road used by members of the public and others to gain access to the site.

**Issue:** (i) Did the accident result from driving a motor vehicle that was required to be registered under the *MVA* and hence fell within the s. 19 exception to the statutory bar contained in s. 18 of the former *Workers' Compensation Act*?

(ii) If the proceeding is not statute-barred, is the defendant liable in negligence for the plaintiff's injuries, and was there contributory negligence on the part of the plaintiff?

**Result:** The forklift was not being operated as a motor vehicle at the time of the accident nor was it intended to be "operated upon a highway". Furthermore, there was no requirement that it be registered under the *MVA*. Neither the lumber yard or the private access road leading to it constituted a highway as that word is defined in the *MVA*. If the action had not been statute barred the defendant would have been vicariously liable for the negligence of its employee who was acting in the normal course of his duties. The plaintiff was not contributorily negligent.