

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
THE ATTORNEY GENERAL FOR CANADA IN RIGHT OF THE DEPARTMENT OF NATIONAL DEFENCE and HER MAJESTY THE QUEEN IN RIGHT OF CANADA  (Appellant)	- and -        Halifax, N.S.	M.J.D.        (Respondent)  BATEMAN, J.A. (Orally)
CA 165834		

---

[Cite as: **Canada (Attorney General) v. M.J.D., 2001 NSCA 13**]

APPEAL HEARD: January 23, 2001

JUDGMENT DELIVERED: January 23, 2001

WRITTEN RELEASE OF ORAL:

SUBJECT: Civil Procedure Rule 25.01(1)(a)

SUMMARY: The parties applied to a chambers judge on an Agreed Statement of Facts to determine a preliminary point of law (**Civil Procedure Rule 25.01(1)(a)**) - namely, whether the respondent (plaintiff in the main action) was precluded by s.111 of the **Pension Act**, R.S.C. 1985, c. P-7 and/or s. 9 of the **Crown Liability and Proceedings Act**, R.S.C. 1985, c. C-50 from suing the government for damages as a result of being raped by a fellow member of the Canadian Armed Forces, until she had exhausted her right to request a review or appeal the Minister's denial of her application for a pension. The parties discovered after the chambers judge had rendered his decision that one of the Agreed Facts was incorrect. The Crown asked that the chambers judge reconsider the matter taking into account the new fact. The respondent would not agree that he do so. Failing agreement of the parties, the chambers judge left the matter for appeal.

ISSUES: Appeal dismissed. The question before us, which is whether the chambers judge erred in his decision on the merits of the application, is moot. The decision of the chambers judge, due to the error in the Agreed Facts, is hypothetical and not responsive to the facts of this case. We cannot say that the incorrect fact was not material to the judge's determination. Should the parties remain of the view that this preliminary issue can be

decided under **Civil Procedure Rule 25.01(1)(a)** the proper procedure is to apply to chambers for a decision on the corrected record.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.