

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** Nova Scotia (Attorney General) v. Merriam, 2003 NSCA 111

**Date:** 20031021

**Docket:** CA196828

**Registry:** Halifax

**Between:** The Attorney General of Nova Scotia  
Appellant  
v.  
Thomas G. Merriam  
Respondent

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**Judge:** Roscoe, J.A.

**Appeal Heard:** October 16, 2003

**Subject:** **Civil Procedure Rule** 14.25, application to strike out statement of claim, *res judicata*

**Summary:** The respondent, a former civil servant, in an action commenced in 2001, claimed to be entitled to a deputy minister's pension. In a previous action commenced in 1994 he had claimed entitlement to a longer period of accrual of pensionable service. That action was settled by consent in 1996. In an application pursuant to Rule 14.25, the Province claimed that the current action was barred by the application of the doctrine of *res judicata*. The Chambers judge dismissed the application.

**Issues:** Did the Chambers judge commit reversible error?

**Result:** Appeal dismissed. Whether the claims actually made or which should have been made in the first action, are the same as those now advanced, and whether the 1996 release is sufficiently broad that it should be found to preclude the present action, are complex issues. It is far from obvious whether either *res judicata* or issue estoppel ought to apply, and the determination should not be undertaken summarily or without a full factual record, including examination and cross examination of the respondent.

**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 6 pages.**