

## THORSON v. A.-G. CANADA

Judgment pronounced January 22, 1974.

Reasons by Mr. Justice Laskin: concurred by Martland J., Ritchie J., Spence J., Pigeon J., Dickson J. Dissent Mr. Justice Judson; concurred by Abbott, C.J.

The case involves an action brought by the appellant for a declaration as to the constitutional validity of the *Official Languages Act*. The point of issue is whether the appellant has standing to bring such an action. Two cases figure largely in the judgment; *MacIlreith v. Hart* (1908), 39 S.C.R. 657 where the Supreme Court held an action was maintainable by a rate payer against a municipality for a declaration that an expenditure was illegal; the other case *Smith v. A.-G. of Ontario* [1924] S.C.R. 331 where it was held that an individual has no status or standing to challenge the constitutional validity of an Act of Parliament in an action for declaration unless he is specially affected or exceptionally prejudiced by it. The lower court applying the *Smith* doctrine found that the fact that the appellant, Thorson's, taxes will be raised along with everyone else's did not amount to special damage or prejudice allowing him to bring the action. Laskin, J. held that the substantive issue raised is justiciable and that it would be "alarming" if the alleged excess of legislative power could not be, in some way, made subject to adjudication. He held that the matter of standing was in the discretion of the Court and that the nature of the legislation being attacked by a taxpayer action is relevant to the exercise of that discretion; thus he distinguishes between the type of regulatory legislation being questioned in the *Smith* case, where standing was denied and the *Official Languages Act*. Laskin J. accordingly, as a matter of discretion, held that the appellant had standing and that the case should proceed to determination on its merits.

†D.G. Stanley

---

† Assistant Professor of Law, U.N.B.