Therefore, the wording of the by-law which forbade the display of all election signs, was not intended to apply during the actual period of a federal election.

The dissenters rejected the above proposition entirely. The by-law was viewed as provincial legislation in relation to property, which in its pith and substance is in relation to property and civil rights in the province, which can incidentally effect the means of propaganda used in a political campaign. The by-law was not seen as a substantial interference with parliamentary elections in Canada.

Robertson & Rosetanni v. The Queen (1963) S.C.R. 651

F: The plaintiffs wanted to conduct business on Sunday.

I: The Lord's Day Act was challenged on the grounds that it infringed on freedom of religion guaranteed in the Bill of Rights.

D: The Lord's Day Act did not infringe upon the freedom.

R: (a) Freedom of religion under the Bill of Rights means that Parliament cannot compel religious observance and does not apply to Sunday observance legislation having only a secular effect.
(b) The Bill of Rights, in speaking of freedoms, means freedoms as they existed in 1960, that is as limited by existing statutes. The term "freedom of religion" is so limited by the Lord's Day Act.

Dissent:
(a) Purpose and effect of the Lord's Day Act is to compel observance of Sunday as a holy day and so infringes the freedom of religion.
(b) Just because the Lord's Day Act was in force before the Bill of Rights does not mean Parliament did not consider it an infringement of religious freedom. To hold so would disregard section 5(2) of the Bill of Rights.
(c) Where there is irreconcilable conflict between an act of Parliament and the Bill of Rights, the latter must prevail. As the Lord's Day Act infringes on one of the preserved freedoms, it must be treated as inoperative.

The Queen v. Joseph Drybones (1970) S.C.R. 282

F: Section 94(b) of the Indian Act, R.S.C. 1952, c. 149 made it an offence for an Indian to be intoxicated off a reserve. Drybones was convicted of his offence in the Northwest Territories. There is no reserve in the Northwest Territories. The law was such that Drybones would not have been guilty of the offence if he had not been an Indian.

I: Did the law offend the Bill of Rights?

D: Yes.

R: Ritchie J. (for the majority):
In the Northwest Territories it is not an offence for anyone except an Indian to be intoxicated otherwise than in a public place. Thus an Indian may be convicted for being intoxicated in his own home (if that home is not on a reserve) where others would not be convicted. The Canadian Bill of Rights guarantees by section 1(b) that every individual has the right to equality before the law and section 2 provides that:
Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe, or to authorize the abrogation . . . etc. of any of the rights or freedoms herein recognized and declared.

This section means that "if a law of Canada cannot be sensibly construed and applied so that it does not abrogate one of the rights and freedoms recognized and declared by the Bill, then such a law is inoperative "unless it is expressly declared by an act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights."

"The word 'law' as used in section 1(b) of the Bill of Rights is to be construed as meaning 'the law of Canada' as defined in section 5(2) (i.e., Acts of the Parliament of Canada and any orders, rules or regulations thereunder) and without attempting an exhaustive definition of 'equality before the law,' I think that section 1(b) means at least that no individual or group of individuals is to be treated more harshly than another under the law, and I am, therefore, of the opinion that an individual is denied equality before the law if it is made an offence punishable at law, on account of his race, for him to do something which his fellow Canadians are free to do without having committed any offence or having been made subject to any penalty."

Since, therefore, section 94(b) of the Indian Act is a law of Canada, and does infringe on a fundamental freedom of the accused and is not declared by the Parliament of Canada to be operative in spite of the Canadian Bill of Rights, it must be considered suspended in so far as it is incompatible with the terms of the Canadian Bill of Rights.

Cartwright C.J. dissented because he felt that section 2 merely provided a canon of construction in interpreting federal statutes but did not permit the courts to go against the plainly expressed will of Parliament.

Attorney-General of Canada v. Lavell (1974) S.C.R. 1348; 38 D.L.R. (3d) 481

F: The Indian Act, passed under section 91(24) of the B.N.A. Act, provided that:
12 (1) The following persons are not entitled to be registered, namely . . .
(b) a woman who married a person who is not an Indian unless that woman is subsequently the wife or widow of a person described in section 11 (namely an Indian).

Mrs. Lavell and Mrs. Bedard were both Indian women who lost the right to be registered band members under the above section.

I: Was this provision of the Indian Act rendered inoperative by the Bill of Rights as only Indian women were removed from the register for marriage with non-Indians. Indian men were not similarly affected. The Federal Court of Appeal in Mrs. lavell's case, and the Ontario Supreme Court in Mrs. Bedard's case, had decided that section 12(1)(b) of the Indian Act was inoperative.

D: In a five-to-four decision, the appeals were allowed and section 12(1)(b) upheld. The true question was whether Parliament, in defining Indian status so as to exclude women of Indian birth who have married non-Indians, enacted a law which cannot be sensibly construed without abrogating or infringing the rights of women before the law. (This was viewed as the **Drybones** principle.)

R: Ritchie J. in summarizing his decision was of the opinion:
1. That the Bill of Rights is not effective to render inoperative legislation, such as s. 12(1)(b)Indian Act, passed by the Parliament of Canada in discharge of its constitutional function under s. 91(24) of the B.N.A. Act, to specify how and by whom Crown lands reserved for Indians are to be used;

2. That the Bill of Rights does not require federal legislation to be declared inoperative unless it offends against one of the rights specifically guaranteed by section 1, but where legislation is found to be discriminatory, this affords an added reason for rendering it ineffective;

3. That equality before the law under the Bill of Rights means equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land, and no such inequality is necessarily entailed in the construction and application of s. 12(1)(b).

Martland and Judson J. concurred.

Pigeon J.:
This result is in accordance with the view that the Bill of Rights was not intended to suppress all federal legislation over Indians. **Drybones** did not apply to a case like this.

The dissenters, Abbott, Hall, Spence and Laskin JJ. took the view that **Drybones** could not be distinguished from the cases. Also, effect must be given to the opening of section 1 of the Bill of Rights when invoking equality before the law, even if this approach was not taken in the **Drybones** case. There was also *dicta* to the effect that the Bill of Rights is not limited to resolving clashes between federal statutes. Furthermore, the Bill of Rights must override other statutes or provisions unless Parliament declares that the provision is to operate notwithstanding the Bill of Rights.

Comment

Look at the number and nature of intervenants in this case if you have problems reconciling this decision with that in the earlier **Drybones** case.

Standing

Who has standing to bring an action before the courts?

This has always been a problem in either tortious or constitutional cases wherein the person seeking recognition as plaintiff has to satisfy the court that he is acting in a bona fide manner and has specifically suffered extra damages.

Thorson v. A.-G. of Canada et al. (No. 2) (1974) 43 D.L.R. (3d) 1

F: Thorson, a taxpayer, sought to gain standing and sue for a declaration that the Official Languages Act was *ultra vires* the Parliament of Canada. The Attorney-General refused to act.

I: Did Thorson, as a taxpayer who would have to pay for the implementation of the act, have status to bring the action even though he would not suffer any greater damage than that suffered by other taxpayers?

D: In a five-to-four decision, Thorson was granted standing.

R: Judson J., Fauteux C.J.C. and Abbott J. held that Thorson, as an individual, had no status to challenge the constitutional validity of a Parliamentary act unless the old test of being "specially affected or exceptionally prejudiced" was me. An individual taxpayer's interest is no different from any other taxpayer's interest.

Laskin J., Martland, Ritchie, Spence, Pigeon and Dickson JJ. held that in a federal system it was not a necessary precondition that the private individual first request the attorney-general to bring proceedings or that the individual first be exceptionally prejudiced, as in public nuisance cases.

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by R. P. Heyman

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