



Case in Brief: **Canada (Minister of Citizenship and Immigration) v. Vavilov**

Judgment of December 19, 2019 | On appeal from the Federal Court of Appeal
Neutral citation: 2019 SCC 65

A person born in Canada to parents who were undercover Russian spies is a Canadian citizen, the Supreme Court has ruled.

Mr. Vavilov was born in Toronto in 1994. In 2010, his parents were arrested for spying in the United States, where they were living. Mr. Vavilov learned then that his parents had been undercover Russian spies his whole life. The United States sent the parents back to Russia as part of a spy exchange.

Mr. Vavilov tried to renew his Canadian passport. He was rejected twice. Officials said he needed proof he was Canadian, and his birth certificate wasn't enough. He needed a certificate of Canadian citizenship. He got this and applied again. But he still didn't get a passport. Instead, he got a letter from the Registrar of Citizenship. The Registrar makes the final decision on who is a Canadian citizen. The letter said giving Mr. Vavilov the certificate of citizenship was a mistake and that he was not a Canadian citizen.

The Registrar's decision was based on her view of the *Citizenship Act*. The general rule is that anyone born in Canada is a Canadian citizen. But there is an exception. This exception applies to a child of "a diplomatic or consular officer or other representative or employee in Canada of a foreign government." If neither parent is a Canadian citizen or permanent resident, the child won't be a citizen. The Registrar said the exception applied in Mr. Vavilov's case.

The Registrar relied on a report for her decision. The report was written by a junior analyst. The analyst noted there was no definition of "other representative or employee in Canada of a foreign government" in the Act. But she said it could include undercover spies. The analyst recommended the Registrar cancel Mr. Vavilov's certificate of citizenship.

Mr. Vavilov asked the Federal Court to review the Registrar's decision. The Federal Court ruled for the Registrar. It said the decision was "correct." The Federal Court of Appeal ruled for Mr. Vavilov. It said the decision was "unreasonable" and quashed (canceled) it. (To better understand what "correct" and "unreasonable" mean here, read the ["Case Law in Brief" on the Standard of Review.](#))

All the judges at the Supreme Court said the Registrar's decision was "unreasonable" and that the Federal Court of Appeal was right to quash it. They said Mr. Vavilov was a Canadian citizen.

The judges said the Registrar didn't justify her view of the law. They said she didn't properly consider lawmakers' debates, court cases, the text of the *Citizenship Act*, and international law. These sources showed that the exception was only meant to apply to people who had diplomatic "privileges and immunities."

Citizens have to follow all their country's rules. For example, Canadian citizens have to pay Canadian taxes and obey Canadian laws. But people working for foreign governments, like at embassies or consulates, don't always have to. They may have "privileges and immunities." These are like exceptions to the rules that citizens have to follow. They are meant to make sure one country can't meddle in another country's foreign policy through its officials. The officials need the privileges and immunities to do their jobs properly. That's why diplomats and other foreign representatives to Canada can't become Canadian citizens.

The majority said it didn't matter that Mr. Vavilov's parents were working for a foreign state. What mattered was whether they had privileges and immunities. They didn't. That meant the exception didn't apply to Mr. Vavilov.

Normally, if a court finds an administrative decision unreasonable, it will send it back to the decision-maker to try again. In this case, the majority said it wouldn't be useful to do that. Mr. Vavilov had already brought up all these issues and nothing changed the Registrar's mind. The judges said that Mr. Vavilov was a Canadian citizen.

This case was one of three cases known as the "administrative law trilogy." (The other two cases, decided in [Bell Canada v. Canada \(Attorney General\)](#), were about Super Bowl ads.) *Vavilov* and the Super Bowl ad cases were about very different issues. But they all dealt with an area of administrative law called "standard of review." To learn more about this (and to better understand the Court's reasons in this case), read the ["Case Law in Brief" on the Standard of Review.](#)

Breakdown of the decision: *Majority:* Chief Justice [Wagner](#) and Justices [Moldaver](#), [Gascon](#), [Côté](#), [Brown](#), [Rowe](#), and [Martin](#) dismissed the appeal | *Concurring:* Justices Rosalie Silberman [Abella](#) and Andromache [Karakatsanis](#) agreed that the Registrar's decision was unreasonable and was rightly quashed

More information (case # 37748): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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