



Case in Brief: ***Bell Canada v. Canada (Attorney General)***

Judgment of December 19, 2019 | On appeal from the Federal Court of Appeal
Neutral citation: 2019 SCC 66

A decision to allow US Super Bowl ads to be shown in Canada went beyond the CRTC's power, the Supreme Court has ruled.

The Canadian Radio-television and Telecommunications Commission is a federal body. It makes rules about TV, phone service, and internet on behalf of the government. Some of the rules deal with “simultaneous substitution” of TV broadcasts. “Simultaneous substitution” means replacing one station’s broadcast with another’s at the same time. If a Canadian TV station has the exclusive right to a program in Canada, under “simultaneous substitution” rules, it can make other stations use its version. This includes the commercials. Cable and satellite companies have to use this version on all their channels showing the program. The rules are meant to give Canadian TV stations a bigger audience. This way, they can make more money selling advertising. “Simultaneous substitution” isn’t allowed where it’s not in the public interest.

The Super Bowl has been shown on Canadian TV for over 40 years. Part of the experience has been the commercials. But, because of “simultaneous substitution,” viewers in Canada have always seen different commercials than viewers in the United States.

The public told the CRTC that it wanted to see the US Super Bowl commercials. So the CRTC decided that “simultaneous substitution” wouldn’t be allowed for the Super Bowl anymore. In 2015, it made a “policy statement” saying this. It made the official decision in a “Final Order” in 2016. The Final Order said the change would happen in 2017.

Bell Media bought the exclusive rights to show the Super Bowl on its CTV stations until 2019. Bell and the National Football League (which owned the copyright for the Super Bowl) disagreed with the CRTC’s decision. They said it didn’t have the power to make it. The Federal Court of Appeal agreed with the CRTC, saying its decision was “reasonable.”

But the majority of judges at the Supreme Court said the Federal Court of Appeal took the wrong approach. There are specific ways courts have to look at decisions made on behalf of the government by bodies like the CRTC. For some decisions, courts “review” the decision. But in this case, the law said the parties had the right to “appeal.” That meant the court had to treat the CRTC’s decision the same way it would treat a court decision. It had to look at whether the decision was “correct” in light of the law. (To better understand what “reasonable” and “correct” mean here, read the [“Case Law in Brief” on the Standard of Review.](#))

The majority agreed with Bell and the NFL. They said the CRTC didn’t have the power to make the decision. The decision was made under a specific section of the *Broadcasting Act*. The majority read the words of that section in their entire context. It looked at its wording and grammar, the purpose of the Act, and what Parliament intended when it passed it. It said that section only gave the CRTC power to order cable and satellite companies to carry specific *channels*. As part of that power, it could create terms and conditions the companies had to follow. Part of the reason for the section was to support Canadian content that cable and satellite companies might not consider profitable.

In this case, the CRTC was saying cable and satellite companies carrying US stations had to broadcast the US version of the Super Bowl, including the commercials. This was beyond the powers the CRTC had under that section of the Act. Going beyond its powers made the decision not “correct.” The majority didn’t decide whether the CRTC could make the decision under a different section of the Act, though.

The *Bell Canada* and *NFL* cases were two of three cases known as the “administrative law trilogy.” (The other case, [*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*](#), was about whether someone was a Canadian citizen.) The Super Bowl ad cases and *Vavilov* 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 these cases), read the [“Case Law in Brief” on the Standard of Review.](#)

Breakdown of the decision: *Majority:* Chief Justice Richard [Wagner](#) and Justices Michael [Moldaver](#), Clément [Gascon](#), Suzanne [Côté](#), Russell [Brown](#), Malcolm [Rowe](#), and Sheilah [Martin](#) allowed the appeals | *Dissenting:* Justices Rosalie Silberman [Abella](#) and Andromache [Karakatsanis](#) said the CRTC's decision to allow US Super Bowl ads was reasonable and would have dismissed the appeals

More information (case # 37896 & 37897): [Decision](#) | Case information ([37896](#), [37897](#)) | [Webcast of hearings](#)

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