

Citizenship and the Australian Constitution

Mum Did It: The Canavan Argument

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Featured image: Sen. Matthew Canavan (Source: [@mattjcan / Twitter](#))

*“A real Italian never blames his mum.” – Australian Greens **Senator Richard Di Natale**, SBS, Jul 27, 2017*

It has raged, and continues to do so, like a pestilence emptying the benches of the Australian parliament. Who will be the next to be carried off into political oblivion for violating section 44 of the Australian constitution, a dull but supremely destructive provision that disqualifies dual-citizenship holders from holding office?

The Greens were the first to be ravaged by the constitutionally driven illness, with Senators **Scott Ludlam** and **Larissa Waters** making their own discoveries that they had citizenships they were ignorant of. Both duly fell on their positioned swords, the latter with more feeling than the former.

Then came questions about One Nation **Senator Malcolm Roberts**, who still insists that he has neither British nor Indian connections. He reiterated to *The Australian* that he renounced his British citizenship on June 6 last year, though remains indifferent to producing the proof.

The same paper uncovered, last Friday, British High Commission records showing that the senator was born a British citizen, and that he had travelled on a British passport as a baby.[1] But Roberts, keeping matters tantalizing, has tweeted that he has the “necessary” documentation and “will soon release details of dual citizenship review I have called for.” (The desperation that calls for deflection.)

Novel excuses are being proffered in the latest round of outings. “As far as I am aware” is a common formulation, and it is not a vessel that holds much water: ignorance is far from convincing at the best of times. But it is exactly that ignorance that will form Nationals **Senator Matt Canavan**’s application to the High Court.

In the case of Senator Canavan, it is ignorance of one’s mother’s actions at the Italian consulate in Brisbane in 2006 to seek Italian citizenship. No papers, Canavan claimed, were signed. He took no active steps to become an Italian national. But there was devious mother Maria, beavering away behind his back to launch him into the soup. (Canavan was not *entirely* unaware – a family discussion had taken place a year prior.)

This blissful ignorance of a parent’s actions in supposedly signing you up for the citizenship of another country is fodder for satirists, not to mention those questioning a politician’s sense of awareness. The imagination on this point is piqued, though, as with other matters

of the imagination, not necessarily plausible.

Sara Bucalossi, a visa procurement associate at one of Italy's largest immigration law firms, Mazzeschi, certainly thought as much.

"It doesn't matter if someone else wants to apply for you, not your parents, not even your wife, because you're an adult at that point, you make the decision for yourself." [2]

Italian consulates in Australia, Bucalossi also noted, tended to follow this to the letter. Sarcastically, she did observe that, given the numerous consulates spread across the globe, she could not confirm the possibility that Canavan's shoddy reasoning might be credible. Perhaps "in Mongolia or something like this?"

Each day brings forth another horde of gold. It is now clear that Canavan has been listed on the Registry of Italians Residing Abroad in addition to receiving Italian voting forms addressed to him, though sent to his mother's address for the last 10 years.

Other colleagues have been sceptical of the senator's defence. The Greens leader, **Senator Richard Di Natale**, is understandably short on kindness, given the savaging loss of two senators from his team.

"Now Senator Canavan should do the right thing by the Australian people and resign immediately."

To date, Canavan has merely left the Cabinet.

Senator Cory Bernardi of the Australian Conservatives suggested that Canavan was promoting a variant of the "dog ate my homework" excuse.

"My father was Italian. We inquired into these citizenship matters many, many years ago and we found it was simply impossible to do as an adult, unless you were part of it yourself." [3]

The always colourful **Bob Katter**, federal MP from Queensland, found Canavan's reasoning near ludicrous.

"If you're telling me someone was made a citizen of another country without your knowledge, you'd be seriously testing my intelligence, I mean, give me a break!"

The forum Canavan will have to convince is the High Court of Australia, which will need in the order of six months, at the bare minimum, to consider the case. Given their rigid, formal interpretations of section 44, the chances for exemption are questionable.

Nothing in the provision suggests that a mental state, or volition, are necessary ingredients to be taken into account on discovering you are the national of another country. As one legal opinion voiced to AAP went,

“I can’t see there’s suddenly any flexibility or discretion to create a consent because no one consents to citizenship.”[4]

Gabrielle Appleby of UNSW prefers to see it in more problematic terms, focusing on the taking of “all reasonable steps to renounce citizenship”.

The active element here is that of being entitled to a foreign nationality, and the active renunciation of it, a point made by the majority in *Sykes v Cleary [No 2]* (1992).[5] Having to “acquiesce” to it would perhaps be a reasonable extension (the dissenting view of **Justice William Deane** suggests this), but would require judicial adventurism Australian judges are not renowned for. That is a mountain Canavan and this government will have to climb.

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Notes

[1] <http://www.theaustralian.com.au/national-affairs/no-papers-but-malcolm-roberts-in-clear-over-citizenship/news-story/d43b740016c9d0b54c2381acc0b9b731>

[2] <https://www.theguardian.com/australia-news/2017/jul/26/matthew-canavans-dual-citizen-account-questioned-by-italian-immigration-experts>

[3] <http://www.abc.net.au/news/2017-07-26/senator-canavan-urged-to-resign-amid-citizenship-row/8746588>

[4] <http://www.sbs.com.au/news/article/2017/07/26/liberal-senator-matt-canavans-future-rests-high-court-flexibility>

[5] <http://eresources.hcourt.gov.au/showbyHandle/1/231112#XN.37>

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