LAW SCHOOL

The Passport and Credentials: a Case Brief

A Nation's passport, the border, and the law of travel documents.

The issue

What legal effect, if any, does the Nation's passport have at a Canadian or foreign border; and how do Canadian law on passports and forgery, and the border rights asserted by Mohawk people, bear on its use?

The instruments

Instrument	Date	What it does
Jay Treaty, art III	1794	Free passage for Indians across the border, as asserted
ICAO Doc 9303	8th ed, 2021	The world passport standard
Canadian Passport Order	SI/81-86	Canada's own passports
Criminal Code, s 57	RSC 1985, c C-46	Forging or uttering a passport
UNDRIP, art 33; UN Declaration Act	SC 2021, c 14	Identity and membership

The statutes

Canadian Passport Order, SI/81-86.

Immigration and Refugee Protection Act, SC 2001, c 27.

Criminal Code, RSC 1985, c C-46, s 57.

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.

The cases

> ***Mitchell v MNR***, 2001 SCC 33
> A Mohawk of Akwesasne did not establish an Aboriginal right to bring goods across the border free of duty.

The arguments

	For the border authority	For the holder
Status	Not a Canadian passport; acceptance is discretionary	A genuine document of a Nation, to ICAO standards
Forgery	Any document resembling a passport invites scrutiny	It imitates no state's passport; it is the Nation's own (s 57 is not engaged)
Border rights	Mitchell: no Aboriginal right of free passage for goods	The holder relies on identity, not on duty-free passage
UNDRIP	Interpretive only	Art 33 supports a people's own identity documents

Weak points to test

For the holder: discretion at the border; Mitchell's reasoning on cross-border rights. For the authority: the document is genuine and checkable; UNDRIP and its federal Act.

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Briefing note

A border services officer is presented with the Nation’s passport by a traveller who also holds a Canadian passport. In 150 to 200 words, advise the officer: what the document is, how to check it, and what to record. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

A traveller is charged with uttering a forged passport after presenting the Nation’s passport at a port of entry. The defence argues the document is genuine, issued by the Nation, and resembles no Canadian passport.

For the defence: the elements of s 57, the document’s genuineness, UNDRIP art 33. **For the Crown:** the purpose of s 57 and border integrity. **For both:** what “forged” means for a document a Nation actually issued.

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A worked outline: IRAC

Step	For the defence
Issue	Is the Nation’s passport a forged passport under s 57?
Rule	The elements of s 57; the meaning of a false document.
Application	The document is what it says it is: the Nation’s passport, genuinely issued and checkable on its Register; it imitates no state’s passport.
Conclusion	No offence: an acquittal.

The Crown’s outline runs the same four steps the other way. Students draft it themselves.

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Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the defence or the Crown, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

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For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
TRC Call to Action 28	Indigenous identity and the border (Mitchell), and UNDRIP.
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a border officer; a moot on a criminal charge.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side's best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River's position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

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