

2019



Hfx No. 490119

**Supreme Court of Nova Scotia**

**Between:**

**Stephen Joyce, Robert Cooper, E. Dianne Langley, and Kenneth Langille**

**Plaintiffs**

**and**

**The Attorney General of Nova Scotia representing Her Majesty the Queen in right of the  
Province of Nova Scotia**

**Defendant**

**Affidavit**

I, Kenneth Langille, of Aspen, Nova Scotia, make oath and give evidence as follows:

1. I am a proposed representative plaintiff in this action.
2. I have personal knowledge of the evidence sworn to in this affidavit, except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.

**Personal Background**

4. I am 59 years old. I live in Aspen, Nova Scotia.
5. I have been a member of the Native Council of Nova Scotia ("NCNS") since 2010. The NCNS is the Self-Governing Authority for Mi'kmaq/Aboriginal Peoples residing off-reserve in Nova Scotia throughout traditional Mi'kmaq Territory. I participate actively in the NCNS.
6. I have held an Aboriginal and Treaty Rights Access Passport ("ATRA Passport") since 2010. My current ATRA passport number is 8-1535. Copies of my current and past ATRA passports are attached to my affidavit as **Exhibit "A"**.

### **I am a Non-Status Mi'kmaq Indian**

7. I am Mi'kmaq. I self-identify as Mi'kmaq, I am of Mi'kmaq ancestry, and I am accepted by my community as Mi'kmaq.
8. I am not a person registered as an Indian under the *Indian Act*; I am not a "Status Indian."
9. I am a direct descendant of the Mi'kmaq community at Wycomocagh, Cape Breton Island. I am a beneficiary of the 1760/61 Treaty between the Mi'kmaq and Her Majesty.

### **My Use of the ATRA Passport**

10. Up until the Province of Nova Scotia's decision in 2017 to revoke recognition of ATRA Passports, I exercised my right to hunt and harvest in Nova Scotia using my ATRA Passport. In particular, I participated in the annual moose hunt in Cape Breton Island. I normally harvested one moose per year.
11. I have not been able to hunt since the Province's decision to revoke recognition of ATRA Passports.
12. As someone on a limited income, I used to rely on the meat I hunted and harvested using my ATRA Passport to feed myself and my family. Following the Province's decision to revoke recognition of the ATRA Passport system in 2017, I have been forced to frequently go without meat, because I cannot always afford the cost of store-bought meat.

### **My Qualifications as a Representative Plaintiff**

13. I believe I can fully and adequately represent the interests of the proposed class.
14. To the extent necessary, I can also represent the interests of the subclass of plaintiffs who have or assert rights pursuant to the 1760/61 Treaty and/or an Aboriginal right to hunt and harvest natural resources. I am a member of this subclass.
15. I have familiarized myself with the common issues of this case and the nature of the evidence in this case. With my involvement in NCNS and the Mi'kmaq community, I believe I am well-suited to assist counsel to the Class ("Class Counsel") with advancing this claim.
16. I am prepared to act as the representative plaintiff for the Class, or any other class as may be defined by the Court.
17. I understand the major steps in a class action are generally:
  - (a) the action is commenced by Statement of Claim;

- (b) the representative plaintiffs brings a motion for certification of the actions as a class action;
- (c) if the motion is successful, then notice of the certification is delivered to the Class, and the Class Members are given an opportunity to opt-out;
- (d) discovery of each side's documents, including preparation of an affidavit of documents and production of all relevant, non-privileged documents;
- (e) examination for discovery, of me as one of the representative plaintiffs, and of a representative of the Defendant;
- (f) a pretrial conference, where a judge helps parties explore the possibility of settlement, narrow the issues for trial and otherwise focus the parties on the requirements for trial;
- (g) a trial of the common issues;
- (h) notice to the class for their participation if individual participation is required;
- (i) determination of the common issues;
- (j) distribution of the judgment (or proceeds of settlement, if the action is settled); and
- (k) there may be appeals from the certification order, from other court orders, or from the judgment at the common issues trial.

18. I understand that by acting as a representative plaintiff, it is my responsibility to:

- (a) become familiar with the issues to be decided by the court, which I have done;
- (b) review and approve the statement of claim and any amendments to it, which I have done;
- (c) assist in the preparation of the material in support of the motion for certification, which I have done;
- (d) attend, if necessary, any cross-examination on this affidavit and any other affidavit I may swear in support of certification of the action as a class proceeding;
- (e) assist in the preparation of an affidavit of documents listing all relevant documents in my possession, control or power, and execute it;



- (f) attend at an examination for discovery, where I will be asked questions about the nature of my claim;
- (g) assist with the preparation for the trial of this action, or with respect to any proposed settlement, as requested and/or required by my counsel;
- (h) attend at the trial of the common issues, and give my evidence regarding the case; and
- (i) assist in the preparation of and execution of an affidavit in support of a motion for approval of any settlement that my counsel and I agree is in the best interests of the class.

19. To date, I have taken the following steps to fairly and adequately represent the interests of the proposed Class:

- (a) educated myself on the ATRA Passport system and the Province's decision to revoke recognition of the ATRA Passports;
- (b) to the best of my ability, continually monitored changes to the system;
- (c) retained the law firms of Paliare Roland Rosenberg Rothstein LLP and Patterson Law as Class Counsel, and instructed them to commence this proceeding;
- (d) provided information for the statement of claim and this certification motion, including compiling information about my genealogy and lineage;
- (e) reviewed and approved the statement of claim;
- (f) aided in the drafting of this affidavit; periodically reviewed the content of the class action information websites posted by plaintiff's counsel on their respective firms' websites and by the NCNS; and
- (g) requested and received status updates from Class Counsel and the NCNS on a bi-monthly conference call.

20. I have also reviewed the Litigation Plan set out at Schedule B to the Notice of Motion.

21. I do not have any interest in conflict with the interests of the other members of the Class. I believe that I can fairly and adequately represent the interests of the Class, and I am committed to doing so.


22. I swear this affidavit to support my motion for certification and no improper purpose.

**SWORN** before me in Truro, in the  
Province of Nova Scotia, this 30<sup>th</sup> day of  
January, 2020.



Robert H. Pineo

A Barrister or Solicitor of the Supreme  
Court of Nova Scotia.



Kenneth Langille

**ROBERT H. PINEO**  
A BARRISTER OF THE  
SUPREME COURT OF NOVA SCOTIA

20 19 No 490119  
This is Exhibit A referred to in the  
Affidavit of Kenneth Langille  
sworn before me this 30 day of January  
A.D. 20 2020  
Robert H. Pineo  
A Barrister of the Supreme Court  
of Nova Scotia

ROBERT H. PINEO  
A BARRISTER OF THE  
SUPREME COURT OF NOVA SCOTIA



NATIVE COUNCIL OF NOVA SCOTIA

**ABORIGINAL & TREATY RIGHTS  
ACCESS (A.T.R.A.) PASSPORT  
IDENTIFICATION CARD**

In the name of Mi'kmaq Nationimow, the Bearer of this A.T.R.A. Passport is a citizen of the Nationimow and entitled to all privileges and immunities thereto appertaining.



**Name: Kenneth W. Langille**

**D.O.B. 18/12/1960 Height: 5'10**

**Weight: 195 Lbs Sex: M Hair: Grey Eyes: Blue**

**Date of Issue: 26/02/2015 Date of Expiry: 25/02/2020**

**Bearer's Children:**

**A.T.R.A. # 8-1535**

**Signature:**

*Grace Conrad*

(Grace Conrad, Chief & President, Native Council Of Nova Scotia)



the Netukulimkewé Commission, the natural resource management authority for the large community of Mi'kmaq/Aboriginal people residing off-reserve in Nova Scotia throughout traditional Mi'kmaq territory and within the Mi'kmaq nation. I request in the name of the Mikmawey Mawiomi, to all those to whom it may concern, to allow the Bearer of this card to pass freely without let or hindrance and to allow the Bearer the free liberty of hunting, fishing, bowling and trade as usual and to afford the Bearer such assistance and protection as may be necessary. The Bearer of this passport is a person of Mi'kmaq ancestry, deemed an Aboriginal person and is a beneficiary of Aboriginal, Treaty and other rights guaranteed by Section 25 of the Canadian Constitution and Part 2 Section 35. It is to be used only by the Bearer in whose name it is issued and children under the age of 16 whose names are included on it.

This Aboriginal and Treaty Rights Access (A.T.R.A.) Passport is the property of the N.C.N.S. Netukulimkewé Commission and it must not be altered and should be safe guarded in every way. The Bearer is advised to keep the passport number recorded separately from this card. If lost or stolen or destroyed report at once to the N.C.N.S. A.T.R.A. Passport office, Netukulimkewé Commission, P.O. Box 1320, Truro, Nova Scotia B2N 5N2 or call toll free 1-877-565-1752. If surrendered to any person or agency and not promptly returned, immediately report this occurrence to the N.C.N.S. Netukulimk Office.



**A.T.R.A. PASSPORT IDENTIFICATION CARD**

In the name of the Mikwac Nations, the Bearer of this A.T.R.A. Passport is a citizen of the Mikwac Nation and entitled to all privileges and immunities therein.

**Name: Kenneth W. Langille**

D.O.B. December 18, 1969 Height 5' 10"  
Weight 180 lbs. Sex M Hair Grey Eyes Blue  
Date of Issue October 8, 2010 Date of Expiry October 7, 2015  
Bearer's Address: N/A

**A.T.R.A. No. 8 - 1535**

This Passport is not valid unless signed by the Chief and President and the Bearer's photograph are added.

Signature

Tulawa Council Chief & President, Nation Council of Nisw Society

Not valid unless imprinted with the seal of the Mikwac Nations 1 Commission

The Mikwac Nations 1 Commission, the national management authority for the large community of Mikwac/Aboriginal people residing off-reserve in Nova Scotia throughout traditional Mikwac territory within the Mikwac Nation's request to the name of the Mikwac Nations, all those to whom it may concern to allow the Bearer to pass freely without let or hindrance and to allow the Bearer free liberty of hunting, fishing, trapping and trade as usual and to allow the Bearer such assistance and protection as may be necessary.

The Bearer of this passport is a person of Mikwac ancestry, deemed an Aboriginal person and is a beneficiary of Aboriginal, Treaty and other rights guaranteed by Section 25 of the Canadian Constitution and Part 2 Section 38.

It is to be used only by the Bearer in whose name it is issued and obtained under the sign of 40 whose names are included on it.

This Aboriginal and Treaty Rights Access Passport is the property of the Mikwac Nations 1 Commission and it must not be altered and should be safe guarded in every way.

The Bearer is advised to keep the passport secure and recorded separately from this card. If lost or stolen or destroyed report at once to the A.T.R.A. Passport office, Mikwac Nations 1 Commission, P.O. Box 1300, Truro, Nova Scotia B9N 1W2 or call toll free 1-877-966-1762. If surrendered to any person or agency and not promptly returned, immediately report this occurrence to the Mikwac Nations 1 Commission.



*ATRA CARD MAILED REGISTERED  
OCTOBER 15, 2010*

*ATRA BOOKLET MAILED  
REGISTERED 25-10-10*