

IN THE MATTER OF MY REPRESENTATION OF BUFFY SAINTE-MARIE

AFFIDAVIT OF DELIA OPEKOKEW

I, Delia Opekokew, of the Canoe Lake Cree First Nation, resident in Toronto, Ontario, as the legal counsel representing Buffy Sainte-Marie at the time she sought to investigate her Indigenous ancestry, make oath and say (or affirm) that:

1. This Affidavit is prepared in support of Buffy Sainte-Marie's defence of allegations that inconsistencies in her personal identification documents equate to Indigenous identity-fraud or misrepresentation.
2. The first time I heard Buffy Sainte-Marie's song 'Now That the Buffalos Gone' was on the Radio in Regina in approximately 1966. I was at my first job as a clerk typist with the Government of Saskatchewan after having attended Secretarial School and Indian Residential Schools. I was struck dumb with admiration and pride. I had never heard anyone speak the truth as she did about our people with such force and the joy of music. I used to walk around in Regina, Saskatchewan, with my head down as I was hit upon by white men with sexual solicitations and/or racism. From then on, after hearing Buffy so loudly and honestly expose our truth, I lifted my head with pride. I immediately recognized she could not have composed the song and sung it from her heart, without knowing and understanding our collective truths and experiences as Indigenous women.
3. When I first moved to Toronto, in 1968, I worked with a group called the Ontario Native Development Fund – it was a Program of the Indian Eskimo Association of Canada in 1968 to about 1970. During that period, I organized a fundraising concert at Convocation Hall and cold-called Buffy Sainte-Marie, and she agreed to perform at the concert. That is how I met her.
4. I worked for Buffy Sainte-Marie in 1972 at the Native American Center for the Arts in New York City, United States, and was her administrative assistant.
5. I was called to the bar as a lawyer in 1979 in Ontario, and later in about 1988, in Saskatchewan, also. I continue to be an active member licensed to provide legal services in both provinces.
6. I articulated with Norman Zlotkin and then joined him in 1979 as partners, Zlotkin Opekokew in Toronto, but I left in 1980 to return to Saskatchewan, where I was general counsel to the Federation of Saskatchewan Indians, (FSI) now the Federation of Sovereign Indigenous Nations (FSIN).
7. Buffy Sainte-Marie asked me to represent her, and she became my client in the 1970's and 1980's for the purposes of assessing her rights to Indian status and Canadian citizenship.
8. In the course of my work on this task, I attended the Piapot Indian Reserve, Saskatoon, Ottawa and other places throughout Canada.
9. I met with Emile and Clara Piapot and other members of the Piapot family. I met with Noel Starblanket, from Starblanket First Nation, which is close to Piapot First Nation. He

was the National Chief of the National Indian Brotherhood, which is now the Assembly of First Nations, at one time. I also spoke with Jean Goodwill, who was the first Indigenous nurse in Saskatchewan. We were good friends at the time, and I do not recall the specific locations of our meetings as we were both engaged in regular national and international travel.

10. I knew Noel Starblanket from when we attended the Lebret Indian Residential School at the same time in the early 1960s and I later worked for him. I first met Jean Goodwill when I ran for the Indian Princess of Canada in 1967. She was one of our chaperones. Later that same year I got to ride on the Saskatchewan Roughriders float as a Princess in 1967 in Ottawa. I stayed at her place then. I met Emile Piapot through Buffy Sainte-Marie.
11. During my representation of Buffy Sainte-Marie, I conducted interviews with these individuals which I recorded in writing. I have conducted a reasonable search of my office and determined that the documentary records of my representation would likely have been destroyed after seven years in keeping with legal business practices and law society requirements. However, I have recently been provided a copy of some of the documents that Buffy Sainte-Marie had kept, that she received from me during this period, and have reviewed them. The documents themselves continue to be solicitor/client privileged, but they confirm my recollection of the events.
12. I recall specifically from my investigation that Emile Piapot said to me Buffy Sainte-Marie was his daughter. Clara and Emile both represented that Buffy Sainte-Marie was their daughter. At the time, they did not identify that she was their daughter by way of adoption, and it would not have been appropriate for me to question the character of their assertion that she was their daughter. I respected his belief and knowledge, and I did not question him. My understanding at the time, which continues to be my understanding today, is that, in keeping with Cree laws including *Wahkohtowin*, which is our kinship, whether Buffy Sainte-Marie was adopted or not, she was the daughter of Emile and Clara Piapot of Piapot First Nation without distinction.
13. Noel Starblanket voluntarily approached me about his relationship as a relative of Buffy Sainte-Marie and shared oral history evidence with me that his family had told him Buffy Sainte-Marie was born north of Piapot to a single woman who could not care for her, and that she gave Buffy as a baby to an American family who happened to be in the Piapot area.
14. Jean Goodwill worked at the Fort Qu'Appelle Indian Hospital in the 1950s. I spent a lot of time with Jean, and she taught me to be honourable and respectful of our Cree traditions. I also was her lawyer when she founded the Indian Nurses Association of Canada. She conveyed to me that a large part of their prenatal work was to educate Indian mothers that it was important to register their babies with the government, such as to get birth certificates. She said it was common for Indigenous people not to trust the government and not to register their children with the governments. She said it would

have been quite normal for Buffy Saint-Marie's birth mother not to have registered her birth.

15. I, myself, did not have a birth certificate until I was one years' old. It is my understanding and belief, from my personal experiences and the research I have reviewed in my over Forty years of legal practice, that it was easy and common for Indigenous children's names to be changed, their identities stolen, for them to go missing, even be murdered, and very easy for them to be adopted without any physical record surviving to corroborate their existence. This is evidenced repeatedly in the Royal Commission on Aboriginal Peoples (1991), the Report of the Truth and Reconciliation Commission (2015), and the Interim Report of the Special Interlocutor (2023).
16. In respect of the oral evidence given by Elders and traditional keepers from Emile Piapot, Noel Starblanket and Jean Goodwill, I analyzed the evidence and decided that the various Elders, and traditional Knowledge Keepers had proven that it is more probable than not the events they described actually happened. Their telling of their history on Buffy Sainte-Marie's identity were credible and reliable. Guidance for discharging this sometimes-onerous responsibility has recently become abundant.
17. Guidance is provided by the following case, *DM v. Attorney General (Canada) et al*, 2004, SJ 289 (QB), which is particularly apt:

Credibility assessment includes consideration of the consistency and inconsistency in the evidence given by the witnesses, including the Plaintiff, with testimony or evidence otherwise given at other times, the existence of independent and reliable evidence from other sources with respect to occurrences alleged or matters collateral to those occurrences, and the reasonableness of the account in the context of the totality of the circumstances. Occasionally, a witness' demeanor may impact on this credibility assessment, however, this is not as reliable as the other approaches outlined.
18. There was consistency in the witnesses to Buffy Sainte-Marie's identity. The oral history is therefore trustworthy.
19. In the 1980s, around the same time as I was conducting this investigation, I was engaged in Treaty research and begun a lifelong task of learning the Indigenous perspective of our Treaties. I understood already the difference between Indigenous record keeping in the 1980s. I believe I interviewed Emile Piapot in our Cree language, making my understanding of his perspective even more accurate. The following excerpt of my writing on the cultural and linguistic differences relevant to the interpretation of Treaties, is pertinent to the manner in which I was able to comprehend the Indigenous perspectives of Buffy Sainte-Marie's role in the Piapot family:

Cultural and linguistic differences compounded the divergent interpretations of what was negotiated by the treaty-making parties. The interpreters were attempting to communicate culturally-based concepts, which would not have an

equivalent meaning in the other language. Language is the means of expression of a people's shared cultural values and world-view. It would have been difficult to find concepts that have the same meaning for each side in the negotiating stage. To attempt to set these concepts down in written form in the language of only one of the parties, so that it corresponds to the understanding of another party having an oral tradition, would be exceedingly difficult, if not impossible. Leaving aside the question of bad faith bargaining, the cultural and linguistic differences alone resulted in misunderstandings.

Using the example of the cession language in the later treaties one must look at the cultural meaning of the words "cede, release, surrender and yield ...forever their rights, titles and privileges whatsoever to the lands" and endeavour to understand what those words meant to each party. There is not a meeting of the minds. Another factor is the customs, habits, and experiences of modern judges, who are faced with the task of identifying and interpreting the treaty terms in court. Similarly relevant are the customs, habits, and experiences of the elders who seek to convey and interpret the true oral promises underlying the treaties. We are faced with the insurmountable problem of not only language problems but cross-cultural problems. It has been recognized that the person who "has never lifted the 'language curtain' behind which other people move and talk and think and feel in a way which is peculiar to them, may not even suspect that there is a way of living which is distinct from his own, let alone understand it."

Unfortunately, only the Anglo-Canadian system of law, based on customs, values, and practices foreign to Indian people, is applied in interpreting Indian treaties. The mistakes which arise from such a practice are overwhelming. A language has specialized vocabularies reflecting a people's unique solutions and explanations of their concepts. The language used in the treaties refers to and explicates a landholding system, and deals with concepts such as the surrender of and rights to the land that are foreign to Indians. The European concept of land holding does not have an equivalent in the Indian cultures. There was a meeting of the minds when treaties dealing in these concepts were signed.

20. It has taken many years of evolving jurisprudence in the area of Indigenous legal issues for oral history to be recognized with the same level of accuracy, credibility, and reliability, as documentary evidence. However, our Indigenous ways of recording, knowing, and sharing our knowledge are as meaningful to us in our laws, as the law of evidence in common law. The common law has opened up to accept these concepts in keeping with the rule of law, the principle of correctness, and the Honour of the Crown. See cases such as *Ontario (Attorney General) v Bear Island Foundation*, [1985] 1 CNLR;

Delgamuukw v British Columbia, [1997] 3 SCR 1010; *R v Sparrow*, [1990] 1 SCR 1075; *Mitchell v M.N.R.*, [2001] 1 SCR 911; *Restoule v Canada*, 2018 ONSC 7701; *Kawacatoose First Nation et. al. and Star Blanket First Nation and Little Black Bear First Nation and Standing Buffalo Dakota First Nation and Peepeekisis First Nation v. Her Majesty the Queen in Right of Canada*, 2019 SCTC 3; *Siska Indian Band v Her Majesty the Queen in Right of Canada*, 2021 SCTC 2; *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc.*, 2022 BCSC, etc.

21. At no point during my investigation did I form any knowledge or belief that Buffy Sainte-Marie's birth certificate from the United States was a representation of Buffy Sainte-Marie's identity and origins. I have since become aware, through my work as a Deputy Chief Adjudicator in the Independent Assessment Process set up to adjudicate Claimants' Indian Residential School Claims, that many First Nation individuals have experienced difficulties accessing information to their original identities as a result of harmful Colonial practices and the application of non-Indigenous perspectives to Indigenous children and families. It is my perspective and belief that these general practices corroborate and are not inconsistent with the oral history evidence I received about Buffy Sainte-Marie's origins from Noel Starblanket.
22. I have no doubt that Buffy Sainte-Marie is an Indigenous woman with community accountability through her Piapot family in Saskatchewan.
23. It is my perspective as a Cree lawyer, and the first Indigenous female lawyer to be called to the bar in Ontario, as well as the first Indigenous female lawyer to be called to the bar in Saskatchewan, that a person forms a lived identity through their family, their community, their environment, their teachings, and their sacred relationship with themselves and the Creator. I, myself, have a lived identity as an Indian Residential School survivor, taught to think and educate myself, and work in a manner that is Colonial and not in keeping with my traditional Cree knowledge and laws. I am also an Indigenous woman, daughter, sister, aunt, and kookum, with a family and community who keep me grounded in my traditional Cree ways of knowing and being, helping me to restore the schism existing internally as I address having my culture stripped from me since childhood in Residential Schools.
24. It is my opinion and honest belief that Indigenous children who have been apprehended, adopted, scooped, or who have attended Residential School, such as myself, continue to be Indigenous. And, children who are raised by Indigenous peoples without knowledge of where they come from other than their Indigenous family, are as much a member of our Indigenous family and community under our laws, as other immigrants of Canada are Canadian under common law. I note that "Powers Related to Canadian Sovereignty, Defence and External Relations", including immigration to Canada from a foreign country, is explicitly one of the areas of self-government that falls outside the scope of "The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government"; Canada's policy on negotiating self-

government agreements. Outside of our agreements with Canada, our ability to determine our membership is an expression of our inherent rights given to us by the Creator.

25. Attached to my affidavit as Exhibit "A" is a copy of a letter I wrote in my capacity as counsel for Buffy Sainte-Marie to Paddy Sampson of CBC, Toronto, dated May 27, 1980, wherein I explain:

After researching the matter over a two (2) year period it is my opinion that proving her birth would create a special and unusual hardship. In general, it is difficult to prove Indian births prior to 1944. The majority of Indian mothers, until the past twenty (20) years, had their children at home and did not register them unless there was a practical reason to do so. In 1944 the transfer payment legislation to distribute family allowances was passed and only then was it practical for Indian families to register a child's birth immediately. In Ms. Sainte-Marie's case, it was the practice for the community to encourage single mother[s] to give up their children for adoption. Indian people were generally outside the system and were unaware of the requirements of such matters as the formal adoption process. It would appear from the evidence available that Ms. Sainte-Marie was given up for adoption without any written records having been kept. Those people who have direct knowledge of the circumstances are unavailable or for health reasons unable to provide us with the information. On the other hand, there are many instances of people having knowledge of Ms. Sainte-Marie's history. Her mother, an unmarried woman, was from the Piapot Indian Reserve and had Buffy at Craven, Saskatchewan in a private home and eventually gave her up for adoption to a couple who were in the area at the time.

I personally conducted interviews with the people from the Piapot Indian Reserve and the Starblanket Indian Reserve in English and in Cree. It is my opinion that there are no written records of Ms. Sainte-Marie's birth. Her background is not exceptional in a culture whose people have always recorded their past orally. It is in everyone's best interest if Ms. Sainte-Marie were granted citizenship without such written proof as she has met the criteria for s.5(4) of the Citizenship Act when such proof can be waived.

26. I make this affidavit in good faith.

Sworn before me, remotely, by Delia Opekokew, in the City of Toronto, before me at the Town of New Tecumseth, Ontario, on October 25, 2023 in accordance with O. Reg. 431/20.



Signature of Commissioner (or as may be)

J. de Villiers
LSO # 81323N

Being a Solicitor

* Recording retained on
file.



Signature of Deponent

ZLOTKIN & OPEKOWE

Barristers & Solicitors,

280 BLOOR STREET WEST, SUITE 202
TORONTO, ONTARIO
M5S 1W1
TELEPHONE (416) 967-5900

May 27, 1980

Mr. Paddy Sampson
c/o CBC - TV
Toronto, Ontario

Dear Mr. Sampson:

RE: Buffy Sainte Marie

Pursuant to our conversations, the following is my opinion of Ms. Sainte Marie's position as a Canadian citizen or lack thereof and my suggestions for acquiring such status.

There are two avenues available for a person to reacquire their citizenship. The ordinary way requires proof of the Canadian birth by documentation and, also, proof that a person has not acquired the nationality or citizenship of another country. Alternatively, the Secretary of State (presently the Honourable Francis Fox) may, pursuant to instructions from the cabinet, grant citizenship to any person in order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada.

It would be in the best interests of Canada, the Indian people of Canada, and Ms. Sainte Marie and her family if citizenship was granted to her under the second category to reward her services and also to alleviate the unusual hardship it would create to establish her birth.

As you know and as the Canadian government knows Ms. Sainte Marie has generated tremendous goodwill for Canada internationally. She has instilled pride in Indian people and in particular Indian people in Canada. Her services have been of an exceptional and intangible value.

After researching the matter over a two (2) year period it is my opinion that proving her birth would create a special and an unusual hardship. In general, it is difficult to prove Indian births prior to 1944. The majority of Indian mothers, until the past twenty (20) years, had their children at home and did not register them unless there was a practical reason to do so. In 1944 the transfer payment legislation to distribute family allowances was passed and only then was it practical for Indian families to register a child's birth immediately. In Ms. Sainte Marie's case, it was the practice for the community to encourage single mother's to give up their children for adoption. Indian people were generally

Mr. Paddy Sampson
Re: Buffy Sainte Marie

May 27, 1980

outside the system and were unaware of the requirements of such matters as the formal adoption process. It would appear from the evidence available that Ms. Sainte Marie was given up for adoption without any written records having been kept. Those people who have direct knowledge of the circumstances are unavailable or for health reasons unable to provide us with the information. On the other hand, there are many instances of people having knowledge of Ms. Sainte Marie's history. Her mother, an unmarried woman, was from the Piapot Indian Reserve and had Buffy at Craven, Saskatchewan in a private home and eventually gave her up for adoption to a couple who were in the area at the time.

I personally conducted interviews with the people from the Piapot Indian Reserve and the Starblanket Indian Reserve in English and in Cree. It is my opinion that there are no written records of Ms. Sainte Marie's birth. Her background is not exceptional in a culture whose people have always recorded their past orally. It is in everyone's best interest if Ms. Sainte Marie were granted citizenship without such written proof as she has met the criteria for s.5(4) of the Citizenship Act when such proof can be waived.

I trust the above information is sufficient for your purposes. Please do not hesitate to contact me if you require further information. From June 5 - August 31, 1980 I will be in Saskatoon at (306) 665-0911

Yours truly

ZLOTKIN & OPEKOKEW



Delia Opekokew

DO:lb

cc. Ms. Buffy Sainte Marie