



**FORM 66
RULES 16-1(2) and 16-1(19)(b)(ii)**

No. S79991
Nanaimo Registry

In the Supreme Court of British Columbia

Between

CANDICE SERVATIUS

Petitioner

and

SCHOOL DISTRICT 70 (ALBERNI)

Respondent

**AMENDED PETITION TO THE COURT
(Originally filed on November 1, 2016)**

ON NOTICE TO:

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Counsel for the Petitioner

This proceeding is brought for the relief set out in Part 1 below by Candice Servatius (the “Petitioner”)

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition in the United States of America, within 35 days after that service,
- (c) if you were served with the petitioner anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 35 Front Street Nanaimo, BC V9R 5J1
(2) The ADDRESS FOR SERVICE of the petitioner is: Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW. Calgary, Alberta T2V 1K2 Fax number for service of the petitioner: 587-747-5310 E-mail address for service of the petitioner: jcameron@jccf.ca
(3) The name and office address of the petitioner’s lawyer is: Jay Cameron Justice Centre for Constitutional Freedoms #253, 7620 Elbow Drive SW. Calgary, Alberta T2V 1K2

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. A Declaration pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) that the actions of School District 70, by imposing prayer and religious rituals on students at John Howitt Elementary School (“JHES”) during the 2015-16 school year, violated the freedom of religion of the Petitioner as protected under s. 2(a) of the *Charter*.
- ~~2. An Order prohibiting School District 70 from facilitating or allowing any religious exercises, including rituals, “cleansings”, ceremonies, and prayer to occur at any of the schools it exercises jurisdiction over.~~
2. An Order prohibiting School District 70 from facilitating or allowing religious practices (as distinct from including religious content as part of the curriculum), during mandatory instructional time, at mandatory student assemblies, or during any other time when student attendance is mandatory. Such practices include, but are not limited to, religious or spiritual rituals, “cleansings”, ceremonies, and prayer.
3. Costs; and
4. Such further and other relief and directions as this Honourable Court considers necessary.

Part 2: FACTUAL BASIS

5. On September 15, 2015, Candice Servatius received a letter dated September 14, 2015 from JHES principal, Stacey Manson (the "Parent Letter"). The Parent Letter had been sent home with the students in Mrs. Servatius' son's grade three class and informed parents that Sherri Cook, the JHES Nuu-chah-nulth Education Worker would be hosting a "Traditional Nuu-chah-nulth Classroom/Student Cleansing" (the "Cleansing Ritual") in the classroom. The Cleansing Ritual was to be performed by a "Nuu-chah-nulth Member". The Parent Letter did not provide a date for when the Cleansing Ritual would occur.

6. The Parent Letter described specific beliefs of the Nuu-chah-nulth, such as the belief that "everything is one, all is connected" and the belief that "everything has a spirit." In accordance with these beliefs, the Parent Letter described in detail how the Cleansing Ritual would "cleanse" the classroom of "energy" and cleanse the students' "spirits." The Parent Letter implied that until students were "cleansed" they would be prevented from engaging in new, positive experiences. Explicit in the Parent Letter was that without cleansing, the classroom and even the furniture would harbour negative "energy" and would not be safe until the "energy" was "released." The Parent Letter stated that each student would participate in the Cleansing Ritual by holding onto a cedar branch while having "smoke from Sage fanned over [their] body and spirit." This part of the Cleansing Ritual was identified as "Smudging." The Parent Letter claimed that the Cleansing Ritual was merely a means to learn about "culture and history".

7. Concerned about the explicitly religious nature of the Cleansing Ritual, Mrs. Servatius decided to attend at JHES the next day. Mrs. Servatius arrived at JHES on the afternoon of September 16 and was shocked to learn that the Cleansing Ritual had already taken place in her son's

classroom. She was further shocked to discover that a Cleansing Ritual had also occurred in her daughter's grade five classroom, despite no letter having been sent home, or any other notification having been issued to her by JHES.

8. Later in the day on September 16, Mrs. Servatius was informed by her daughter that she had been coerced by her teacher to participate in the Cleansing Ritual. When Mrs. Servatius' daughter expressed to her teacher that she did not want to participate, the teacher told Mrs. Servatius' daughter that it would be "rude" not to participate in the Cleansing Ritual and that "all" the students were "required" to participate. Mrs. Servatius' daughter was unwillingly subjected to being fanned by smoke, and she was told that her "spirit" needed to be "cleansed" of negative "energies." She was led to believe, by adults who are in a position of trust, that her own religious beliefs were unworthy of respect, and that if she refused to participate in a ritual of a different religion she was being "rude". Mrs. Servatius' daughter experienced anxiety, shame, and confusion as a result of being forced to participate in a religious ritual that conflicted with her own religious convictions
9. In response to the events of September 16, Mrs. Servatius phoned Greg Smyth, Superintendent of Schools for School District 70, to request that she be provided with the policies and procedures that School District 70 relied on when it allowed the Cleansing Rituals to take place at JHES. Mr. Smyth agreed to provide the requested information, but thereafter failed to provide anything to Mrs. Servatius.
10. Realizing that no response would be forthcoming from Mr. Smyth, Mrs. Servatius wrote a letter to Mr. Smyth and School District 70 (the "First Letter") in which she outlined her

concerns regarding the Cleansing Ritual and requested that School District 70 adhere to its legal obligations under s. 76 the *School Act* and the *Charter*.

11. After receiving the First Letter, Mr. Smyth contacted Mrs. Servatius by phone. During the phone conversation, Mr. Smyth informed Mrs. Servatius that no religious or spiritual exercise would again occur at JHES without giving adequate notice to parents and requiring parental consent to participate.

12. Despite Mr. Smyth's assurances, on January 7, 2016, Mrs. Servatius learned that a prayer based on Aboriginal spirituality was performed at a JHES student assembly (the "January 7 Prayer"). The individual performing the prayer made explicit references to an unspecified "god". No parental notice of the prayer was issued by JHES.

13. As a result of the January 7 Prayer, Mrs. Servatius left a number of voicemails with Mr. Smyth to inquire as to why JHES had again subjected her children and the school at large to another religious practice. Despite repeated attempts to contact Mr. Smyth, Mrs. Servatius' phone calls were unreturned. Mrs. Servatius again wrote a letter to School District 70 (the "Second Letter"), specifically asking why School District 70 was allowing prayer at JHES despite the fact prayer is not legally permitted in Canadian public schools. As with the First Letter, Mrs. Servatius respectfully requested that School District 70 adhere to its legal obligations under the *School Act* and the *Charter*.

14. Realizing that Mr. Smyth had not and would not honour his oral commitments, Mrs. Servatius requested that School District 70 provide her with a written commitment that no further religious activities would be allowed to occur at any of the schools under the control of School District 70.

15. In response to the Second Letter, Mr. Smyth again contacted Mrs. Servatius by phone. During the phone conversation, Mr. Smyth agreed to provide Mrs. Servatius with the written commitment she had requested, and do so by the end of April 2016. Mr. Smyth failed to honour this representation.
16. Throughout May 2016, Mrs. Servatius repeatedly called Mr. Smyth and left voicemail messages. These phone calls were not returned or acknowledged in any way. Finally, tired of having her phone calls ignored, on June 9, 2016, Mrs. Servatius attended at the School District 70 offices, determined to wait until Mr. Smyth was available to meet (the "June 9 Meeting").
17. Mr. Smyth was unable to avoid Mrs. Servatius when she was physically present at his office. During their June 9 Meeting, Mr. Smyth told Mrs. Servatius that the prayer on January 7, 2016, was considered by School District 70 to be "culture", and not religion. Mr. Smyth further told Mrs. Servatius that, in any event, "there is more tolerance for Aboriginal religion than your religion". Mr. Smyth then informed Mrs. Servatius that School District 70 would not give Mrs. Servatius any written commitments until at least September 2016, because such documents would be "legal" in nature and take a long time to prepare.
18. As a result of the foregoing, Mrs. Servatius retained current counsel. On July 12, 2016, the Justice Centre for Constitutional Freedoms (the "Justice Centre") sent a legal warning letter (the "Demand Letter") to Mr. Smyth and the trustees of School District 70 Board of Education (the "Board"). The letter explained the illegal actions of School District 70 in allowing religious activities to take place at JHES. The Justice Centre requested a response to the letter by July 29, 2016.

19. On July 28, Mr. Smyth sent an email to the Justice Centre stating that School District 70 would need more time. On July 29, counsel for Mrs. Servatius emailed Mr. Smyth to request that Mr. Smyth provide an estimate on how long School District 70 would need before a substantial response would be received by the Justice Centre.

20. Mr. Smyth did not respond to the July 29, 2016 email. On August 12, counsel for Mrs. Servatius phoned Mr. Smyth and left a voicemail message requesting Mr. Smyth to call him at his earliest convenience. Counsel then phoned Pam Craig, Chair of the Board, to request an estimate on when a substantial response to the Demand Letter would be forthcoming. Ms. Craig refused to provide counsel with an estimate for a response, and instead requested that all communication be directed to Mr. Smyth exclusively.

21. On August 15, counsel for Mrs. Servatius sent an email to Mr. Smyth summarizing the lack of response from Mr. Smyth and requesting a timely reply. Counsel also informed Mr. Smyth that Mrs. Servatius would prefer an amicable resolution to the matter, but would consider further action if a timely response from the School District was not received. Mr. Smyth did not reply.

22. On September 27, counsel sent Mr. Smyth a letter advising Mr. Smyth that counsel was preparing court documents. On October 3, Mr. Smyth sent an email to the Justice Centre stating that the Board would provide a response to the Demand Letter following the October 11 Board meeting.

23. On October 25, 2016, on the eve of filing this Petition, counsel for School District 70 emailed a response to the Demand Letter to counsel for Mrs. Servatius. The following is apparent from this communication in regard to School District 70:

- a. It continues to deny that its actions have violated the religious freedom of Mrs. Servatius and her children;
- b. It continues to ignore the religious nature of ceremonies such as the Cleansing Ritual and the January 7 prayer, or that students were compelled to participate in these events against their conscientious and religious beliefs;
- c. It continues to insist that religious ceremonies are permissible in public school if such ceremonies are optional.

Part 3:LEGAL BASIS

24. By facilitating religious activities at JHES, School District 70 has violated s. 2(a) of the *Charter* and breached its duty of religious neutrality. Further, the actions of School District 70 have violated the freedom of religion of both Mrs. Servatius and her children, and have caused the aforementioned to experience mental distress, particulars of which include, but are not limited to, anxiety, sleeplessness, shame, distrust of JHES personnel and the Board, including Mr. Smyth, and the ongoing fear that the Servatius children will again be subjected to religious rituals in the 2016-2017 school year that violate their constitutional rights as well as the *School Act*.

25. All government institutions, including public schools such as JHES, have a legal duty to remain neutral regarding religion. Public schools have a *Charter* obligation to be a “neutral public space free from coercion, pressure and judgment on the part of public authorities in matters of

spirituality”: *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [*Saguenay*] at para 74 [emphasis added].

26. Labelling a particular religious practice as “culture” is not an acceptable justification or excuse for breaching the duty of neutrality and violating the freedom of religion. Gascon J. for the majority in *Saguenay* stated at paragraph 78: “[I]f the state adheres to a form of religious expression under the guise of cultural or historical reality or heritage, it breaches its duty of neutrality.” [emphasis added] The School District, including JHES, is precluded from inviting religious rituals and practices of any kind to take place at the school. Unilaterally redefining a religious and/or spiritual practice as “cultural” does not absolve the School district of its legal duty of neutrality, nor does it change the nature of the impact of such rituals on those who are compelled and coerced to participate in them.

27. Claiming that religious activities are permissible at JHES as long as they are not mandatory, whether or not, in fact, the religious activities in question are mandatory, does not reduce or otherwise negate the violation of religious freedom caused by the facilitation of religious activities at JHES: *Zylberberg v. Sudbury (Bd. of Education)*, [1988] O.J. No. 1488 at para. 40; *Saguenay* at paras. 124-126.

28. Such further and other grounds as counsel may advise and as this Honourable Court may allow.

Part 4: MATERIAL TO BE RELIED UPON

29. Affidavit of Candice Servatius.

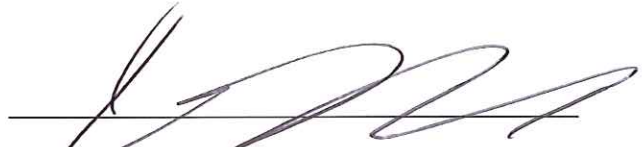
30. The *Canadian Charter of Rights and Freedoms*.

31. The *BC Human Rights Code*.

32. The BC *School Act*.

The petitioner estimates that the hearing of the petition will take more than 2 hours.

Date: January 3, 2017

for: 
Jay Cameron, counsel for the Petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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Date:

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Signature of Judge Master