



Justice Centre for Constitutional Freedoms

July 12, 2016

Pam Craig
Chair, Board of Education
School District 70
4690 Roger Street
Alberni, BC, V9Y 3Z4

VIA EMAIL: pcraig@sd70.bc.ca
(hard copy to follow by ordinary mail)

Dear Ms. Craig,

RE: Violation of *Charter* Right to Religious Freedom – “Cleansing” Ceremony and Prayer

We write on behalf of Mrs. Candice Servatius, who is the mother of two students currently attending John Howitt Elementary School (“JHES”).

Background

On September 16, 2015, JHES hosted a series of “Traditional Nuu-chah-nulth Classroom/Student Cleansing” ceremonies in its classrooms. As per the parent letter dated September 14, 2015 (the “Parent Letter”), these cleansing ceremonies involved the “cleansing” of students’ “energy” and “spirits,” and required students to directly participate in the ceremony by holding cedar branches and having smoke “fanned” over their “spirits”. The Parent Letter did not inform parents as to the date on which the ceremony would take place.

Mrs. Servatius received the Parent Letter on the afternoon of September 15 when it was sent home with her son’s grade 3 class. Mrs. Servatius was concerned about her son participating in what appeared to be an explicitly religious and spiritual ceremony. As such, she decided to attend in person at JHES the next day. When Mrs. Servatius arrived at JHES on the afternoon of September 16, 2015 she was informed that the ceremony had already taken place in her son’s class that

morning, Mrs. Servatius was surprised and frustrated that the school had failed to provide her with adequate prior notice about requiring her children to participate in a religious ceremony.

Later that same day, September 16, Mrs. Servatius learned that her daughter was coerced by her teacher into participating in the same “cleansing” ceremony in her daughter’s grade 5 class. 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 and that “all” the students were required to participate. Mrs. Servatius’ daughter experienced anxiety as a result of being forced to participate in what she reasonably perceived to be – and which in fact was – a religious and spiritual ceremony. Neither Mrs. Servatius nor her daughter were informed beforehand that a “cleansing” ceremony would be occurring in the grade 5 class on September 16, 2015.

In response to the events of September 16, Mrs. Servatius made oral and written requests to JHES staff and Greg Smyth, Superintendent of Schools for School District 70 (the “School District”) that she be provided with adequate prior notice of any future events occurring at JHES that are of a religious nature, and that she be given the opportunity to either provide her consent for her children to participate, or withdraw her children for the duration of the religious event. Mrs. Servatius also reminded JHES and Mr. Smyth of their obligation to refrain from facilitating religious practices in the school. She was given oral assurances by JHES staff and by Mr. Smyth that her requests would be followed.

On January 7, 2016 a prayer invoking Aboriginal spirituality was performed at a JHES student assembly. The individual performing the prayer made explicit references to a “god”. No notice that a prayer would take place at JHES on January 7, 2016 was given to parents or students. Despite assurances to the contrary, Mrs. Servatius was not informed that her children would again be exposed to religious practices at JHES.

In response to the events of January 7, 2016 Mrs. Servatius wrote to Mr. Smyth requesting that she be provided with written assurance that she would be notified in advance of the occurrence of religious practices at JHES and that her consent would be required before her children would be allowed to participate in any religious events at JHES or any other school. Mr. Smyth orally agreed to provide Mrs. Servatius with a document by the end of April, 2016.

Mr. Smyth failed to provide the requested written assurance by the end of April. Throughout the month of May 2016, Mrs. Servatius telephoned Mr. Smyth many times, and left him several messages. Her calls were not returned. On June 9, 2016 (the “June 9 meeting”), Mrs. Servatius attended at the School District office and waited until Mr. Smyth was available to meet with her.

At this June 9 meeting, Mr. Smyth stated to Mrs. Servatius that the prayer on January 7, 2016 was considered by the School District to be “culture”, not religion. Mr. Smyth further stated “there is more tolerance for Aboriginal religion than your religion”. Mr. Smyth then informed Mrs. Servatius that the School District would not be giving her any written statements about parental consent until at least September 2016.

The actions of JHES staff and Mr. Smyth are unreasonable, violate the section 2(a) *Charter* rights of both Mrs. Servatius and her children, and are in breach of the School District’s duty of religious neutrality. JHES and the School District do not have the authority or the discretion to deem ceremonies and prayers that are clearly religious practices as “culture”.

Charter Requirements

All government institutions, including public schools such as JHES, have a legal duty to remain neutral regarding religion. The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) requires that the School District and JHES remain neutral and neither “favour nor hinder any particular belief, and the same holds true for non-belief”; *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [*Saguenay*] at para 72. The Supreme Court has ruled that state sponsorship of one religion discriminates against other religions; *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, para 17. The Court further found that it is only through government religious neutrality that true freedom and equality can be achieved. 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”; *Saguenay*, at para. 74 [Emphasis added]

Labelling a particular religious practice as “culture” will not be accepted as an excuse for breaching the duty of neutrality and violating the freedom of religion. Gascon J. for the majority stated in paragraph 78 of *Saguénay*:

I do not think that the state’s duty to remain neutral on questions relating to religion can be reconciled with a benevolence that would allow it to adhere to a religious belief. State neutrality means...that the state must neither encourage nor discourage any form of religious conviction whatsoever. **If 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. If that religious expression also creates a distinction, exclusion or preference that has the effect of nullifying or impairing the right to full and equal recognition and exercise of freedom of conscience and religion, there is discrimination.** [Emphasis added]

The School District, including JHES, is precluded from inviting religious ceremonies 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. Many religious practices and ceremonies are indeed cultural, such as the Catholic prayer that was at issue in *Saguénay*. This may be true for some Aboriginal spiritual practices as well, but the fact that a particular religious ceremony, practice, or prayer is also cultural, does not negate the fact that it is a religious expression which the government is prohibited from engaging in

Conclusion

It is a mischaracterization to label the “cleansing” ceremony that took place in JHES classrooms on September 16, 2015 as non-religious: the description of the ceremony explicitly referenced “spirits” and “energy”. The prayer that occurred on January 7, 2016 is also clearly religious in nature. Prayer, by definition, invokes the spiritual and/or the divine, and in the case of the January 7 prayer, explicit reference to a “god” was made by the individual performing the prayer.

The School District has violated the *Charter* section 2(a) freedom of religion of Mrs. Servatius and her children, by breaching its duty of neutrality through the facilitation of religious practices. The School District further violated her religious freedom by not informing Mrs. Servatius that her children would be exposed to religious practices at JHES. The School District also violated the religious freedom of Mrs. Servatius’ children by requiring them to participate in the September 16

ceremony and observe the January 7 prayer. In the future, JHES and School District 70 must respect the freedom of religion of its students and parents, and adhere to its duty of neutrality.

We demand that JHES and the School District cease the facilitation of religious practices and refrain from characterizing such practices as "culture" in an attempt to shirk its duty of neutrality. We request JHES and the School District develop and implement policies and procedures that will bring JHES and the School District in compliance with the requirements of the *Charter*, and to share those policies and procedures with Mrs. Servatius.

We have every hope that this can be resolved amicably, but if not we will be compelled to take further steps, up to and including the commencement of court action pursuant to sections 24(1) and 52 of the *Charter*.

We expect a detailed response to this matter by Friday, July 29, 2016.

If no response is received, further action will be taken.

Sincerely,



for

Jay Cameron
Barrister and Solicitor
jcameron@jccf.ca

cc: Trustees, School District 70
Greg Smyth, Superintendent of Schools
Stacey Manson, JHES Principal
Candice Servatius