

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CANDICE SERVATIUS

PETITIONER

AND:

SCHOOL DISTRICT 70 (ALBERNI)

RESPONDENT

AND:

ATTORNEY GENERAL FOR BRITISH COLUMBIA

AND:

THE NU-CHUH-NULTH TRIBAL COUNSEL

INTERVENER

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OVERVIEW

1. This case involves state-compelled participation of public school children in a ceremony to “cleanse” themselves, their belongings and a school classroom of “energy” using smoke, invocations and ritualistic ceremony (the “Cleansing”).¹ The Cleansing occurred on September 15, 2015, in a Port Alberni classroom at John Howitt Elementary School (“JHES”), a school within School District 70.² Parents of children, including the Petitioner, were provided with less than 24 hours notice prior to the Cleansing, thereby depriving them of the opportunity to object to the participation of their children in the Cleansing, and/or withdraw them from class on the material day. On September 15, 2015, the Petitioner’s child protested that she did not wish to participate in the Cleansing but was compelled to do so anyway by school staff.
2. The Cleansing, and the related incident of the offering of prayer to a deity, is a prima facie breach of section 76 of the School Act. The Petitioner seeks a declaration that the Cleansing infringed her and her child’s rights pursuant to section 2(a) of the Canadian Charter of Rights and Freedoms. The Petitioner also seeks an Order that the Respondent, School District 70, be prohibited from holding ceremonies such as the Cleansing in the future.
3. The Parties were directed by the Honourable Justice Thompson to file preliminary factums addressing social fact evidence. In accordance with that direction, the within factum addresses key excerpts from the cross examinations of the witnesses of the Attorney General and the Intervener, the Nuu-chuh-nulth Tribal Council, on their respective Affidavits.

ARGUMENT

A. The Cleansing is Not a Proper Requirement of British Columbia’s Public School Curriculum or Learning Standards

4. The School Act³ states:

¹ See letter of September 15, 2015 (the Parent Letter”) from JHES, Exhibit “B” to the Affidavit of Candice Servatius.

² Affidavit of Candice Servatius filed November 1, 2016.

³ School Act, RSBC 1996, c 412

Section 76(1) All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles.

(2) The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.

5. Ceremonies such as the Cleansing derive from, incorporate, and are reliant upon, creed or religious dogma. In describing what would take place during the Cleansing, the Parent Letter of September 14, 2015, states that the Cleansing derives from the “belief” that “everything is one, all is connected”, “everything has a spirit”, that the Cleansing would “cleanse” the “energy” and “spirit” of students and the classroom generally, including inanimate objects such as “furniture”.⁴
6. The Cleansing’s purpose was not merely abstractly educational, but for students to personally “experience cleansing of energy from previous students in our classroom, previous energy in our classroom, and cleanse our own spirits”.⁵ It is permissible for the Respondent to teach about the beliefs of different cultures, religions and creeds passively through the use of videos and books, provided that it does so in a non-partisan and non-sectarian fashion, and in accordance with parental and religious rights protected by the Canadian Charter of Rights and Freedoms. The Petitioner maintains that it is not lawful for the Respondent to hold a supernatural ceremony as a state-endorsed event, or to compel participation in said ceremony.
7. It is settled law that the state has a duty of neutrality.⁶ This duty “flows from freedom of conscience and religion”,⁷ and means that the state cannot endorse or compel participation in an identifiable belief or creed. As the Supreme Court of Canada stated in *Mouvement laïque québécois v. Saguenay (City)*:

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

⁴ *Supra*, note 1.

⁵ See Exhibit “B” to the Affidavit of Candice Servatius [emphasis added].

⁶ *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 SCR 3, 2015 SCC 16 [Saguenay].

⁷ *Saguenay*, para. 168 [emphasis added]. The duty of neutrality flows from the constitutional rights of the Petitioner, her child, and all citizens in a free country to be free of state compulsion on questions of creed and religion.

nullifying or impairing the right to full and equal recognition and exercise of freedom of conscience and religion, there is discrimination.⁸

8. The state cannot lawfully compel citizens to participate in ritualistic or religious ceremonies, including in the educational context, without breaching the duty of neutrality and infringing the conscience and religious rights of citizens. There is nothing in the Education Curriculum (the “Curriculum”) or the School Act which authorizes the Respondent to attempt to ritualistically cleanse students, or the classrooms or furniture from the supposed energy of other students, or any other “energy”.

i. Cross-examination of Nancy Walt

9. Nancy Walt is Executive Director for Curriculum and Assessment within the British Columbia Ministry of Education, and an Affiant for the Attorney General.⁹ When asked in cross examination whether, in her capacity of Executive Director, she would “say that personally experienced ritual cleansing by smudging is part of a student’s essential learning”, Ms. Walt answered by stating that:

[i]t's not in the curriculum, so it's not -- it's not a -- it's not part of the learning standard. It might have been -- it might be a way somebody is interpreting how to get at a knowledge piece that's in the curriculum, but you're not going to find that kind of thing in the provincial curriculum as stated like that.¹⁰

10. Ms. Walt was also asked the following:

Q Now, what about as far as part of the learning standards? Is smudging part of the learning standards?

A Not to my --

Q It's not mandatory?

A Not to my knowledge. No, it's not mandatory.¹¹

⁸ Ibid, at para. 78.

⁹ Affidavit of Nancy Walt at para 1.

¹⁰ Cross-examination on Affidavit of Nancy Jane Walt, question 85 and answer at p 18 [emphasis added].

¹¹ Ibid, questions 75-76 and answers at p 16.

11. When counsel for the Petitioner put it to Ms. Walt—in reference to her prior answers—that “[w]e’ve already established that smudging is not a mandatory part of the curriculum and it is not a mandatory part of the learning standards”, Ms. Walt answered in the affirmative.¹²

12. Further, Ms. Walt acknowledged that she does not intend to make smudging mandatory in BC public schools:

Q At any rate, just for clarity, as the executive director of the Province of British Columbia curriculum, it is not your intention to require smudging to be mandatory?

A No, it's not; correct.¹³

ii. Cross-examination of Harry Cadwallader

13. Harry Cadwallader is District Principal for Aboriginal Education Programs for the Nanaimo School District, and an Affiant for the Attorney General.¹⁴ Mr. Cadwallader previously served as the Director of the Aboriginal Education Enhancement Branch within the BC Ministry of Education from 2014 to 2018, and was in that role at the time the Parent Letter was sent out by the Respondent.¹⁵ Mr. Cadwallader’s responsibilities included “assisting with the development” of a new curriculum for BC public schools.¹⁶

14. Mr. Cadwallader’s work in this role led to the development of a document titled Aboriginal Worldviews and Perspectives in the Classroom.¹⁷ A copy of this document is included as Exhibit “A” to Mr. Cadwallader’s Affidavit.¹⁸

15. Consistent with Ms. Walt’s testimony under cross-examination, when asked if “compulsory smudging [is] covered by the curriculum as it exists”, Mr. Cadwallader answered “[n]o.”¹⁹

¹² Ibid, question 110 and answer at p 24.

¹³ Cross-examination on Affidavit of Nancy Jane Walt, question 118 and answer at p 26.

¹⁴ Affidavit of Harry (Ted) Cadwallader at para 1.

¹⁵ Ibid.

¹⁶ Ibid at para 2.

¹⁷ Ibid at paras 3-6.

¹⁸ Ibid, Exhibit “A” (“Aboriginal Worldview and Perspectives in the Classroom”).

¹⁹ Cross-examination on Affidavit of Harry Tennyson Cadwallader, question 68 and answer at p. 16.

16. Further, when asked in the abstract “if it is respectful to compel a child to be smudged” in a classroom “against their will”, Mr. Cadwallader answered “[n]o.”²⁰

17. Mr. Cadwallader also deposed, inter alia, to the following:

- a. That the Curriculum does not contain anything about “everything is one, all is connected”;
- b. That it is not an official or unofficial position of the Province that energy from past students manages to survive into the following school year in a classroom;
- c. That it is possible to commence the school year in September without Cleansing the classrooms first;
- d. That he is unaware of any empirical guarantee that the Cleansing will guarantee “only good things” happening thereafter;
- e. That he does not know what a cleansing is in the context of the Parent Letter;
- f. That he knows nothing of the efficacy of sage smoke and the cleansing of negative energy.²¹

iii. Cross-examination of Lorna Williams

18. Dr. Lorna Williams is a member of the Lil’wat Nation who served as Director of the BC Ministry of Education’s Aboriginal Education Enhancement Branch from 2001-2004, and is an Affiant for the Attorney General.²²

19. Since leaving the Ministry of Education in 2004, Dr. Williams has “continued to provide information, advice and support to the Ministry and in particular, the Curriculum Branch with respect to Indigenous education issues.”²³ She has been involved in “many of the conversations and stakeholder consultation processes that resulted in the development of British Columbia’s new public school Curriculum which expressly includes Indigenous worldviews and perspectives.”²⁴

20. Dr. Williams acknowledged under cross-examination on her Affidavit in this proceeding that she was not aware of any requirement for smudging in the Curriculum, or anything in the

²⁰ Ibid, question 94 and answer at p 23.

²¹ Ibid, pages 29-40.

²² Affidavit of Dr. Lorna Williams at para 1.

²³ Ibid at para 55.

²⁴ Ibid.

Curriculum that would require somebody to participate in any kind of ceremony if they are unwilling:

Q [...] So in your involvement as an advisor regarding the creation of the curriculum, would it be your understanding that the curriculum would compel participation in a smudge if a student was unwilling?

A I don't think that that [sic] smudging was in the curriculum.

Q Is there anything in the curriculum, in your knowledge, that requires somebody to participate in any kind of a ceremony if they're unwilling?

A Not that I know of.²⁵

B. The Spiritual and Supernatural Beliefs Underpinning the Cleansing at Issue Are Not Part of the BC Public School Curriculum, Learning Standards, or Provincial Government Policy

21. The BC Curriculum is devoid of a requirement or authority to compel participation in the supernatural or ritualistic beliefs which underpin the Cleansing.

22. The letter to parents of September 14, 2015 (the “Parent Letter”),²⁶ included the following statements:

Nu-chah-nulth [sic] People believe strongly that “Hil-Shuukish-Tsawalk” (everything is one; all is connected). Everything has a spirit and energy exists beyond the end of school one year to the next. This will be our opportunity to learn about Nu-chah-nulth Traditions and experience cleansing of energy from previous students in our classroom, previous energy in our classroom, and cleanse our own spirits to allow GREAT new experiences to occur for all of us.

[...]

Classroom and furniture will also be cleansed to allow any previous energy from: falls, bad energy, bullying, accidents, sad circumstances, etc. to be released and ensure the room is safe for all and only good things will happen.²⁷

²⁵ Cross-examination on Affidavit of Lorna Wanosts’ a7 Bernita Williams, questions 166-167 and answers at p 38 [emphasis added].

²⁶ Letter from JHES, dated September 14, 2015 (the “Parent Letter”).

²⁷ Ibid.

i. Cross-examination of Nancy Walt

23. The questioning of Ms. Walt on the Parent Letter included the following exchange:

Q [...] what I'm asking is whether or not the cleansing of students' spirits in British Columbia public schools to allow for great new experiences is part of the curriculum.

A No.

Q It's not a mandatory part of the curriculum; part of the learning standards?

A No, it's not part of the mandatory learning standards, that's correct.

Q Okay. Is there anything in the BC curriculum about classrooms and furniture retaining energy, their own energy?

A In the curriculum, no.

Q Is there anything in the curriculum about how energy is affected by sage smoke?

A No.

Q Does the BC curriculum teach that everything has a spirit?

A No.²⁸

ii. Cross-examination of Harry Cadwallader

24. The questioning of Mr. Cadwallader regarding the Parent Letter also included the following exchange:

Q [...] Now, I want to go through this letter here with you. Now, you'll see in the second paragraph that it says that:

"Nuu-chah-nulth People believe strongly that "Hii-Shuukish-Tsawalk" (everything is one; all is connected)."

Do you see that there?

A I do.

²⁸ Cross-examination on Affidavit of Nancy Jane Walt, questions 172-176 at pp 41-42.

Q Now, the idea that everything is one and that all is connected, is that part of the curriculum, to your understanding?

MR. MORLEY: Could you clarify? Do you mean the belief of the Nuu-chah-nulth people or that as a fact?

MR. CAMERON:

Q As a fact, is that part of the curriculum?

A The curriculum doesn't, to my knowledge, contain that.

Q Okay. Now, you see there the next sentence says:

"Everything has a spirit, and energy exists beyond the end of school one year and into the next."

Do you see that there, sir?

A I do.

Q Now, are you aware of any policy or document from the British Columbia government on whether or not everything has its own spirit?

A No.
[...]

Q What I'm asking is whether or not you're aware of an official policy or position on the notion of whether or not everything has a spirit on behalf of the government.

A I'm not aware of that.

Q Okay. Now, what about the idea that energy exists beyond the end of the school one year and goes into the next? Is that an idea that is an official or unofficial position of the British Columbia government?

A Not to my knowledge, no.

Q Is it reflected anywhere in the curriculum?

A Not to my knowledge, no.

Q Are you aware if it's taught as fact in the schools?

A I am not aware of that, no.²⁹

25. Further, Mr. Cadwallader acknowledged that it was not his intention, in his previous role with the Ministry of Education, that students “experience the cleansing of energy of previous students from the classroom”:

Q That students "experience the cleansing of energy from previous students in our classroom", is that something that it would have been your intention, as director of Aboriginal Education Enhancement, that students experience; that the energy of previous students, that they had to experience the cleansing of that energy?

A No.³⁰

C. The Aboriginal Worldviews and Perspectives in the Classroom Document is Not a Mandatory Part of the BC Public School Curriculum

26. The answers given both by Ms. Walt and Mr. Cadwallader establish that the Aboriginal Worldviews and Perspectives document³¹ is not a mandatory part of the BC public school curriculum.

i. Cross-examination of Nancy Walt

27. The cross-examination of Ms. Walt included the following exchange:

Q Are you familiar with the document titled "Aboriginal Worldviews and Perspectives in the Classroom"?

A I am familiar with it.

Q How are you familiar with it?

A Just aware that our counter -- sister branch, the Aboriginal Education Branch, created it to help with -- to help teachers understand how they could go about supporting some of the pieces in the curriculum. So I'm aware it was created, and we link to it off our curriculum website. It's one of a number of things that we ...

Q And it's a document that is sort of a guide for implementing the curriculum?

²⁹ Cross-examination on Affidavit of Harry Tennyson Cadwallader, questions 125-129 and 131-134 and answers at pp 29-31.

³⁰ Ibid, question 140 and answer at p 33.

³¹ Supra note 10.

A It's an optional resource.

Q Okay.

A Teachers don't have to use it. It's just meant to be a resource.³²

ii. Cross-examination of Harry Cadwallader

28. The optional and non-mandatory nature of the Aboriginal Worldviews and Perspectives document was corroborated by the following exchange during the cross-examination of Mr. Cadwallader:

Q [The Aboriginal Worldviews and Perspectives in the Classroom document] is not part of the curriculum?

A Correct.

Q What is it?

A It's a guide for teachers, as they go through the curriculum, to bring aboriginal worldviews and perspective to the classroom.

Q Teachers are intended to look at this, though, and use it as a guideline for teaching, are they not?

A Teachers have the choice of whether they're going to use that or not, because they have professional autonomy on how they implement the curriculum and make decisions around it.

Q I see. So if a teacher decides to use this, that's an exercise of their decision? There's nothing compelling them to use this?

A Correct.³³

³² Cross-examination on Affidavit of Nancy Jane Walt, questions 118-122 and answers at pp 26-27.

³³ Cross-examination on Affidavit of Harry Tennyson Cadwallader, questions 97-100 and answers at pp 24-25.

D. The Spiritual Beliefs Expressed in the “First Peoples Principles of Learning” Are Neither Part of the BC Public School Curriculum or Provincial Government Policy More Generally

29. The Aboriginal Worldviews and Perspectives in the Classroom Document includes a statement titled “First Peoples Principles of Learning”.³⁴
30. That statement includes an assertion that “[l]earning ultimately supports the well-being of [...] the land, the spirits and the ancestors.”³⁵
31. As indicated in the testimonies of Mr. Cadwallader and Ms. Walt, the spiritual beliefs contained within this assertion are neither part of the Curriculum nor provincial government policy more generally.
32. In this case, the Petitioner does not oppose the abstract teaching about various beliefs, including those of the NTC. The Petitioner objects to the state holding supernatural ceremonies at public schools and compelling participation therein.

i. Cross-examination of Harry Cadwallader

33. The cross-examination of Mr. Cadwallader included the following exchanges:

Q Is "First Peoples Principles of Learning" a mandatory part of the curriculum?

A Not to my knowledge.

[....]

Q Does the British Columbia government, to your knowledge, endorse the conscious existence of the ancestors?

A Not to my knowledge.

[....]

Q Does the government have a position on whether or not these spirits are real, unreal, imaginary, metaphysical, physical? Is there any policy from the British Columbia government regarding spirits?

³⁴ Supra note 10 at p 14 of the Exhibit.

³⁵ Ibid [emphasis added].

A Not to my knowledge.

Q Does the British Columbia government have an official policy on life after death?

A Not to my knowledge.

Q Does it endorse the idea, that you're aware of, that there is life after death?

A Not that I'm aware of.

Q Is that a mandatory part of the curriculum?

A Life after death, a mandatory part of the curriculum?

Q That's what I'm asking.

A No.³⁶

ii. Cross-examination of Nancy Walt

34. Likewise, the cross-examination of Ms. Walt included the following exchange:

Q Are you aware of an official BC government policy on whether there is life after death?

A No, I'm not aware.

Q You've never encountered such a policy?

A No.

Q Does the British Columbia government, through the curriculum, teach as empirical fact that there is life after death?

A No.

Q Are you aware of any statutory mandate to teach that there is life after death?

A No.³⁷

³⁶ Cross-examination on Affidavit of Harry Cadwallader, questions 192-193 and 195-199 and answers at pp 46-47.

³⁷ Cross-examination on Affidavit of Nancy Jane Walt, questions 186-189 at p 45.

E. Both Ms. Walt and Mr. Cadwallader Acknowledged Awareness of Section 76 of the School Act

35. Both Ms. Walt and Mr. Cadwallader acknowledged awareness of section 76 of the School Act³⁸ in the course of the cross-examinations on their respective affidavits.

i. Cross-examination of Nancy Walt

36. The cross-examination of Ms. Walt included the following exchange:

Q Now, are you familiar with the School Act?

A Well, I'm familiar with it. But we have experts in our ministry, a whole legislation branch that serves that area, so they are really the experts in it.

Q Have you read the School Act?

A I read portions of it when I need to.

Q Are you familiar with section 76 of the School Act?

A I'd have to look at it to see.

Q I'm going to show you a copy here. Your counsel saw this yesterday, and of course your counsel is familiar with it. For the record, I'm showing a copy of section 76 of the BC School Act to the witness. Are you familiar with that section?

A Yes, I'm familiar with it.

[...]

Q Yes. What is your understanding of the impact of section 76 of the School Act on the curriculum?

A I'm not sure I really understand your question. I would -- yeah, explain a bit more. What do you mean by that?

Q Well, you're the executive director of Curriculum?

A Mm-hmm.

Q You understand there's a legal framework governing the curriculum?

³⁸ RSBC 1996, c 412, s 76.

A Yes.

Q I'm simply asking as far as this section that you've just read:

"All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles. The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school."

As far as that section goes, what is your understanding of the impact on the curriculum, or do you have an understanding?

A Well, I guess anything we would design and develop for the curriculum, if we felt it – you know, we're getting into that realm, we would get things checked out with Legal and such.

Q Do you understand what the word "sectarian" means?

A Yes.

Q And what does it mean to you?

A Non-religion, I guess, it means to me.³⁹

37. Further, Ms. Walt acknowledged having an understanding that the requirement to act in accordance with the School Act applies to principals and teachers:

Q Your understanding [...] is that teachers get their authority from principals? That's what you just said; correct?

A Their authority? I think it's a bit strong. I don't know if I would use that term. They would lean on principals for advice. Principals would be setting tones in schools, you know, those sorts of things. But teachers have a lot of autonomy in terms of interpreting the curriculum, delivering the curriculum.

Q Is it your understanding that schools have to operate in accordance with the School Act?

A Yes, boards of education do.

Q And principals also have to act in compliance with the School Act?

A Mm-hmm, yeah.

³⁹ Cross-examination on Affidavit of Nancy Jane Walt, questions 35-45 at pp 9-11.

Q And so do teachers, then?

A Yes. It's all worded as "boards of education", but they all fall under boards of education.⁴⁰

ii. Cross-examination of Harry Cadwallader

38. The cross-examination of Mr. Cadwallader also included the following exchange:

Q [...] Now, in your capacity as the director of Aboriginal Education Enhancement, were you familiar with the School Act?

A Generally, yes.

Q Have you read the School Act?

A I have, yes.

Q Are you familiar with section 76 of the School Act?

A I may be.

Q Okay. I'm going to show you a copy of section 76 of the School Act.

A Okay.

Q Have you read that before? Your counsel can have a look at it as well.

A Yes, I've read that before.

Q When did you first read that?

A I don't recall.

Q Did you read it at the beginning of your tenure as the director, or after, or --

A Long before.

Q Long before?

A Yes.

Q So when you became director, you were familiar with that provision?

⁴⁰ Ibid, questions 103-106 and answers at pp 22-23.

A Yes.⁴¹

39. Further, Mr. Cadwallader acknowledged having an understanding, from the perspective of an educator, that—in light of section 76 of the School Act—teaching certain spiritual beliefs as fact is inappropriate:

Q [...] You would agree with me that teaching in a classroom, for example, that God created the earth in seven days as fact would be in contravention of section 76 of the School Act?

MR. MORLEY: I'm going to let this [sic] if it can be interpreted as what his understanding of teaching practice in public schools is, as opposed to an interpretation of section 76, which I don't think he can answer.

MR. CAMERON:

Q What I'm trying to get at is: As an educator, you can teach about people's beliefs. You can teach students that Kwakiutl people believe this about where supernatural beings came from, but it would be inappropriate to teach it as fact in a public school. That's the differentiation I'm trying to draw, and I want to know, as an educator in the public school system, whether or not you agree with that proposal.

A Yes.⁴²

F. Smudging Students is Not Something that the Nuu-chah-nulth Tribal Council Requires of School District 70 in the Agreements Between Them

40. Smudging is not something that the Nuu-chah-nulth Tribal Council (“NTC”) requires of School District 70 (Alberni) in the agreements between them.

i. Cross-Examination of Judith Sayers

41. Dr. Judith Sayers—President of the NTC⁴³—in the cross-examination on her Affidavit in this proceeding, deposed that the Agreement between the NTC and School District 70 does not require student smudging.

⁴¹ Cross-examination on Affidavit of Harry Tennyson Cadwallader, questions 30-38 at pp 7-8.

⁴² Ibid, questions 243-244 at pp 59-60.

⁴³ Affidavit of Dr. Judith Sayers, para 1.

42. That cross-examination includes the following exchanges:

Q [...] From the NTC's perspective, it is not pushing School District 70 to smudge classrooms in advance of the school year?

A Like I say, it's our position that our culture should be taught, and that's -- you know, how that happens is not something we oversee or dictate to any degree. We wouldn't do that.

[...]

Q From the NTC's perspective, Port Alberni School District 70 is not required, under this [Local Education Agreement], to smudge classrooms?

A Not within this agreement. They're to work with us to educate non-Nuu-chah-nulth people about our culture. That's all it says. There's nothing specific anywhere -- you'll never find smudging in any of these agreements.

[...]

Q Now, would it be the NTC's position that there is anything in this [School District 70 Aboriginal Education Enhancement Agreement] which requires smudging in classrooms?

A There are no specifics like that, in this agreement, of any kind.

[...]

Q And it would not be the NTC's position that School District 70 is in breach of the enhancement agreement if there is no smudging in classrooms?

A There is no requirement -- there's nothing specific that says that.⁴⁴

G. The First Nations Education Steering Committee Neither Calls for Smudging in Schools Nor has a Position in Favour of Smudging Children Against Their Will

i. Cross-examination of Jo-Anne L. Chrona

43. As described by Affiant Jo-Anne L. Chrona, the First Nations Education Steering Committee (“FNEESC”) is “a First Nations-controlled collective organization [...] focused on advancing quality education for all Indigenous learners in British Columbia.”⁴⁵

⁴⁴ Cross-examination on Affidavit of Judith Sayers, questions 165, 175, 202 and 204 and answers at pp 45-46, 49 and 56-57.

⁴⁵ Affidavit of Jo-Anne L. Chrona at para 2.

44. Ms. Chrona is “the Curriculum Coordinator at the FNEESC.”⁴⁶

45. According to the testimony of Ms. Chrona, the FNEESC neither calls for smudging in schools, nor has a position in favour of smudging children against their will.

46. The above is demonstrated by the following exchange:

Q Is it FNEESC's position that there should be smudging in the classroom?

A No, it is not.

Q It wouldn't be FNEESC's position, then, that children should be smudged against their will?

A FNEESC does not have any position on how education within the classroom happens, on the pedagogical approaches.⁴⁷

H. Compulsory Participation in Aboriginal Ceremonies such as Smudging Ceremonies is Not Necessary to Educate BC Public School Students on Aboriginal Perspectives and Worldviews

47. Compulsory participation in ritualistic ceremonies such as the Cleansing is not necessary or rationally connected to educate BC public school students about Aboriginal perspectives and worldviews.

i. Cross-examination of Nancy Walt

48. Ms. Walt agrees the Curriculum does not compel compulsory participation in rituals such as the Cleansing, and agreed that there is a difference between learning about something and being compelled to participate in it.⁴⁸

Q The curriculum, as it currently stands, intends to teach about aboriginal worldviews as part of the curriculum?

A It intends for students to learn about aboriginal worldviews and perspectives as part of the curriculum.

⁴⁶ Ibid at para 1.

⁴⁷ Cross-examination on Affidavit of Jo-Anne L. Chrona, questions 38-39 and answers at p 8.

⁴⁸ Cross-examination on Affidavit of Nancy Jane Walt, p. 23, lines 2-7.

Q And my point is that learning about is different than mandatory participation in a ceremony. You can learn about a ceremony without being compelled to mandatorily participate in the ceremony; yes?

A Yes. And I would say there's nothing in the curriculum that would require a mandatory participation.⁴⁹

ii. Cross-examination of Harry Cadwallader

49. This is consistent with the testimony of Mr. Cadwallader, which included the following exchanges:

Q I understand that you are one of the people who helped create the curriculum, that you were somebody who was consulted by aboriginal stakeholders, and that you reviewed a draft of the curriculum which was posted in 2014. I understand that you did not create the curriculum. You are one of the people who had a hand in shaping the curriculum. What I'm asking you about is, as far as your intention as the director of Aboriginal Education Enhancement, would it have been your intention that parents and children could opt out of aboriginal practices in public schools?

A I'm trying to answer the question in a way that would be most accurate, so -
-

Q I appreciate that.

A So it was my intention that all students would learn about the way that the indigenous people had lived here in the past and understood their place in the world.

Q Okay.

A That was my intention.

Q You used the word "about", "learn about". I think we can agree that learning about smudging is different than being compelled to participate in smudging or experiencing smudging yourself. Would you agree with that?

MR. MORLEY: Sorry. I think those are two separate questions. One is about being compelled.

MR. CAMERON: Okay, let's break it down.

⁴⁹ Cross-examination on Affidavit of Nancy Jane Walt, questions 209-210 and responses, at p 50 [emphasis added].

Q Would you agree that learning about smudging is different than being smudged?

A Yes.

Q And what is the difference, sir?

A I can learn about smudging in a number of different ways.

Q In a passive way; right?

A In a number of different ways.

Q In a passive way. You can learn about smudging in a passive way; isn't that correct? You can be shown a demonstration. You can be shown a video. You can be read a description.

A Yes.

Q And that is different than being compelled to participate in a smudge?

A Yes.

[...]

Q What was your purpose in assisting with the creation of the new curriculum? What was the broad purpose?

A The broad purpose of my involvement was to, to the best of my ability, support the infusion of aboriginal culture, content, language, history, of understanding, as a methodology to improve the success of aboriginal students and raise awareness of all students about aboriginal people.

Q Okay. And can that purpose be accomplished without compelling children to be smudged against their will?

A Yes.⁵⁰

iii. Cross-Examination of Jeffrey Ansloos

50. An expert witness report was filed in this proceeding from Dr. Jeffrey Ansloos.⁵¹

⁵⁰ Cross-examination on Affidavit of Harry Tennyson Cadwallader, 57-65 and 249-250 and answers at pp 13-14 and 61-62 [emphasis added].

⁵¹ Expert Witness Report of Dr. Jeffrey Ansloos.

51. In that report, Dr. Ansloos states his opinion that “the impact of including Indigenous worldviews and perspectives in the public school curriculum for Indigenous peoples are substantial and positive.”⁵²
52. Dr. Ansloos acknowledged under cross-examination that this opinion and his report more generally “doesn't speak to [and he has not] examined the relevant information regarding the nature of how that information is presented to learners within those contexts.”⁵³
53. Indeed, Dr. Ansloos’s report provides no support for the contention that achieving the benefits he ascribes to “including Indigenous worldviews and perspectives in the public school Curriculum” requires compelling students to participate in smudging ceremonies against their will.

iv. Cross-examination of Lorna Williams

54. The answers given by Dr. Williams under cross-examination further illustrate that educating students about Aboriginal perspectives and worldviews does not require compelling those students to participate in Aboriginal ceremonies against their will.
55. In addition to her aforementioned roles in relation to the BC Ministry of Education, Dr. Williams has also worked as a professor of Indigenous Knowledge and Indigenous Education at the University of Victoria.⁵⁴ The University of Victoria provides education for students who are adults, not children like the Petitioner’s daughter.
56. In her role as a university professor, Dr. Williams developed and taught a class called “Learning and Teaching in the Indigenous World”.⁵⁵ People who enroll in this class are aware that the class deals specifically and pervasively with First Nations themes.

⁵² Ibid at para 4.3.1.

⁵³ Cross-Examination on Affidavit of Jeffrey Paul Ansloos, answer to question 57 at p 22 [emphasis added].

⁵⁴ Cross-examination on Affidavit of Lorna Wanosts’a7 Bernita Williams, question 186 and answer at p 42.

⁵⁵ Ibid, questions 188-191 and answers at p 43.

57. Dr. Williams testified that students in the University of Victoria were free to not participate in smudging that occurred in the class,⁵⁶ and would not face punitive actions in relation to their grades for choosing not to participate:

Q Would it matter to you what the reason why somebody didn't want to participate in a smudge was? If they weren't comfortable or if it was they had different religious beliefs, you would respect that; correct?

A I would respect it. If they wanted me to know why, that would be great. But if they didn't, that would be okay too. I would respect their decision.

Q There would be no punitive actions, as far as their grade goes?

A None whatsoever.⁵⁷

58. Dr. Williams is a survivor of the residential school system. Dr. Williams entered St. Joseph's Mission, located south of Williams Lake, under state compulsion at the age of six.⁵⁸ Her parents' visits were restricted. During cross examination, the following exchange occurred:

Mr. Cameron: Q Were their visits restricted at all?

Dr. Williams: A Yes.

Q Yes. So they would have liked to come see you more, but they were restricted from doing so?

A Yes.

Q You felt very isolated, I'm sure.

A Yes.

Q You probably have very vivid memories of what happened there even now.

A Yes.

Q While you were there, you were forced to submit to a different cultural and religious --

A And linguistic.

⁵⁶ Ibid, questions 199-204 and answers at pp 43-44.

⁵⁷ Ibid, questions 211-212 at pp 44-45.

⁵⁸ Cross examination transcript of Dr. Lorna Williams, p. 10.

Q And linguistic. So a different cultural, religious and linguistic paradigm?

A Mm-hmm.

Q That must have caused a significant resentment in you, as a young person.

A It did.

Q Do you remember those feelings?

A I do.

Q Were you restricted from speaking your own language?

A I was.

Q Were you compelled to practice the Catholic faith?

A Yes.

Q In what ways were you compelled to practice the Catholic faith?

A We were by having to -- by having to attend church and to pray and to do the rosary.

Q And that was all against your will?

A As a six-year-old, you don't know what your will is about that. You do -- you are just trying to live.

Q You just do what you're told?

A Mm-hmm.⁵⁹

I. Neither Ms. Walt nor Mr. Cadwallader Were Aware of Any Other Occurrences of Smudging in Schools

59. That holding smudging ceremonies in BC public schools is not necessary for the purpose of education on Aboriginal worldviews and perspectives is evidenced by the testimonies of Ms. Walt and Mr. Cadwallader, two experienced education officials who have never heard of even one other occurrence of smudging in schools.

⁵⁹ Cross examination transcript of Dr. Williams, p. 10-13.

i. Cross-examination of Nancy Walt

60. Ms. Walt's cross-examination included the following exchanges on this subject:

Q Insofar as smudging goes, do you know how many schools are implementing smudging or have had smudging in schools?

A No.

Q Okay. That hasn't come across your desk much --

A No.

Q -- or at all?

A At all.

Q Okay. Do you know if it's happening in other schools or has happened in other schools besides John Howitt Elementary?

A I'm not aware, no.

[...]

Q And you haven't heard of [a teacher compelling students in his or her classroom to undergo smudging], except in this one incident?

A I have not heard of it, no.⁶⁰

61. Interestingly enough, when counsel for the Petitioner asked Ms. Walt what a cleansing is, counsel for the Attorney General refused to permit the question. However, neither Ms. Walt nor the Attorney General apparently have any issue with a letter from the Respondent informing parents that a cleansing was going to occur in a public school classroom.⁶¹

62. Counsel for the Attorney General also objected to the question of whether it was possible to hold classes in public schools without smudging them first.⁶² Eventually, the following exchange between counsel for the Petitioner and Ms. Walt occurred:

⁶⁰ Cross-examination on Affidavit of Nancy Jane Walt, questions 68-71 and 93 and answers at pp 14-15 and 19.

⁶¹ Ibid, p. 39.

⁶² Ibid, p. 39, line 1.

Mr. Cameron: Q Just a moment. You oversee a curriculum, and you are interested in the implementation of that curriculum and its learning standards in classrooms?

Ms. Walt: A Mm-hmm.

Q. What I'm asking is whether or not, as a precursor to implementing the curriculum in classrooms, if it is necessary to cleanse energy from furniture in the classroom.

A It has nothing to do with the curriculum, so I really don't have a comment on that.⁶³

63. The Petitioner agrees with the Executive Director of Curriculum: state sponsored “cleansing” of “energy” from furniture in a public school classroom has nothing to do with the Curriculum.

ii. Cross-examination of Harry Cadwallader

64. Likewise, the cross-examination of Mr. Cadwallader included the following exchanges:

Q Have you heard of [smudging] in other schools, apart from John Howitt Elementary School?

A No. I've participated in it myself, but outside of school.

[...]

Q Now, I asked you whether or not you were aware of any other smudging incidents in schools, and you say you're not?

A Correct.

[...]

Q I just want to be clear about your evidence. So the 35 schools that are represented by the staff that you oversee in your capacity as district principal for aboriginal programs in the Nanaimo School District, you have not heard of any other incidents of smudging in classrooms?

A Correct.⁶⁴

⁶³ Ibid, p. 44, lines 2-12. [emphasis added]

⁶⁴ Cross-examination on Affidavit of Harry Tennyson Cadwallader, questions 70, 74 and 82 and answers at pp 16-17 and 18.

J. Nuu-chah-nulth Smudging is a Spiritual and Supernatural Practice Tied to Broader Beliefs About the Unseen World

65. Of particular significance in relation to the legal issues engaged in this proceeding is that Nuuchah-nulth smudging is a spiritual and supernatural practice tied to broader beliefs about the unseen world. This is demonstrated not only by the September 14, 2015 Parent Letter signed by Ms. Manson,⁶⁵ but also by the evidence of Dr. Sayers under cross examination.

i. Cross-examination of Judith Sayers

66. The cross-examination of Dr. Sayers included the following exchanges:

Q [...] at paragraphs 16 and 17 [of your affidavit] you talk about the practice of smudging as a way of cleaning thoughts, spirits, and places of spirits of negative energies?

A Yes.

Q And so I just want to go back to my original question about the unseen world.

A Right.

Q My understanding of what you're saying is that living things have energy or a spirit. I had asked about inanimate things, things that were not alive, for example, like rocks or furniture. I mean, furniture has components that come from living creatures, as wood?

A No, they're not alive.

Q Okay, but they're not alive.

A Rocks might be a bit different because they come from Mother Earth. So they might be part of ceremonies, but not with smudging. But I don't see them as having a spirit, but they're important because they come from Mother Earth.

Q Now, is it possible to interact with that unseen world in some way?

A I don't know -- it's around you. We know, as part of our way of life, that there are spirits that are around us. Example: You know, I mean things that people might not see and we may not even see, but, I mean, on occasion you may. I mean, we can talk about thunderbirds, or sea serpents, or sasquatch, or other beings that we know are out there, you know, and as part of our practice,

⁶⁵ Supra note 17.

we'll acknowledge them, just as you would acknowledge, you know, plants or trees if you're taking them for a certain purpose, and then that way you do. Like, we were building our renewable power project. You go to the stream. You ask permission. You tell them what you're going to do and ask permission to be able to do that, and that's paying respect to what is there.

You know, I never really thought about and -- you know, in that way. I just know that there's a power in the water, there's a power from Mother Earth that we -- you know, as we go on the land to pray or to fast or to do other things. And so in that way, I guess we interact with the spirit, but I don't think -- but I'm not saying I sit there and converse with it.

Yeah, I'm not sure if that's answering your question.

Q I think that answers the question. As far as the cleansing of negative energy --

A Yes.

Q -- which you refer to in paragraph 17, where does the negative energy come from, in your people's understanding?

A Well, I don't know if you've ever had the feeling, sitting in your house or sitting in your office, and there's just this really awful feeling around you and you don't know what it is. But if I get up and I smudge my house, I can sleep better. And I don't know what that negative energy is. I could have had a bad day, a bad interaction with somebody. And I go home and I cleanse myself, smudge, and I -- and it takes away those negative feelings. That's what smudging is about. A lot of people begin their day with smudging even just to say -- to start their day right, focus your mind. And smudging is used for many, many, many purposes and many different things for very different people.

Q Does the smoke from smudging interact with the energy in a way that you can articulate?

A I don't think that I can articulate it any way. So, I mean, if I'm feeling negative energy in my house, I'll smudge my house. I'll smudge, you know, all corners, windows, doors, so just trying to clear the air. You know, you're just trying to clear it out of your living space so that you can feel safe, you can feel protected, you can feel like you can sleep that night, or even it can happen in the middle of the day.

[...]

Q So can you explain how [protection obtained from smudging] works? To protect against what?

A Any negative spirits that might be out there may try to -- I don't know -- influence you in some way. We just believe that they are out there, these negative spirits, so you just protect your house from the mentoring.

Q As far as the source of the negative spirits, where do they come from?

A I have no clue. I mean, I wish they didn't exist. Seriously, I just don't know. I just know that they are there. There's always good and evil, and, you know, there's always something that will interfere. Yeah, people have bad days and they don't know why. I don't know if I can explain it any better than that.⁶⁶

67. Although Dr. Sayers states in her affidavit that “Nuu-chuh-nulth practices of smudging are not religion”,⁶⁷ her testimony on cross-examination indicates that her personal conception of the meaning of “religion” is a narrow one, and does not exclude beliefs and practices of a stereotypical “religious” nature:

Q And so as far as going back to the concepts of language, there are things that are expressed in English that are different than the way that you express things in your language, as a Nuu-chah-nulth person, and there are things in the Nuu-chah-nulth language that you express differently or that maybe you can't say in English at all? Are there things like that?

A Yes.

Q Okay. It's like that with cultures around the world with their languages. Because of their unique experiences, there are things that cannot be said in other languages that are expressed in their own language easily. So you're aware of circumstances like that, limitations in the English language?

A Yes.

Q As far as the concept of religion for a Nuu-chah-nulth person, is there such a thing as the religion of the Nuu-chah-nulth people?

A Never. I mean, never. I mean, religion is some organized -- you know, like all the churches out there. Our spirituality comes from our practices and who we are. I mean, you get up in the morning and do your prayers, you do different -- you know, it's interesting, because the white men never saw how spiritual we were. They called us heathens and savages, and not recognizing because they didn't understand us. But, no, I mean, there no word in our language for

⁶⁶ Cross-examination on Affidavit of Judith Sayers, questions 45-52 and 73-74 and answers at pp 12-16 and 23.

⁶⁷ Affidavit of Dr. Judith Sayers at para 17.

"religion". It's all about spirituality. I mean, it's kind of the best way to describe our relationship to the land or the water or to the Creator, you know. I don't even know for sure that there is a word in our language. You'd have to ask some of our speakers.

Q I asked Dr. Williams this on Friday. But the Nuu-chah-nulth people do believe in a creator?

A I can't say for everybody, but --

Q But it's a common belief?

A It's a common belief. Naas, Ha'wiih, or we have many different -- just another word for our chiefs as well, but -- and so we have many terms for our creator, unlike religion, where we don't have any terms.⁶⁸

68. Of note in this regard is the Supreme Court of Canada decision in *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*,⁶⁹ in which the Court recognized an Aboriginal spiritual belief as falling within the protection for freedom of religion under section 2(a) of the Canadian Charter of Rights and Freedoms.⁷⁰ The Ktunaxa Nation in that case specifically argued, in fact, that their belief in the Grizzly Spirit fell within the scope of section 2(a)'s protection of religious beliefs.

69. Although the section 2(a) claim in *Ktunaxa Nation* failed, it did not fail because the Court held the nature of the Aboriginal spiritual belief at issue fell outside the scope of the freedom of religion; rather it failed because the Court held that section 2(a) does not protect the spirit itself that was the focal point of that Aboriginal spiritual belief.⁷¹

70. It is apparent from the foregoing that what is broadly societally and commonly termed "religion" is analogous or even identical to many aspects of Aboriginal spirituality, such as the belief in an unseen world, the presence of spirits and energy, and the ability to interact with both. Dr. Sayers discussed the spirits that the Nuu-chuh-nulth believe are within living things, asking permission from them, and discussed the innate "power" in living things, such as

⁶⁸ Cross-examination on Affidavit of Judith Sayers, pp 60-61.

⁶⁹ 2017 SCC 54 [*Ktunaxa Nation*].

⁷⁰ *Ibid* at paras 68-69, applying section 2(a) of the Charter.

⁷¹ *Ibid* at paras 70-71.

cedar.⁷² Dr. Sayers agreed on behalf of the Intervener, the NTC, that “the integration of things like spirits and energy and the beliefs in the metaphysical world, the unseen world, are part of” the NTC, including the belief that smudging “protects” against bad spirits.⁷³ Those are common beliefs associated with spirituality, religion and creeds in various parts of the world.

K. Nuu-chah-nulth and Other Aboriginal Beliefs on Smudging Do Not Require Compulsory Participation Against One’s Will

71. There is no evidence that Aboriginal beliefs require compulsory participation against one’s will, or that such compulsion is consistent or required by Aboriginal culture. In fact, the evidence is to the contrary. The NTC does not appear to endorse or practice compelled smudging. It is also noteworthy that when the Curriculum was assembled no criteria for what constituted Aboriginal “culture” was even established by the Province.⁷⁴

i. Cross-examination of Judith Sayers

72. The cross-examination of Dr. Sayers included the following exchange:

Q As far as your people's practice regarding smudging, I mean, you yourself have been involved in many smudges?

A Yes.

Q Is it your experience that smudging is entered into on --

A By consent.

Q By consent?

A Mm-hmm.

Q Always?

A Always, mm-hmm.

Q And that those who participate in it do so on a voluntary basis?

A Yes.

⁷² Cross-examination on Affidavit of Judith Sayers, p. 17, line 11.

⁷³ Ibid, at p. 59, lines 22-25; p. 23, line 13.

⁷⁴ Cross-examination of Harry Cadwallader, pp. 21 and 22.

Q Their perspective in entering into the smudge is an important part of the smudge itself, is their attitude; is that correct?

A Yeah, for sure.

Q Because the purpose is to cleanse and to get rid of negative energy, and it would be counterproductive to compel somebody to participate because it would --

A Well, it's -- I don't know if it's counterproductive, but obviously if a person -- if you don't believe, it's not going to work. And so why do it if somebody doesn't believe?

Q It's not your people's practice, though, to smudge people against their will?

A. Well, I can't say. I mean, Nuu-chah-nulth and -- I mean, in my family, we never would. I don't know of any instances, yeah.

Q I mean, from --

A Nuu-chah-nulth, as far as I know, would never.⁷⁵

73. According to Dr. Sayer, the NTC itself does not advocate for compelling people to be cleansed or smudged against their will. The use of compulsion by the Respondent to Cleanse children against their will is therefore not consistent with NTC culture, nor is it reflective of the NTC's cultural reality. The Respondent, however, justifies its conduct by claiming that compelling children to be smudged in a public school classroom is in fact part of teaching about Aboriginal culture. It is apparent that this assertion is false.

ii. Cross-examination of Lorna Williams

74. The cross-examination of Dr. Williams included the following exchange:

Q So you talked about community and how important that is.

A Yes.

Q And I agree with you that it is important. My experience with community is that in order to have community with people, it has to be voluntary to be true community. I don't attempt to compel people to hold community with me, and they don't compel me to hold community with them. That's one of the things

⁷⁵ Cross-examination on Affidavit of Judith Sayers, questions 87-95 and answers at pp 26-28.

that makes community special is because there is a mutuality in it. Is that consistent with your understanding of the word "community"?

A Yes.

Q Now, would it be consistent with your experience, as a First Nations person, that regarding smudging, that if there is to be a smudge, that the participants should enter into it willingly as opposed to by force from another person?

A Yes.

Q I have never heard, and I asked some of the other witnesses in this case, about smudging people against their will, and I had never heard of such a thing in the First Nations world. I wanted to ask you if, in your experience as a First Nations person, you have heard of smudging people against their will.

A No.⁷⁶

75. This is also consistent with the testimonies of Mr. Cadwallader and Ms. Walt.

iii. Cross-examination of Harry Cadwallader

76. The cross-examination of Mr. Cadwallader on his Affidavit included the following exchange:

Q The [First Nations] who are in your district or your districts, you have had occasion to work with First Nations people for over a decade?

A I have had that opportunity, yes.

Q Is it your understanding of First Nations culture or religion or society that they compel people to be smudged against their will?

A Again, there are 203 First Nations, so I don't know all of them. But to my knowledge – I can't speak on behalf of the cultures in the province. So that may be in some cultures, but not to my knowledge.

Q I'm not asking you to speak on their behalf. I'm asking you whether or not you have ever encountered a situation --

A I have not encountered a situation.

⁷⁶ Cross-examination on Affidavit of Lorna Wanosts' a7 Bernita Williams, questions 148-151 and answers at pp 32-33 [emphasis added].

Q -- where a First Nations person or a tribal council or group has compulsorily smudged somebody against their will.

A I have not encountered that.⁷⁷

iv. Cross-examination of Nancy Walt

77. The evidence of Ms. Walt on her Affidavit on this point was similar to that of Mr. Cadwallader:

Q Are you aware of any circumstances where First Nations people seek to compel people to be smudged against their will?

A No.⁷⁸

CONCLUSION

78. A review of the social fact evidence in this case is devoid of any justification for the Cleansing which occurred on September 15, 2015. The Cleansing occurred without parental consent during regular school hour when attendance was mandatory. The Cleansing clearly incorporates and derives from a particular creed. The Cleansing is not required by the Curriculum, and it is possible to teach about Aboriginal culture and history without actively smudging students, furniture and classrooms. Compelling people, especially children, to be cleansed is entirely inconsistent with the beliefs of the NTC and the other First Nation witnesses to date. By smudging classrooms of vulnerable children who do not consent, or cannot legally consent, to compulsory participation in the Cleansing, the Respondent is

⁷⁷ Cross-examination on Affidavit of Harry Tennyson Cadwallader, questions 85-88 and answers at p 19.

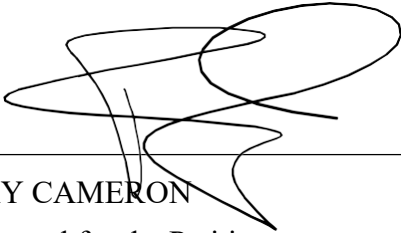
⁷⁸ Cross-examination on Affidavit of Nancy Jane Walt, question 136 and answer at p 30. Despite the fact that Ms. Walt, the Executive Director for Curriculum and Assessment, had never heard of First Nation's people smudging anyone against their will, Ms. Walt opined that she thought that a principal of a school could decide to have a classroom smudged, and that parents may not be able to opt out – see p. 21, lines 8-18 of the Transcript, and pages 24-25. She also deposed that it might be permissible to smudge a child against her will, and testified that if someone compelled her [Ms. Walt] to be smudged against her will she could not say whether or not she would feel disrespected – see pp. 27 and 28. Ms. Walt later grudgingly admitted that if she was confined to a classroom and compelled to be smudged against her will despite requesting to leave that that would “probably not” be respectful of her. She expressed a lack of concern about the September 14, 2015 Parental Letter – p. 31, line 12. Ms. Walt's testimony on these points and apparent comfort with compulsion and authoritarianism as the Executive Director for Curriculum and Assessment is concerning.

actually contradicting Aboriginal culture and history, which appears to recognize that no one should be compelled against their will to be smudged.

79. Additionally, the insistent assertion of the Respondent that it is somehow justified in its conduct and that public school children ought in fact to be subjected to Cleansing against their and their families' will is, in a certain way, an echo of the gross abuses of the residential school days where First Nation's children were taken from their homes, deprived of family support, and compelled by the state to participate in religious practices against their will.

80. Even if it were part of the NTC's practice or culture to compel people to be Cleansed against their will, the Petitioner states that it would not be lawful for the state to carry out such a practice using government authority, as it would constitute a gross and unjustifiable infringement of section 2(a) of the Charter, as it has in the instant case.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:



JAY CAMERON
Counsel for the Petitioner