B.C. Supreme Court allows schools to hold mandatory Indigenous smudging ceremonies

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The B.C. Supreme Court has handed down a decision that comes as a great disappointment to the Justice Centre for Constitutional Freedoms (on whose board I sit). The Court ruled that obliging schoolchildren to take part in an Indigenous smudging ceremony whose purpose is to “cleanse” the spirits of participants does not implicate them in a religious ceremony, but rather a “cultural” experience.The JCCF was acting for plaintiff Candice Servatius, who was informed in Sept 2015 by the principal of John Howitt Elementary School in Port Alberni, B.C. that the school would be sponsoring a “cleansing” of students and their classroom, which would be performed by a member of the Nuu-chah-nulth First Nation of Vancouver Island. As described by JCCF president John Carpay in a November column in these pages,  The letter claimed that without cleansing, the classroom and even the furniture would harbour negative “energy” and would not be safe until the “energy” was “released.” Smoke from sage was fanned over the bodies of children, including Mrs. Servatius’ daughter, who was required to participate in this ritual against her will. Several months later, an aboriginal prayer was offered to a “god” at a school assembly that children were required to attend.The Servatius family’s suit was not vexatious or motivated by antipathy to Indigenous rituals per se. They had no objection to their children learning about the smudging ceremony via texts, video or a visitor’s explanation. They objected to their children being compelled to take part in a spiritual ceremony. Students can, after all, learn about Yom Kippur without fasting for 24 hours; they can learn about Catholic repentance without smudging ash on their forehead; girls can learn about the principle of sexual modesty without wearing the hijab (a quasi-religious cultural custom that has generated numerous controversies in law). Why should students have to engage in an actual ceremony to learn the aboriginal concept of “energy” and spiritual cleansing?Everyone is aware that Canadian law has established that religious freedom does not include the right to impose one’s faith or affirmations of faith on children. Nor should children be forced to single themselves out by making use of an exemption, which necessarily requires an expression of non-belief.Ah, but according to this judgment, if the ceremony is definitively cultural and not religious in nature, well then, there is no problem. That at least is the gist of what the Court has ruled. From which I infer the thinking was: How could anyone possibly object to taking part in a benign cultural ceremony that does no harm and is educational to boot (and who knows, may even cleanse the school of bad juju)?The question is: Where does religion end and culture begin? Culture is downstream from religious belief. The Nuu-chah-nulth Tribal Council, an Intervenor in the case, declared that aboriginal spirituality is not religion, and that First Nations’ languages have no word meaning “religion.” But as Carpay points out here, that won’t wash, because the Supreme Court of Canada has ruled, in the case of Ktunaxa Nation v. British Columbia (2016), that aboriginal spiritual beliefs qualify as “religion” for the purposes of being protected by the Charter’s section 2(a).I am troubled by this judgment, and it took me a while to work out why. What follows is inference and interpretation on my part. I do not accuse the judges of any conscious wish to patronize or condescend to First Nations in their judgment. Any conjectures as to what is going on below the level of consciousness are mine alone.The plaintiffs then, it seems to me, are treating Indigenous spirituality as they would treat any other form of spirituality or religion that does not accord with their own or their children’s beliefs. That is to say, they are treating the Nuu-Chah-Nuulth First Nation as civic peers, as Canadians with the same rights they are entitled to and the same limitations they are constrained by. In objecting to their children’s participation in Indigenous spiritual rituals, they are therefore demonstrating respect for the spiritual beliefs of the Nuu-Chah-Nuulth as equivalent in stature and potential influence to their own beliefs.The Court, it seems to me, sees the Nuu-Chah-Nuulth as children, their beliefs fairy tales and their rituals as charming aesthetic gestures. The burning and smudging are nothing more than cultural theatre, like a Japanese tea ceremony. So parents should not worry that they rise to the same significance as Christian prayers and practices which, naturally, may not be imposed on other students, because they might offend or be perceived as proselytism. That is, Christian beliefs and rituals aren’t theatre; they are real; they have potential influence.To me, this judgment bespeaks the same kind of virtue-signalling embodied in the now-prescriptive land-acknowledgement mantras that begin meetings and talks all over the nation. They are spoken and received with deep piety of voice and expression, but they are not taken seriously, because they are purely ornamental. Nobody who parrots them is afraid the land will actually be taken back by the original owners. It’s theatre. Likewise with the smudging ceremony.The culture and the beliefs of Indigenous people are not accorded real respect. They are vehicles for the performance of “reconciliation”—feel-good gestures without any real meaning attached to them. This case should be reviewed at a higher level. If we are content to let it stand, then we are assenting to the principle that with regard to compelled participation in spiritual rituals, some Canadians are more equal than others. I have too much

respect for Indigenous peoples to infantilize them, and so should the courts.Want to help us grow? Here's what you can do!

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