Smoke in the Court of the Thief: Smudging as a Religious Act in Canadian Law

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Inception

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Abstract

Should smudging, a spiritual Indigenous practice, be allowed in schools? Canadian jurisprudence regarding religion and religious freedom in the last 150 years has tended to favor a western, classical liberal approach that separates the secular from the spiritual. This approach excludes the possibility of meaningful decolonial dialogue and reconciliation in the spirit of the Truth and Reconciliation Commission's (TRC) 94 Calls to Action. This paper uses the case of Candice Servatius to interrogate notions of "religion" and "public space" within Canadian law. I argue that while smudging does fall into the definition of a "religious" practice established by the Supreme Court of Canada, the challenge of reconciliation given to Canadians by the TRC compels us to recognize the place of the sacred within public life, including in the public school system.

Introduction

The role of religion within public spaces has been a hotly contested topic in Canada since Confederation. However, while Canadian jurisprudence regarding religion and religious freedom in the last

150 years has tended to favour a classical liberal approach that separates the secular from the spiritual, I would argue that this approach excludes the possibility of meaningful decolonial dialogue and reconciliation in the spirit of the Truth and Reconciliation Commission's (TRC) 94 Calls to Action. These questions of what public space should look like in a post-TRC Canada form the basis of Candice Servatius' suit against British Columbia's (BC) School District 70 (Port Alberni).

Servatius sued the school district on the grounds that the school violated her and her children's freedom of religion by permitting a smudging to be performed at her children's school. This case forced the Supreme Court of British Columbia to decide whether or not smudging constitutes a "religious" practice, and whether or not its inclusion as a part of her children's education constitutes a breach of BC's *School Act* and its commitment to secularity. My endeavour in this paper is to make the case against Servatius and demonstrate why smudging should be permitted in schools.

My argument is twofold. Firstly, I argue that smudging should be allowed in public schools in order to educate Canadians about Indigenous Peoples and Residential Schools. While Indigenous spirituality may be considered a religious practice within the context of Canadian law, this is somewhat irrelevant to whether or not smudging should be allowed in schools. I argue that the challenge of reconciliation given to Canadians by the TRC compels us to recognize the place of the sacred within public life, including in the public school system. The TRC calls for education about Indigenous Peoples and Residential Schools to be a part of every Canadian curriculum, which necessitates the inclusion of Indigenous ceremony.[1]

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[1] Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015), 238,

Secondly, smudging in schools must be done with respect to both Indigenous beliefs and the wishes of participants, as inspired by Manitoba's approach. As acknowledged by the "Smudging Protocol and Guidelines" from Manitoba's Department of Education, smudging can be a valuable educational experience for students to better learn the effects of Residential Schools and colonialism.[2] However, if a smudging is to be conducted in a public school, it must be done in a manner that reflects Indigenous beliefs and practices, and participants must do so voluntarily, again, in accordance with Indigenous beliefs.

This paper will begin with a brief discussion of Indigenous spiritual beliefs, drawing largely from the writings of activist and writer Winona LaDuke. I will then summarize the case being argue on behalf of Servatius against Port Alberni's School District before moving into a wider analysis of Canadian jurisprudence on freedom of religion, as defined in section 2(a) of the *Constitution Act, 1982*. I will then turn to a discussion of how the secular is framed within the TRC and its 94 Calls to Action, before summarizing the approach of the Manitoba government to smudging in Manitoban public schools.

Smudging and Indigenous Spirituality

Firstly, it is important to acknowledge that Indigenous Peoples practice a multiplicity of beliefs and engage in a wide variety of spiritual rituals. Therefore, not all Indigenous ceremonies may include a smudging, or the burning of medicines (such as sage or

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http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf.

[2] Aboriginal Education Directorate. "Smudging Protocol and Guidelines." Manitoba Education and Advanced Learning. Last modified 2014. Accessed February 3, 2017. http://www.edu.gov.mb.ca/aed/publications/pdf/smudging_guidelines.pdf: 6

sweetgrass) to create smoke, which is then passed over the body. However, smudging is an important spiritual practice of many Indigenous nations on Turtle Island,[3] and indeed the practice symbolizes a fundamentally different conception of society and of the sacred then that of European colonizers.

Winona LaDuke describes Indigenous spirituality as being based on "the reaffirmation of the relationship of humans to the Creator."[4] Indigenous ceremony, therefore, is centered around the interconnectedness between people and the Creator, through Sundance, sweat lodges, and other ceremonies practiced across Turtle Island.[5] She quotes Vine Deloria, Jr., who states that the purpose of Indigenous religious practices is to "introduce a sense of order into the chaotic physical present as a prelude to experiencing the universal moment of complete fulfillment."[6] Importantly, Indigenous spirituality does not include a delineation between the public and private spheres/spaces, with specific times and spaces being designated as those in which the divine or spiritual can be experienced. As discussed by Niigaanwewidam James Sinclair, "Indigenous spiritualties are very different than religion, consisting of a series of locally-derived actions occurring every moment of every day, emerging in thought and invested informing relationships with all beings in the cosmos."[7]

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[3] Indigenous name for North America.

[4] Winona LaDuke, *Recovering the Sacred* (Chicago, IL: Haymarket Books, 2005), 12.

[5] Ibid*.,* 12.

[6] As cited in Ibid*.,* 13.

[7] Letter by Niigaanwewidam James Sinclair, "Dear Relations in the Emmanuel Pentecostal Church," November 16, 2014, accessed April 16, 2017, https://s3.amazonaws.com/s3.documentcloud.org/documents/1362166/dear-relations-in-the-emmanuel-pentecostal-church.pdf.

In contrast, Western conceptions of society and spirituality make explicit boundaries between that which is public and secular, and private and religious/spiritual. Taylor and Maclure delineate between these Western spheres with the public sphere being that which concerns that state, or to "designate what is open, transparent, and accessible." Rendering the public space non-religious may take one of two forms—with either the state adopting a neutral stance towards religion, or broader society expected to refrain from religious references. Within the context of Turtle Island, LaDuke is quick to point out not only this discrepancy in conceptions of what "religion" and "spirituality" are between Indigenous peoples and European colonizers, but that they exist within an asymmetrical system based on colonial dominance. As she argues, "We have a problem of two separate spiritual paradigms and one dominant culture—make that a dominant culture with an immense appetite for natural resources."[8] Therefore, religious subjugation is intimately connected with the wider project of colonialism, with Indigenous claims to sacred space being repeatedly denied on the basis that they do not conform to Western notions of religion and sacredness.

Smudging occupies and important place within some Indigenous spiritualties, and indeed exemplifies the key divergence between Western and Indigenous conceptions of public space. Stevenson emphasizes the importance of smudging to a healing ceremony, as it allows a person, as described by Elders, to be cleansed of "negative thoughts, bad spirits, or negative energy."[9] The smoke is an important symbol of cleansing. Smudging, therefore, plays a similar role to incense in many other beliefs and practices, as it prepares the mind, space, and body for a respectful ceremony. Sinclair describes smudging as being the physical manifestation of "forging healthy and strong relationships (such as with human and

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[8] *Recovering the Sacred*, p. 14.

[9] Jean Stevenson, "The Circle of Healing". *Native Social Work Journal* 2 no. 1 (April 1999): 12.

non-human beings, plants, earth, water, the sky, the stars, the sun, the moon, and the universe) life can become a nurturing, sustainable, and everlasting space."[10] He calls it "an action that acknowledges past, honours present, and invites future relationships" and is therefore essential to ceremony, or any activity that involves a community coming together.[11] Thus, as exemplified by the symbolism evoked in smudging, Indigenous spiritual beliefs and practices cannot be segmented according to Western definitions of what "religious" practices are. A community cannot come together without it, regardless of whether or not said activity may be 'religious' or spiritual in nature.

I will be focussing on the use of smudging in Port Alberni to discuss these wider issues of culture clash and colonialism introduced by LaDuke. The next section will discuss this in the context of Canadian jurisprudence, with particular regards to Servatius' lawsuit.

Servatius vs School District 70 (Alberni) and "Religion" in Canadian Law

Freedom of religion, as enumerated in Section 2(a) of the *Canadian Charter or Rights and Freedoms* (*Charter*) has been adjudicated a number of times before the Supreme Court. However, only in 2017 was there a case of Indigenous beliefs being classified as "religious." This section will first describe the *Servatius* case in British Columbia, before discussing Canadian jurisprudence on religious freedom, particularly with respect to Indigenous beliefs and religion in schools.

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[10] Letter by Niigaanwewidam James Sinclair, "Dear Relations in the Emmanuel Pentecostal Church," November 16, 2014, accessed April 16, 2017, https://s3.amazonaws.com/s3.documentcloud.org/documents/1362166/dear-relations-in-the-emmanuel-pentecostal-church.pdf.

[11] Ibid.

Candice Servatius was informed via a letter sent home from her children's school, John Howitt Elementary School (JHES) in Port Alberni, British Columbia, informing her that her children would be participating in a smudging. In the letter dated September 15th, 2015, the principal stated that this would be conducted by a Nuu-chah-nulth member of the community, in order to better educate the students about Indigenous culture and history.[12] In response, Servatius, worried by the religious tone of the ceremony, contacted the school to request a meeting with the principal on September 16th, 2015 to discuss the religious nature of the event, only to find out that the smudging had already taken place.[13] Servatius stated in a letter to the superintendent of the school district that her and her partner "support our children learning about other cultures and traditions. However, we do not agree with the forced participation in spiritual/religious practices and without parents' written consent and further more believe that these types of practices do not have a place in the regular classroom."[14]

On January 7th, 2016, after her communication with the school district, an Indigenous prayer with explicit references to a "god" was said in an assembly at JHES, prior to the performance of a hoop dance.[15] Parents were not given prior knowledge of the ceremony. Servatius contacted the superintendent once again, asking that she be provided with written assurance that no religious ceremonies would be taking place in JHES without prior communication with parents. The superintendent did not respond with a document. Rather, he told Servatius at a meeting on June 9th, 2016, that the

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[12] "Servatius v. School District 70 Exhibits," Justice Centre for Constitutional Freedoms, last modified November 2016, https://www.jccf.ca/wp-content/uploads/2016/11/Servatius-v-SD70-EXHIBITS.pdf.
[13] Ibid., 25.
[14] "Servatius v. School District 70 Exhibits," 26.
[15] Ibid., 33.

activity was cultural, not religious, and that “there is more tolerance for Aboriginal religion than your religion.”[16] This stance—that the activities were cultural, not religious—has been maintained by the School District in subsequent communication with Servatius and her legal counsel.

Servatius argues, supported by the Justice Centre for Constitutional Freedoms, that the rights of her and her children under the *Charter* were not respected, as they were not given the ability whether or not to choose to participate in the ceremonies.[17] Notably, unlike in the United States or France, Canada has no constitutionally entrenched separation of church and state. The *Charter* lists “Freedom of conscious and religion” as a fundamental freedom of every Canadian.[18] Education, being under provincial jurisdiction, is subject to provincial legislation. Servatius argued in a letter to the Superintendent of the School District that the school was acting in contravention to the British Columbia *Schools Act.* The British Columbia *Schools Act* states in section 76.1 that, “all schools and Provincial schools must be conducted on a strictly secular and non-sectarian basis. The highest morals must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.”[19] Thus, schools have a duty to impart morals to students, but it may not be done within a religious context.

In summary, the case against the Port Alberni School District hinges on whether or not the Indigenous ceremonies are “religious,” and

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[16] Ibid., 33.
[17] Ibid., 8.
[18] Government of Canada, "Constitution Acts, 1867 to 1982," Justice Laws Website, accessed April 16, 2017, http://laws-lois.justice.gc.ca/eng/const/.
[19] Government of British Columbia, "School Act," British Columbia Laws, accessed April 16, 2017, http://www2.gov.bc.ca/assets/gov/education/administration/legislation-policy/legislation/schoollaw/revisedstatutescontents.pdf.

therefore should not have been permitted in JHES under British Columbian law, and certainly not without prior consent of the parents. When defining “religion” within Canadian jurisprudence, Witten, drawing on Charles Taylor, characterizes it as “soft secularism,” wherein the state is meant to be a neutral agent facilitating religious accommodation and tolerance, due to the actions of the state falling within the public sphere.[20] However, he also points out that this approach to religious freedom can become more assertive (and therefore take on a more ‘hard’ character) when conflicts arise between secular and religious values. This is because “a soft-secular state aspires to be neutral, but it cannot be wholly indifferent to certain constitutive values-such as equality, autonomy, human rights, and popular sovereignty-which are necessary in order for people with diverse conceptions of the good to live together peacefully.”[21] Thus, soft-secularism cannot be totally distanced from its classical liberal roots. Therefore, it can be argued, drawing from this classical liberal legacy, that British Columbians have the ‘freedom from’ being educated according to religious beliefs, in order to better facilitate the creation of a tolerant, pluralistic society.

Regarding the term “religion” itself within Canadian law, the Supreme Court remains somewhat vague. In *Syndicat Northcrest v. Amselem (Syndicat)*, Justice Iacobucci ruled that religion typically encompasses “a particular and comprehensive system of faith and worship…[that] tends to involve the belief in a divine, superhuman or controlling power.”[22] Ultimately, it is “freely and deeply held personal convictions or beliefs connected to an individual’s spiritual

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[20] Mark A. Witten. “Tracking Secularism: Freedom of Religion, Education, and the Trinity Western University Law School Dispute.” *Saskatchewan Law Review* 79 (2016): 223.

[21] Witten, “Tracking Secularism,” 228.

[22] Supreme Court of Canada, "Syndicat Northcrest v. Amselem," Lexum, last modified June 30, 2004, accessed April 16, 2017 at para. 39, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do.

faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith."[23] Justice Iacobucci went on to state that those seeking freedom of religion from the court do not need to prove that the belief is "valid" according to religious dogma or religious authorities, only that the belief is "sincere."[24]

The test for determining an infringement on freedom of religion under the *Charter* was first set out in *R. v. Big M Drug Mart Ltd.*, Dickson set the parameters of freedom of religion as "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination."[25] This simplified and restated in *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)* (*Ktunaxa Nation*) by McLachlin C.J and Rowe J as "the freedom to hold a religious belief and the freedom to manifest it."[26] Thus, the following two-part test must be met to prove an infringement on freedom of religion:

> (1) [The claimant] sincerely believes in a practice or belief that has a nexus with religion;

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[23] Ibid*.,* at para. 39.

[24] Ibid*.,* at para. 43.

[25] Supreme Court of Canada. "R. v. Big M Drug Mart." Lexum. Last modified April 24, 1985. Accessed November 3, 2017. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/43/index.do at p 336.

[26] Supreme Court of Canada. "Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)." Lexum. Last modified November 2, 2017. Accessed November 3, 2017. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16816/index.do at para 63.

> (2) [The] impugned state conduct interferes, in a manner that is non‑trivial or not insubstantial, with his or her ability to act in accordance with that practice or belief.[27]

The classical liberal approach described above by Witten remains evident. Under the *Charter*, the state cannot interfere in a substantial way with an individual's ability to practice their religious beliefs.

Indigenous Spirituality in Canadian Jurisprudence

As neutral and straightforward as the definition and test may seem, Beaman argues that conceptions of religious freedom in Canada and the United States cannot be distanced from their colonial framework, as Indigenous and colonizing peoples have such vast differences between their conceptions of 'religion' and 'religious practice.' Again, as discussed above, for Indigenous Peoples, spiritualism is not practiced within a specific space, nor is it practiced according to written texts.[28] However, it is the colonizer's conceptions of religion (Protestantism and Roman Catholicism in Canada) that dictates what "religion" is according to law. That which is "trivial" or "insubstantial," therefore, is being determined according to a colonial standard. In the case of Canada, this includes conceptions of secular and/or sacred space, with the latter being private and the former being public. As LaDuke says, those in favour of building on sites sacred to Indigenous people, "have been biased toward the 'built' environment, wanting to see extensive ruins, a temple or a church, or perhaps a burning bush as evidence of 'sacredness.'"[29] This vast gulf in conception of the "religious," Beaman argues, leads to Indigenous Peoples' beliefs being

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[27] Ibid at para 68. This test was first established in *Multani,* wherein a family sued a Quebecois school district for their son's right to wear a kirpan on the basis of the Sikh beliefs.

[28] Lori G. Beaman, "Aboriginal Spirituality and the Legal Construction of Freedom of Religion." *Journal of Church and State* 44 (2002): 137.

[29] LaDuke, "Recovering the Sacred", 26.

"accommodated" within the Christian "normal," as opposed to being validated in themselves.[30] As such, even if Canadian jurisprudence on religious freedom is one that is meant to be neutral, it cannot be distanced from the colonial legacy that formed it.

Indeed, as Beaman points out, the vast majority of cases that concern Indigenous spirituality do so on the basis of Aboriginal title. Beaman argues that this trivializes Indigenous belief, as it only measures their worth in comparison to land, fish or animals.[31] Thus, jurisprudence on Indigenous beliefs (that may be "religious" in nature, according to the definition set out in *Syndicat*) tend to rely on section 35 of the *Constitution Act, 1982*. This was the case in *Hamilton Health Sciences Corp. v. D.H*, which saw a mother successfully block the treatment of her daughter's leukemia by chemotherapy in favour of traditional methods.[32] While the creation story of the Haudenosauneen was entered as a part of court proceedings and considered by Edward J, D.H.'s control over her daughter's treatment ultimately rested on it being her right to practice her traditional medicines under Section 35, not under Section 2(a), as they existed prior to European contact.[33]

The first time that Indigenous beliefs were considered by the Supreme Court within the context of freedom of religion was in the 2017 *Ktunaxa Nation* decision. The Ktunaxa Nation argued that the approval of plans to build a ski resort in the Qat'muk valley by the BC Minister of Forests, Lands and Natural Resource Operations infringed on their freedom of religion. This is because, according to

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[30] Beaman, "Aboriginal Spirituality" 146. Beaman also discusses within the context of other religious minority groups.
[31] Ibid., 144.
[32] "Hamilton Health Sciences Corp. v. D.H.," CanLii, last modified November 15, 2014, at para 83
https://www.canlii.org/en/on/oncj/doc/2014/2014oncj603/2014oncj603.html.
[33] "Hamilton Science Corp", at para 81.

their traditional beliefs, the valley is where the Grizzly Bear Spirit comes to dance. Development, they argue, would drive the spirit away. The Court ruled unanimously against the Ktunaxa appeal, stating that the there had been sufficient consultation with the nation prior to the proposed development.[34] Where the judges differed, however, was in their interpretation of the two-part test quoted above.

McLachlin CJ and Rowe J, writing for the majority, argue that the first part of the test is met. There is no dispute as to whether the Ktunaxa belief is sincere. However, "[t]he state's duty under Section 2(a) is not to protect the object of beliefs, such as Grizzly Bear Spirit. Rather, the state's duty is to protect everyone's freedom to hold such beliefs and to manifest them in worship and practice or by teaching and dissemination".[35] As the Ktunaxa were seeking to protect the spirit itself, and not their ability to honor the spirit, their case did not meet the threshold. In their dissent, Moldaver and Côté JJ argue that the Ktunaxa Nation's freedom of religion was infringed by following earlier precedent discussed by Beaman tying Indigenous spirituality to specific spaces. As the Qat'muk valley has been designated a spiritual space, the right to honor the Grizzly Bear Spirit is innately tied to the land itself. The ski resort,

> [W]ould desecrate Qat'muk and cause Grizzly Bear Spirit to leave, thus severing the Ktunaxa's connection to the land. As a result, the Ktunaxa would no longer receive spiritual guidance and assistance from Grizzly Bear Spirit. All songs, rituals, and ceremonies associated with Grizzly Bear Spirit would become meaningless.[36]

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[34] Kathleen Harris. "Supreme Court ruling removes barrier for year-round ski resort on sacred First Nation land." CBC News, last modified November 2, 2017, accessed November 3, 2017. http://www.cbc.ca/news/politics/indigenous-rights-ski-resort-1.4381902,

[35] Supreme Court, "Ktunaxa Nation", at para 71.

[36] Ibid at para 117.

The Minister's decision to approve the ski resort, therefore, did not constitute an insubstantial infringement on their ability to manifest their beliefs.

Religion in Schools

With respect to the presence of religion within schools, Servatius' counsel cites *S.L. v. Commission scolaire des Chênes (S.L.)*. This case, similar to that of Servatius, concerned two parents who were arguing that a new curriculum adopted by the Quebec Ministère de l'Éducation, du Loisir et du Sport exposing students to a variety of religious beliefs infringed on their ability to transmit their Catholic beliefs to their children.[37] Deschamps J, writing for the majority, followed the soft secularism approach established by earlier precedent, stating that "state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever, while taking into account the competing constitutional rights of the individuals affected."[38] However, while acknowledging the need for state neutrality, given that the curriculum was not designed to transmit moral values, but rather "religious facts," the Supreme Court did not find the Quebec government in contravention of the *Charter.*[39] Furthermore, Deschamps J ruled that, in opposing the exposure of their children to differing beliefs, the parents' objection "amounts to a rejection of the multicultural reality of Canadian society."[40] Thus, the court is not ruling in favour of state neutrality at all costs, as is suggested by Servatius' legal counsel. Rather, the court clearly values

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[37] Supreme Court of Canada, "S.L. v. Commission scolaire des Chênes," Lexum, last modified February 17, 2012, accessed April 16, 2017, at para 1.4 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7992/index.do.
[38] Ibid*.,* at para 32.
[39] Ibid*.,* at Preamble.
[40] Supreme Court of Canada, "E.L." at para. 40.

multiculturalism and pluralism as well, and sees exposure to various religious beliefs as being a positive thing for Canadian society and Canadian educational systems.

Thus, in conclusion, Indigenous spiritual beliefs have been considered “religious” within Canadian jurisprudence, as demonstrated by the non-dispute of the Ktunaxa’s belief in the Grizzly Bear Spirit as being religious in nature. Given this, while acknowledging Beaman’s valid concerns of accommodation with respect to accommodation within a Christian “normal,” I would argue that smudging would fall within the “religious” as defined in Canadian law. While Sinclair describes it and other Indigenous rituals as “spiritual,” and therefore distinct, I would argue that smudging’s centrality as a cleansing ritual within Indigenous ceremony in order to prepare the individual to participate fully does fall within “a practice…that has a nexus with religion.”[41] However, I would disagree with Servatius that this renders it intolerable within schools. Rather, in the next section, I will take the argument of the Supreme Court *S.L.* and apply it within the context of the TRC, arguing that if students are truly to be educated about (and with the intention of) de-colonizing reconciliation, it cannot be done within a purely secular space in order for it to be authentic. Indigenous spirituality and smudging challenge us to rethink the “religious” and its place within “public” life on Turtle Island.

Smudging and the TRC

Throughout the work of the Truth and Reconciliation Commission of Canada, Indigenous ceremony and beliefs played a central role. This section will discuss the role of the sacred within the results and recommendations of the TRC, and conclude by discussing the

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[41] Letter by Sinclair, "Dear Relations," Supreme Court of Canada, “Ktunaxa Nation”, at para. 68.

smudging guidelines issued by Manitoba Education, presenting them as an alternative practice to the actions of JHES.

The TRC firmly places the sacred and ceremony at the heart of reconciliation, thereby blurring the lines between the public and private spheres in the Western paradigm of spiritual beliefs. As described in its final report, “Reconciliation will be difficult to achieve until Indigenous peoples’ own traditions for uncovering truth and enhancing reconciliation are embraced as an essential part of the ongoing process of truth determination, dispute resolution, and reconciliation,” in no small part to the Canadian government’s history of banning and denying Indigenous beliefs and spiritual practices.[42] With particular regard to ceremony, the TRC states that they are “vital…because of their sacred nature,” thus excluding the possibility of reconciliation being a purely secular process.[43] This is because ceremonies are “an affirmation of human dignity; they feed out spirits and comfort us even as they call on us to reimagine or envision finding common ground.”[44] This they link to the Seven Sacred Teachings “at the heart of reconciliation: respect, courage, love, truth, humility, honesty, and wisdom.”[45]

In terms of the role of education—and the role that the sacred plays in educating for reconciliation—the Commissioners state that, as a beginning step, “Education must remedy the gaps in historical knowledge that perpetuate ignorance and racism.”[46] This involves teaching Canadian children that history does not begin 150 years ago, or even 500 years ago with the arrival of Jacques Cartier, but rather has existed in the place we call Canada far prior to European

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[42] Truth and Reconciliation Commission of Canada, *Honouring the Truth*, 48.
[43] Ibid*.,* 269.
[44] Ibid*.,* 269.
[45] Ibid*.,* 269.
[46] Ibid*.,* 234.

contact. In terms of educating about Indigenous spirituality, the Commissioners draw from *S.L.* to argue that “religious diversity courses must be mandatory in all provinces and territories… which must include a segment on Aboriginal spiritual beliefs and practices.”[47] The importance of Indigenous spirituality is reflected in Calls to Action 62-64, which emphasize the need for “Indigenous knowledge and teaching methods in classrooms” [48] at all levels of learning.

Therefore, in order to engage fully in a dialogue of decolonization, Canada needs to recognize not only the importance of educating students about residential schools, but also doing so in ways that may be considered “religious” according to colonialist conceptions of the term. The Government of Manitoba’s Aboriginal Education Directorate in its 2014 “Smudging Protocol and Guidelines” document presents a workable solution to the delicate balancing act between de-colonizing Canadian education and respecting religious beliefs of students and parents. First and foremost, the document explicitly states a number of times that smudging must be a voluntary activity, calling it “the most important thing.”[49] This is framed as an extension of the Indigenous teaching of respect.[50] Thus, the right to choose whether or not to participate in ceremony is a mechanism that balances out a multiplicity of interests, and their respective constitutional rights. This includes the parents of students who, like Servatius, would not want their children to participate, or students with allergies or sensitivities to smoke. It also suggests that any school that mandates participation in smudging, as Servatius

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[47] Truth and Reconciliation Commission of Canada, *Honouring the Truth,* 238.

[48] Ibid*.,* 238.

[49] Aboriginal Education Directorate. "Smudging Protocol and Guidelines.” 6.

[50] Ibid*.,* 4.

alleges her children's school did, is not properly or respectfully engaging with processes of decolonization.

However, the document also implicitly acknowledges the importance of smudging to the process of decolonizing in public institutions and acknowledging the violence done by the Canadian state to Indigenous ceremony and ways of life. It states that, "[t]he school community should remember that at one time, First Nations cultural traditions were illegal and smudging was a practice that had to be done in secret. Those who choose to smudge need to feel welcome and respected in learning environments."[51] Thus, smudging acts as an effective tool for educating students about colonialism in two key ways. Firstly, participating in ceremony (should they so choose) exposes students to Indigenous ways of knowing, particularly if (as directed by the guidelines) the smudging is preceded by an Elder explaining the significance of the practice. Secondly, learning about the banning of Indigenous ceremony can lead to a greater discussion about the restrictions imposed upon Indigenous Peoples by the Canadian state.

Conclusion

Reconciliation has been presented as a challenge to all Canadians. This will involve fundamental shifts in our conceptions of Canadian, of Canadian history, and of the role of the sacred in public life. In this paper, I have engaged in these debates surrounding the role of Indigenous spirituality in the public sphere as a means of decolonization. While smudging could be considered a "religious" practice under Canadian jurisprudence, I argue, as guided by the Truth and Reconciliation Commission, that the importance of educating the children of Canada about the abuses of colonialism necessitates doing so within a context that is not strictly secular.

[51] Aboriginal Education Directorate. "Smudging Protocol and Guidelines," 6.

Thus, regardless of whether or not its potentially religious nature could result in it being barred by existing educational legislation, I firmly believe that smudging should be allowed in schools.

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