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**THIS EXAMINATION CONSISTS OF 7 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW**

FINAL EXAMINATION – APRIL 2019

**LAW 201
CONSTITUTIONAL LAW**

**SECTION 4
PROFESSORS JOHNSTON & EDINGER**

TIME ALLOWED – 3 HOURS AND 10 MINUTES READING TIME

**SECTION 1- ABORIGINAL AND TREATY RIGHTS (Johnston) 100 MARKS
RECOMMENDED TIME: 1 HOUR**

**SECTION 2- FEDERALISM AND CHARTER (Edinger) 75 MARKS
RECOMMENDED TIME: 2 HOURS AND 10 MINUTES READING**

NOTE: This is an open book examination. Students may bring into the examination room the casebook, the *Constitution Acts 1867-1982*, and their notes. All electronic devices (other than those required for the use of Exemplify) are forbidden.

If you find that you need additional information, state what that information would consist of and explain its relevance.

SECTION 1- ABORIGINAL AND TREATY RIGHTS (Johnston)

QUESTION 1 (MARKS: 100)

The Beaver First Nation (BFN) is located in a remote area of Northern Ontario. In 1873, their ancestors signed a treaty with the Crown whereby they surrendered all their traditional territory in return for a small reserve and annual treaty payments of \$25 per capita. The treaty contains a blanket extinguishment clause, stating that “the said Indians do hereby cede, release, surrender and yield up to Her Majesty the Queen all their rights, titles and privileges whatsoever”. The text of the treaty does not make any mention of hunting rights. However, the BFN oral tradition indicates that their ancestors were promised that their First Nation would always be able to hunt on the surrendered lands and that this promise was the main reason they agreed to sign the treaty.

To date, there has been virtually no development or settlement in the vicinity of the reserve. The nearest population centre, the town of Hearst, is located more than 600 kilometres to the south and there are no roads connecting the town to the reserve. The only access to and from the reserve is by bush plane. This isolation has enabled the BFN to retain their traditional way of life, a central part of which is moose hunting on the surrendered lands. The BFN places a high cultural and spiritual value on the moose population, treating them and their habitat with the utmost respect.

Recently, the BFN received a letter from the provincial government indicating that it was considering a proposal for locating a diamond mine on the surrendered lands in the vicinity of the reserve. To facilitate construction and operation of the mine, an access road would have to be built connecting the mine to Hearst. The proposal provided that, for safety reasons, hunting would be prohibited along a two-kilometre corridor on either side the access road. The letter advised that a series of open houses were scheduled to take place in Hearst and representatives of the BFN were invited to attend. No financial support was offered for travel expenses and so the chief and council decided not to participate. Instead, they wrote a very detailed letter to the province clearly stating that they were opposed to the proposal for the following reasons: firstly, the mine was to be located in the heart of their moose-hunting territory which would disturb the moose population, potentially causing the moose to move further north and thereby destroying their hunting rights; secondly, even if the moose remained in their hunting grounds, the road corridors would significantly diminish their hunting opportunities.

A few weeks ago, the province notified the BFN by letter that the proposal had been approved. The letter indicated that the approval had been granted because it would enhance regional economic development. The province stated that the potential harm to the moose population would be offset by benefits to the BFN because the mine would bring them important job opportunities and the road would reduce the cost of transportation for medical and educational purposes. As for the impact of the access road, the Province decided to reduce the no-hunting corridor from two kilometres to one kilometre on either side of the road.

The BFN is very dissatisfied with this outcome. They would rather continue their traditional way of life than participate in the mining economy. They also think that the access road corridor remains an unacceptable limit on their hunting rights. They have come to your law firm seeking advice on whether and how they can stop the construction of the mine and the access road. Advise the BFN. If you need additional information, state what that information would consist of and explain its relevance.

SECTION 2- FEDERALISM AND CHARTER (Edinger)

QUESTION 2 (25 MARKS)

The Vancouver Airport Authority (Authority) is a federally incorporated company. It manages and maintains the Vancouver International Airport and some other airports in the lower mainland area of British Columbia. The Crown in Right of Canada is the registered owner of the land on which the Vancouver airport is situated. The Authority leases the property from the Crown on a long-term lease (60 years).

The Authority entered into a contract for an improvement to the Airport. The improvement consisted of expanding the runways. A number of the companies which supplied materials and labor for the improvement filed builders' liens against the title to land owned by the federal government and leased to the Authority.

The liens were filed pursuant to the provincial *Builders Lien Act*, SBC 1997, c. 45. The *Act* creates liens for all those who contribute labor and materials to an improvement. It authorizes the registration of those liens against title to land of the lessee and the owner and, if the lien claimant is not paid, the *Act* authorizes the court to order the land to be sold.

No judicial order for sale of the land has been made. In fact, the liens have been removed from title to Authority land by payment into court of the amounts claimed by the liens. But the Authority takes the position that it is not subject to the *Builders Lien Act* at all, even though there has been no judicial order for sale and the liens have been removed from title. The Authority argues that the work is not yet complete and that other liens may be registered on its title. The Authority petitions for a declaration that the provincial *Builders Lien Act* is inapplicable.

Draft the argument which you can make on behalf of the Authority.

QUESTION 3 (50 MARKS)

Quebec Bill 21 is very controversial. It is said to breach both s.2(a) and s.2(b) of the Charter. Some (but not all) of the critical provisions are reproduced in the question below. Answer all the following questions.

(a) Can a Bill be challenged before it becomes law?
(5 MARKS)

(b) Draft arguments that Bill 21 breaches both s.2(a) and s.2(b).
(40 MARKS)

(c) Would your answers be any different if Quebec used s.33 of the Charter?
(5 MARKS)

BILL 21

AN ACT RESPECTING THE LAICITY OF THE STATE

CHAPTER I

1. The State of Québec is a lay State.
2. The laicity [secularization] of the State is based on the following principles:
 - (1) the separation of State and religions;
 - (2) the religious neutrality of the State;
 - (3) the equality of all citizens; and
 - (4) freedom of conscience and freedom of religion.
3. State laicity requires parliamentary, government and judicial institutions to comply with the principles listed in section 2, in fact and in appearance, in pursuing their missions.

For the purposes of this chapter,

- i “parliamentary institutions” means the National Assembly and the persons appointed or designated by it to an office under its authority;
- ii “government institutions” means the bodies listed in paragraphs 1 to 10 of Schedule I;

lil “judicial institutions” means the Court of Appeal, the Superior Court, the Court of Québec, the Human Rights Tribunal, the Professions Tribunal and the municipal courts.

4. In addition to the requirement under section 3, State laicity requires compliance with the prohibition on wearing religious symbols under Chapter II of this Act, and with the duty of religious neutrality under Chapter II of the Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies (chapter R-26.2.01), by the persons subject to that prohibition or that duty.
5. It is incumbent on the Conseil de la magistrature, with respect to judges of the Court of Québec, the Human Rights Tribunal, the Professions Tribunal and the municipal courts, as well as presiding justices of the peace, to establish rules translating the requirements of State laicity and to ensure their implementation.

Despite subparagraph 3 of the second paragraph of section 3, the requirement to comply with the principles set out in section 2 applies to judges only to the extent provided for in this section.

CHAPTER II

PROHIBITION ON WEARING RELIGIOUS SYMBOLS

6. The persons listed in Schedule II are prohibited from wearing religious symbols in the exercise of their functions.

CHAPTER III

SERVICES WITH FACE UNCOVERED

7. For the purposes of this chapter, “personnel member of a body” means a member of the personnel of a body listed in Schedule I or a person listed in Schedule III who is considered to be such a member.
8. Personnel members of a body must exercise their functions with their face uncovered.

Similarly, persons who present themselves to receive a service from a personnel member of a body must have their face uncovered where doing so is necessary to allow their identity to be verified or for security reasons. Persons who fail to comply with that obligation may not receive the service requested, where applicable.

For the purposes of the second paragraph, persons are deemed to be presenting themselves to receive a service when they are interacting or

communicating with a personnel member of a body in the exercise of the personnel member's functions.

[Sections 9 to 32 omitted]

SCHEDULE I [ABBREVIATED]

- (1) government departments
- (2) budget funded bodies
- (3) bodies and persons appointed under the Public Service Act
- (4) government agencies
- (5) municipalities etc.
- (6) public transit authorities
- (7) school boards
- (8) health services
- (9) bodies appointed by the National Assembly
- (10) inquiry commissioners
- (11) children's centres
- (12) educational institutions receiving subsidies

SCHEDULE II

PERSONS SUBJECT TO THE PROHIBITION ON WEARING RELIGIOUS SYMBOLS IN THE EXERCISE OF THEIR FUNCTIONS

- (1) the President and Vice-Presidents of the National Assembly;
- (2) administrative justices of the peace referred to in section 158 of the Courts of Justice Act (chapter T-16), special clerks, clerks, deputy clerks, sheriffs and deputy sheriffs referred to in sections 4 to 5 of that Act, clerks and deputy clerks referred to in section 57 of the Act respecting municipal courts (chapter C-72.01), and bankruptcy registrars;
- (3) members or commissioners, as applicable, who exercise their functions within the Comité de déontologie policière, the Commission d'accès à l'information, the Commission de la fonction publique, the Commission de protection du territoire agricole du Québec, the Commission des transports du Québec, the Commission municipale du Québec, the Commission québécoise des libérations conditionnelles, the Régie de l'énergie, the Régie des alcools, des courses et des jeux, the Régie des marchés agricoles et alimentaires du Québec, the Régie du bâtiment du Québec, the Régie du logement, the Financial Markets Administrative Tribunal, the Administrative Tribunal of Québec or the Administrative Labour Tribunal, as well as disciplinary council chairs who exercise their functions within the Bureau des présidents des conseils de discipline;

- (4) commissioners appointed by the Government under the Act respecting public inquiry commissions (chapter C-37), and lawyers or notaries acting for such a commission;
- (5) arbitrators appointed by the Minister of Labour whose name appears on a list drawn up by that minister in accordance with the Labour Code (chapter C-27);
- (6) the Minister of Justice and Attorney General, the Director of Criminal and Penal Prosecutions, and persons who exercise the function of lawyer, notary or criminal and penal prosecuting attorney and who are under the authority of a government department, the Director of Criminal and Penal Prosecutions, the National Assembly, a person appointed or designated by the National Assembly to an office under its authority or a body referred to in paragraph 3;
- (7) persons who exercise the function of lawyer and are employed by a prosecutor referred to in paragraph 2 or 3 of article 9 of the Code of Penal Procedure (chapter C-25.1), unless the prosecutor is referred to in paragraph 6, when those persons are acting in criminal or penal matters for such a prosecutor before the courts or with third persons;
- (8) lawyers or notaries acting before the courts or with third persons in accordance with a legal services contract entered into with a minister, the Director of Criminal and Penal Prosecutions, the National Assembly, a person appointed or designated by the National Assembly to exercise a function under its authority or a body referred to in paragraph 3, or lawyers acting in criminal or penal matters before the courts or with third persons in accordance with a legal services contract entered into with a prosecutor referred to in paragraph 7;
- (9) peace officers who exercise their functions mainly in Québec; and
- (10) principals, vice principals and teachers of educational institutions under the jurisdiction of a school board established under the Education Act (chapter I-13.3) or of the Commission Scolaire du Littoral established by the Act respecting the Commission Scolaire du Littoral (1966-1967, chapter 125).

SCHEDULE III [OMITTED]

END OF EXAMINATION