

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAMINATION CONSISTS OF 4 PAGES, INCLUDING THIS PAGE
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION - DECEMBER 2018

**LAW 201
Federalism**

**Section 003
Professor Asha Kaushal**

TOTAL MARKS: 100

**TIME ALLOWED: 1 HOUR
and 15 minutes reading time**

- NOTE:
1. This is an open book examination.
 2. You have 15 MINUTES of reading time, in addition to the 1 HOUR allowed for the exam. You cannot start writing in your exam booklets or typing on your computer during this time but you may make notes on a piece of paper that should not be handed in.
 3. Full citation of cases is not necessary. You may refer to cases in short form.
 4. This examination is designed to test material covered in this course – both assigned readings and lecture materials. Only refer to materials covered in course materials or lectures.
 5. This exam is “fail-safe”, which means that this mark will only count for 25% of your final grade if this would increase your final grade in the course.
 6. The facts and scenarios in this exam are fictional. No knowledge of actual events or legislation is required to answer the question. If you need to make assumptions to answer the question, please indicate what those assumptions are and what, if anything, follows from them.
 7. Good luck and happy holidays!

THIS EXAMINATION CONSISTS OF 2 QUESTIONS.

Recent news stories indicate a sharp rise in the use of psychedelic drugs as an aid to accessing deep trauma and overcoming mental illness. New medical publications also proclaim how older psychedelic drugs offer miracle-like treatment of persistent medical conditions.

Canada's chief public health officer has stated that the resurgence in psychedelic drug use is of great concern. These drugs present considerable dangers as street drugs, and require close medical supervision for their safe therapeutic use. The federal government is thus concerned about this new pattern of illegal drug consumption. It has passed legislation, *An Act to Combat Psychedelics (ACP)*.

The Preamble to the *ACP* reads as follows:

Whereas drug use is a national health crisis that endangers the health and safety of Canadians;

Whereas psychedelic drugs are illegal under other federal legislation;

Whereas it is important to send a strong message that illegal drug use is a serious risk to both individuals and the fabric of Canadian society;

Whereas physicians face primary responsibility for tracking therapeutic use of psychedelic drugs but function in a matrix of complex obligations;

Whereas the delivery of health care must reflect local social and economic factors.

The *ACP* contains the following provisions:

1. The Minister of Health establishes a Psychedelic Use Research Agency (Agency), pursuant to regulations.
 - a. This Agency will research psychedelic drug use and collect data from across the country about patterns of use.
 - b. This Agency will also designate urban centres in Canada where public clinics must comply with the stricter requirements of section 3.
 - c. The Agency will determine when revocation of a physician's license under section 5 of the statute is warranted.
2. A health care worker who is interacting with the public in any professional capacity must report to the Agency those patient cases where that worker is aware of psychedelic drug use.
3. Public health clinics in designated urban centres must report annually on the socioeconomic status of all clinic patients.

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4. Failure by a health care worker to report as required by this Act is subject to a \$5,000 fine.
5. Licensed physicians who fail to report may be subject to medical license suspension of twelve months.

Hansard records show that the federal government spoke in the House about the escalating nature of psychedelic drug use as a public health problem, affecting individuals and families across all walks of life. Further, the federal Minister of Health expressed frustration with the poor reporting requirements of provincial health regimes and the consequent failure to adequately track this new phenomenon, thus endangering the physical and mental health of the population and preventing effective research.

A 2016 report prepared by a Federal/Provincial Ministerial Council linked psychedelic drug users not under medical supervision with sharply rising levels of psychological medical emergencies.

A 2008 Stanford University study is critical of the regulation of psychedelic drugs, and argues that they should be legalized and widely available. The Study cites medical opinions that there is clear therapeutic value to psychedelic drugs and they are as safe to use as legal drugs.

The provincial government of British Columbia has legislation, the *Drug Registry Act (DRA)*, that contains the following sections.

12. All staff at any public clinic must report to provincial health services the annual numbers of patients who report having used psychedelic drugs.
13. Any physician who fails to report under s. 12 of this Act more than three times is subject to permanent medical license suspension.

You are an articling student for the federal Minister of Health and are well aware that provincial governments have jurisdiction over such things as health care delivery, health care professionals, and physician licensing. Your principal has asked you to research and report on the following constitutional law issue.

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Question 1 (Recommended time: approximately 40 minutes)

MARKS

70 Is the federal legislation as a whole valid under the federal government's criminal law power? Do not discuss any other head of power. Do not discuss ancillary powers doctrine but consider everything else we have studied in relation to validity.

Question 2 (Recommended time: approximately 20 minutes)

MARKS

30 Assuming that both the federal legislation and the provincial legislation are valid, are the various pieces of provincial legislation operable?

END OF EXAMINATION