

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 THREE (3) 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 251
Public Law

Section 4
Professor Russo

TOTAL MARKS: 100

TIME ALLOWED: ONE (1) HOUR AND FIFTEEN (15) MINUTES

NOTES:

1. This is an open book examination. Candidates may have with them any hard-copy written material they wish. Laptops are only permitted for the use of ExamSoft.
2. Use of communication devices such as mobile phones, tablets, smartwatches, etc. are not permitted. Candidates should ensure that their phones are turned off.
3. Read the questions carefully and understand what you are being asked to do before you begin your answer.
4. You may refer to cases in short form (e.g. "*Sparrow*").

THIS EXAMINATION CONSISTS OF TWO (2) PARTS

ANSWER BOTH QUESTIONS IN PART I – ESSAY

ANSWER TWO (2) OF THREE (3) QUESTIONS IN PART II – SHORT ANSWER
(If more than 2 questions answered, only the first 2 responses will be marked)

PART I - 60 MARKS – Essay (Suggested time: 45 mins)

Having taken a course in Public Law you know that according to a decision of the Supreme Court of Canada, the *Quebec Secession Reference*, the secession of any province from Canada requires both a clear decision on a clear question for independence and a national process for negotiating secession from Canada. In June 2000, the Canadian Government passed a law called the *Clarity Act*. The government stated that this law was designed to give statutory effect to the Supreme Court's opinion. The key points of the *Clarity Act* are:

- Gives the House of Commons the sole power to decide whether a referendum question is considered clear.
- Gives the House of Commons the sole power to determine whether or not a clear will of the majority had expressed itself following any referendum vote
- Gives the House of Commons the sole power to override a referendum decision if it felt the referendum violated any of the tenets of the *Clarity Act*.
- Specifically states that any question not solely referring to secession was to be considered unclear.
- States that all provinces and the First Nations must be part of any negotiations on a province seceding from Canada.
- It does not specifically define what is considered "clear will of the majority" implying that some sort of "supermajority" more than 50% is required for success.

The Federal Government says that the law respects the "fundamental organizing constitutional principles" that the Supreme Court outlined in the reference. The Quebec government rejects the law by stating that it distorts the Supreme Court decision by giving the Federal Government unilateral authority over a provincial process in measuring what is a clear will of the majority.

Given your knowledge of Public Law and the summary of the *Clarity Act* above answer the following questions:

1. Discuss the four "fundamental and organizing principles" of the Canadian constitution from the Quebec decision, including their origin and role. Based on the summary above, discuss which of the "fundamental organizing principles" you think the *Clarity Act* supports or which of them it does not support.
2. Based on your discussion of these principles, consider that the Quebec government holds a referendum on September 1, 2028. There is one question asked:

"Should the Province of Quebec become an independent and sovereign state? YES or NO."

50.1% of voters vote YES. There was a turnout of 92% of all eligible Quebec voters. The Indigenous population of Quebec is 2%. 95% of Indigenous voters voted NO. Would Canada have to negotiate Quebec's independence? Why or why not?

PART II: 40 MARKS – Short Answer - (20 MARKS PER QUESTION)

Answer any two (2) of the following three (3) questions

(Suggested time: 15 minutes per question)

1. Explain the concept of “legal pluralism” in relation to Canada.
Refer to at least one case that supports the notion that Canada is a legally pluralistic state and explain how it does so.

2. What are the “core characteristics” and “dimensions” of judicial independence?
What values are at stake in relation to the appointment, dismissal or financial compensation of judges? Refer to at least one case to support your answer.

3. In what way(s) can a constitutional case come before the courts in Canada?
For each way, please summarize a case example.

END OF EXAMINATION