

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 3 PAGES (INCLUDING THIS PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

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

MID-COURSE EXAMINATION – December 2019

**LAW 201.001
Canadian Constitutional Law: Federalism**

Professor J. Bakan

TOTAL MARKS: 100

TOTAL TIME ALLOWED: 60 minutes (plus 10 minutes reading time)

- Note:**
- 1. This examination is OPEN BOOK. Candidates may use any materials they have brought into the examination room (with the exception of library and text books) during the examination and the reading period. Case books are permitted.**
 - 2. I advise you to begin by reading through the question in its entirety. Identify the issues raised by the question, and think about possible approaches to answering the questions. YOU MAY WRITE ON SCRAP PAPER DURING READING TIME, BUT TYPING ON COMPUTERS AND WRITING IN ANSWER BOOKS IS NOT PERMITTED.**
 - 3. Do not concern yourself with statutes, cases or other sources not covered in the course materials.**
 - 4. Be brief in your discussion of each point raised. It is better to cover more points in brief than fewer points in detail. State clearly any facts you assume in answering the question. You should describe the arguments that might be made on both sides of an issue, and give some sense of the relative strength of the arguments.**
 - 5. Full citations of cases are not necessary. You may refer to cases in short form.**
 - 6. GOOD LUCK! HAVE A GREAT WINTER BREAK!**

**THIS EXAM CONSISTS OF ONE MAIN QUESTION
(with two sub-questions)**

QUESTION

100 marks Total

The federal *Cannabis Act* creates a strict legal framework for controlling the production, distribution, sale and possession of marihuana and other forms of cannabis. The *Act* decriminalizes recreational use of marihuana in limited circumstances and explicitly leaves in place more permissive medical marihuana regulations that were created in 2002. The latter permit medical users to obtain marihuana in amounts and from sources that would still be criminal under the *Cannabis Act*.

Jane suffers from Glaucoma, a medical condition in which pressure builds up within the eye causing discomfort, visual impairment and, in some cases, blindness. She is being treated for the condition by an ophthalmologist, Dr. Gloria Singh. There is no consistently effective treatment for Glaucoma, but smoking marihuana has been shown to relieve symptoms, and in some cases to slow down the disease's progression.

Under the 2002 medical marihuana regulations a physician can certify a patient's medical need for marijuana and thereby exempt that person from *Cannabis Act* restrictions. Dr. Singh certifies Jane's medical need for marijuana and issues her a prescription for marihuana in accordance with the 2002 regulations.

As a result of issuing that prescription, the BC College of Physicians and Surgeons (the governing body of BC's medical profession) finds Dr. Singh to be in violation of the British Columbia *Medical Practitioners Act* (hereinafter *MPA*), section 89.1, and suspends her license to practice medicine for six months. The section reads:

89.1. A physician who assists a patient in obtaining potentially unlawful narcotic drugs for treatment of an illness is guilty of professional misconduct and liable to have their license to practice medicine suspended for a minimum of three months.

Section 89.1 was amended to the *MPA* just months after the federal *Cannabis Act* – with its explicit continuation of the 2002 medical marihuana regulations – was enacted. When introducing the amendment in the legislature, the British Columbia Minister of Health said this:

This amendment is motivated not by criminal or moralistic concerns about the use of drugs – that is for our counterparts in Ottawa to worry about – but rather by a concern about the health of British Columbians. It falls squarely within the stated purpose of the *Act*, which is “to enhance the quality of medical practice and reduce incompetent, impaired or unethical practice.” Narcotics, including marihuana, have serious harmful effects – both physical and psychological – on those who use them, and there is scant scientific evidence of any medical benefits. As a government, it is our duty to ensure doctors in the province meet the highest standards of medical practice, and, in that spirit, s. 89.1 makes it an offense for doctors to prescribe potentially unlawful narcotics for the treatment of illness.

The majority of MLAs who spoke in favour of section 89.1 during legislative debate, all of them from the Government side, said little about health, but expressed concerns mainly about, as one MLA stated, trying to “stop the moral degeneration of Canadian society into a haven for dope-heads, druggies and criminals.” The Government had recently been elected on a “law and order” platform, and a promise to eradicate all illicit drug use in the province.

Dr. Singh plans to appeal her license suspension. She seeks your opinion on the following two questions:

- 1) Is s. 89.1 of the *MPA* valid under sections 91 and 92 of the *Constitution Act 1867*? (65 marks, 39 minutes)
- 2) Assuming s.89.1 is valid, is it nonetheless:
 - i) inoperative (25 marks, 15 minutes)
 - ii) inapplicable (10 marks, 6 minutes)?

END OF EXAMINATION