

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

FINAL EXAMINATION – APRIL 2021

LAW 271.002  
Introduction to Public Law and the Charter

Professor Margot Young

**EXAM PASSWORD: 8v5L8T**  
RESUME CODE: B11972

**TOTAL MARKS: 100**

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to any course materials, study materials prepared for the course, and notes from class discussions and lectures.

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.**

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**ACADEMIC INTEGRITY**

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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## CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services ([studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca)) and make full disclosure.

A breach of these regulations may constitute student misconduct, and you may be subject to penalty or discipline under UBC's Academic Misconduct policies.

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### What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca) and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

If you experience any difficulty exiting and uploading your Exemplify exam answers, you must wait until the allocated time period specified on the coversheet of the exam has ended, then email Bernie Flinn, [flinn@allard.ubc.ca](mailto:flinn@allard.ubc.ca), and he or another IT Support staff person will help you to upload your Exemplify exam file. Please provide your phone number in the email.

If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca).

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca) immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

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**EXAM NOTES:**

1. This is an open book examination, meaning that you can refer to any course materials, study materials prepared for the course, and notes from class discussions and lectures.
2. You do not have to use full citations for cases or for materials from the casebooks. Make sure that any short form names you use are initially explained and clear.
3. The software does not allow you to cut and paste within your exam answer. Nor will it allow you to cut and paste from an outside file into your exam answer.
4. You must answer ALL questions from Part I; and ONE question from Part II.

**PART I: ANSWER ALL THE QUESTIONS IN THIS PART**

Measures required by the pandemic have severely taxed the provincial government's resources. The government anticipated this and, at the start of the pandemic, embarked on a series of measures to cut expenses in new ways, particularly those that will free up resources for more pandemic relief. One such measure is the sale in March 2020 of the Provincial Archives to Research Is Us (RIU), a private corporation, for \$1 on the condition that RIU assume full responsibility for the pre-existing Archives debt of \$300,000. The Provincial Archives were opened by the B.C. Government in 1952 and since then have been administered by the B.C. Ministry of Culture and Heritage. In addition to the sale, the Government has put in place the *Archive Act (AA)* to ensure that the Archives continue to be run in a fashion that respects the importance of the Archives to British Columbian history and society and to the government's commitment to the preservation of historical materials. RIU has been selected to continue what the preamble to the *AA* calls "the public trust."

The *AA* has a number of provisions that structure how RIU must run the Archives. For example, the *AA* states that the Archives shall be run by a seven-person Board of Directors. All seven directors are to be appointed by RIU. However, the Lieutenant-Governor-in-Council must approve the appointments and the seven directors, according to the *AA*, must include an historian, a librarian, a representative of the community, and an Assistant Deputy Minister of the Ministry of Culture and Heritage. The directors are appointed for a term set by RIU and are removable on terms set by RIU.

The *AA* also states that the Board of Directors must maintain an archival collection that reflects the richness and variety of B.C. heritage and history and must guarantee reasonable public access to the archives. No government funds will be provided for the operation and maintenance of the Archives. However, the contract of sale provides that RIU will have a generous tax break for the next fifteen years.

The *AA* also requires that the Chair of the Board of Directors report twice a year to the B.C. Minister of Culture and Heritage with regard to maintenance and expansion of the archival holdings and public access to the collection. The legislation goes on to state that, where in the

view of the Lieutenant-Governor-in-Council, the Board fails to carry out its statutory mandate such that the public interest is clearly and substantially at risk, the Lieutenant-Governor-in-Council may replace the Board with a trusteeship completely under the control of the government. In addition, at her own bidding, the Minister may send a binding directive to the Board. The Minister, in the first year since the sale, did not exercise this power. However, on April 4, 2021, the Minister directed that the Archives extend its opening hours by an extra hour on Saturdays.

In its first year of operations under the new Board, the Archives instituted a controversial policy. The Archives has loaned its famous “Sir Nebbings-Shaw collection” (the Collection) to the Museum of Natural History in New York. The Collection consists of manuscripts, ledgers, correspondence and newspaper entries from the pre-confederation period documenting the development of trade relations between British settlers and Indigenous communities. The loan is for a five-year term and is for a very generous fee.

This Collection is critical to ongoing research in relation to a legal challenge under s. 35 of the *CA 1982*. The removal of the Collection to New York will sharply increase litigation costs for the Indigenous groups planning to bring the s. 35 challenge.

A protest of the loan of the Collection to New York has been commenced by two UBC law students. Coincidentally, one of the students lives in a ground floor apartment whose front window opens right next to the entry to the Archives. The students have stationed themselves at this window during most days. With the window open wide, these students are able to ask almost every person entering the Archives to take an information sheet on the Archives’ policy and to sign a petition against the transfer. These students feel very strongly about this protest: on occasion they have shouted at individuals entering the building, as well as shaken their fists at those refusing to sign the petition.

Yesterday the students received notice that the Archives is applying for an interim injunction based on the common law of nuisance against the students’ interference with Archive users. The students feel that the injunction, if issued, would be a gross interference with their *Charter* rights. In addition, they take the position that, because of the significance of the Collection to s. 35 litigation, the protest of the loan of the Collection has an added and special public importance. They also want to argue that the decision to loan the Collection infringes the *Charter*. These students come to the firm at which you are articling for legal advice.

## **MARKS**

### **20      Question 1      (35 minutes)**

- Draft a memo with advice as to whether the *Charter* applies to:
- (i) the Archives’ actions to send the Collection to New York; and/or
  - (ii) the interim injunction, should it be issued.

**MARKS****35 Question 2 (65 minutes)**

After a Twitter campaign shaming the Archives, the application for an injunction was dropped. However, Archives security guards have been posted around the entry to the Archives such that they block anyone entering the Archives from viewing the students' window. Guards actively, as well, discourage users from engaging with the students, doing their best to quickly usher users away from being anywhere near the students' window. The students want to seek a judicial declaration that this action interferes with their freedom of expression. They have obtained copies of an internal policy memo sent from the Assistant Manager of the Archives charging security personnel to "prevent any interference with, or impediment to, comfortable access of Archive users to the facilities." Security guards are instructed to discourage Archive users from accepting the students' information sheet,. The memo says that information sheets end up on the sidewalk and on the floors inside the Archives, creating a slipping hazard for elderly Archive users. In a statement to the media, the Archive's Assistant Manager described the students' actions as "unseemly." They went on to state that the actions of the students are distressing, that Archive users are "inconvenienced" by the students hanging out of the window "pestering" and, on occasion, threatening anyone entering the Archives.

Draft a memo outlining the main components of the students' freedom of expression claim against the actions of the Archive's security guards, looking at both the s. 2(b) and s. 1 arguments. Point out the strengths and weaknesses of the students' position; explore all arguments each perspective on this issue might make. (Do **not** address any other issues or parts of the *Charter*. Do **not**, for example, address s. 35. Assume for the purposes of this question that the *Charter* applies to the Archives' administration and its actions.)

**PART II: ANSWER ONE OF THE FOLLOWING TWO QUESTIONS.****MARKS****45 Question 3 (80 minutes)**

It has been said "the distinction between adjudication and legislation, more simply put, between law and politics, makes sense of Canadian public law, including judicial review under the *Charter*."

Critically discuss this statement, referencing in your answer what you have learned about both public law, generally, and *Charter* law, specifically.

In your answer discuss at least three cases, as well as both public law and constitutional law materials that we have read and discussed this semester.

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Your arguments must advance a thesis statement. Be sure to incorporate readings, as well as class content, into your answer. Do not simply summarize cases.

**OR**

**MARKS**

**45**

**Question 4 (80 minutes)**

Aaron Mills, in “The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today,” writes that “Canadian law lives somewhere.” (p. 850) Mills elaborates:

...law is storied...Before students can apprehend any particular lifeworld beneath a system of law, they must first be introduced to the more general notion that law is never a collection of freestanding rules and processes. The law always reflects narratives, and, deeper than these, a worldview.” (p. 869)

Discuss Mill’s argument, referencing in your answer what you have learned about both public law, generally, and *Charter* law, specifically. Page references are to the PDF of Mill’s article.

In your answer discuss at least three cases, as well as both public law and constitutional law materials that we have read and discussed this semester.

Your arguments must advance a thesis statement. Be sure to incorporate readings, as well as class content, into your answer. Do not simply summarize cases.

**END OF EXAMINATION**