

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

FINAL EXAMINATION – APRIL 2021

LAW 271.003

Introduction to Public Law and the Charter

Professor Joel Bakan

EXAM PASSWORD: b46gUm

RESUME CODE: B11B0A

TOTAL MARKS: 100

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

(9:00AM 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.

This is an open book examination, meaning that you can refer to the course casebook and supplement, handouts, and student notes.

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.

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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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**

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QUESTION I

Total Marks: 70

Total Time: 126 minutes

Pursuant to the British Columbia *Teaching Profession Act* ('the *Act*') all teachers in the province are required to be members of the British Columbia Teacher's Federation (BCTF), a statutory body set up under section 2 of the *Act*. The *Act* also provides that: 1) the BCTF's Board of Governors is to be elected by BCTF members; 2) the BCTF's mandate is to advance both the interests of its members and the public interest in education; 3) the BCTF Board of Governors is empowered to pass by-laws, though each by-law it passes must be approved by the Lieutenant-Governor in Council (i.e. the government).

Assume the BCTF Board of Governors passes the following by-law which is approved by the Lieutenant-Governor in Council:

17. Members of the BCTF are prohibited from consuming alcohol, marijuana, or any illicit drug during school hours on school grounds. The penalty for breach of this prohibition is automatic expulsion from the BCTF.

Jane, a high school teacher in a small town in British Columbia, suffers from Glaucoma, a medical condition in which pressure builds up within the eye causing discomfort, visual impairment and, in some cases, blindness. Smoking marijuana has been shown to relieve symptoms of the disease, and in some cases to slow its progression. Dr. Gloria Singh, Jane's doctor, certifies Jane's medical need for marijuana under federal regulations and prescribes that Jane smoke a marijuana cigarette three to five times a day, depending on symptoms, with equal intervals among doses.

Teachers are not permitted to leave school grounds during the school day, so Jane smokes her mid-day doses each day during lunch break by an open window in her classroom. Unfortunately, on the one day she forgets to lock the room's door, the school's principal, Tom, walks in and catches her smoking. He reports her to the BCTF which promptly expels her from the organization and, as a result, she loses her teaching job.

Tom is an amateur comedian. During a performance at a local comedy club the day after he catches Jane, he says this:

What's up with medical marijuana? I caught one of my teachers at the school – you may know her, Jane – smoking a joint in her classroom. She says it's for her Glaucoma. Yea sure! She probably just wants to feel some of the *high* in high school!

The *BC Human Rights Code* ('the *Code*') includes the following provision:

9.1(1) No person shall ... make any statement in a public place or on social media that indicates an intention to violate a person's privacy in ways that could cause that person harm, or undermine their dignity and reputation.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private, or a communication related to an activity otherwise permitted by this *Code*, including one necessary for ensuring public health, public order or public safety, or journalistic integrity.

When section 9.1 was added to the *Code*, BC's Attorney General said the following in the BC legislature:

Human beings need a realm of protected privacy where neither the state, nor employers or fellow citizens can interfere. In many countries, and in international law too, privacy is recognized as a fundamental human right. It is essential to our autonomy, dignity and reputation, and protects us from unwarranted and arbitrary interference in our lives. It gives us the space to be ourselves and to think freely, and protects us from tangible harms. The new section 9.1 is designed to protect people from harms associated with invasions of their privacy, while also recognizing that there are times when interfering with individuals' privacy is justified.

Jane sues the BCTF, claiming by-law 17 violates her section 15(1) rights. She also lodges a complaint against Tom with the BC Human Rights Tribunal claiming he violated s. 9.1 of the *Code* through his references to her in his stand-up routine. The cases make their way through various hearings and appeals and end up in the Supreme Court of Canada.

You are a clerk in the Supreme Court of Canada and your judge asks you to prepare a memorandum that discuss each of the following questions:

1. Does the *Charter* apply to BCTF by-law 17?
(10 marks, 18 mins)
2. Assuming the *Charter* applies, and that glaucoma is a disability, does BCTF by-law 17 limit section 15(1) of the *Charter* (do not discuss section 1)?
(30 marks, 54 mins)
3. How strong is Tom's argument that section 9.1 of the *Code* infringes section 2(b) of the *Charter*, and cannot be saved by section 1 of the *Charter*?
(30 marks, 54 mins)

QUESTION II

Total Marks: 30 (54 mins)

How do different conceptions of the proper role of government in Canadian society affect interpretation and application of the *Charter*?

Discuss the question in relation to ONE of the following:

1. Section 2(b)

-OR-

2. Section 1

-OR-

3. Section 15(1)

-OR-

4. Section 32

-OR-

5. Any combination of the above

END OF EXAMINATION