

**THIS EXAMINATION CONSISTS OF 4 PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2022

**LAW 271
INTRODUCTION TO PUBLIC LAW AND THE CHARTER**

**SECTION 3
PROFESSOR BAKAN**

TOTAL MARKS: 100

**TIME ALLOWED: 180 MINUTES
plus 10 minutes of reading time.
(Students may not begin to type during the reading time.)**



- NOTE:
1. This is a modified open book examination. Candidates may refer to their notes, cans, and the course syllabus, but not to the casebook, handouts, or other books and materials.
 2. ANSWER ALL QUESTIONS

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

LAW 271, Section 3

MARKS

70 QUESTION 1

Crab Park is the most recent of Vancouver parks in or near the Downtown Eastside to see an encampment of people who lack housing. The camp, consisting of numerous tents, emerged in May and June of 2021. Recently, the Crab Park Management Committee (the “Committee”) ordered the campers to leave the park and remove their tents, and to refrain from further overnight sheltering in the Park. The Committee is staffed by volunteers from the local community, selected by the community itself each year at a townhall meeting. City Council formally appoints the selected members, but it is not involved in the selection process, nor does it have control over the Committee. The Committee is, however, authorized by the *Parks Control By-law* to make orders to enforce that Bylaw’s provisions.

The order at issue was made by the Committee to enforce section 10 of the Bylaw:

10. No person shall take up a temporary abode overnight in any place on any portion of any park; and any person conducting themselves as aforesaid may be removed and subject to a fine of no more than \$5000.

Joan is 18 years old and has lived in a tent in the park for several months, the most stable housing situation she has had since leaving home when she was 16. Now, as a result of the Committee’s order, she has to pack up her tent and leave the park within 48 hours. She is really worried. Though the City has created new shelter spaces in anticipation of the park evictions, most shelters – which are typically run by private organizations – have rules that prohibit admitting people under the age of 19.

Consequently, as social scientific studies confirm, young people without housing are significantly less likely than their older counterparts to find a place in a shelter, and thus significantly more vulnerable to ending up on the streets. The studies also show that young people without housing are particularly vulnerable to being harmed on the streets, and that, for many of them, returning home is not an option because the reason they left in the first place was to escape neglect and abuse.

In addition to facing eviction, Jane has had a sign on the side of her tent confiscated by park officials. The sign – which read: “Homelessness is not our choice; it’s the government’s decision” – was removed by park officials under section 11 of the Bylaw:

11. Signs conveying political messages of any kind cannot be placed on structures, trees, or other surfaces in public parks. Any signs found in a public park will be impounded and stored at the City at the expense of the party involved, and the party will be fined no more than \$1000 for violating this bylaw.

LAW 271, Section 3

(Question 1, continued)

At the City Council meeting where sections 10 and 11 were approved, the Mayor said the following:

The purpose of these new bylaw sections is to protect public parks, the people who use them, and the neighbors who surround them. Parks are places for children to play, and for people to escape the tensions, noise, and crowds of the city. As such, they are essential for mental and physical health and for recreational opportunities, especially for children. Sections 10 and 11 are designed to ensure public parks fulfill their crucial purposes. Without diminishing the plight of people who lack housing, living in tents in parks is not the solution. Encampments take up space and put stress on parks' physical property. They interfere with citizens' uses and expectations, and create noise and activity that impinge on neighbors' lives and property. Section 10 is designed to avoid these ill effects. Section 11 recognizes that, for the reasons already noted, parks are essentially pastoral settings, places of quiet reflection not political debate.

Joan sues the City after receiving the Committee's eviction order and having her sign removed. She claims that both the order and section 10 of the Bylaw violate her Charter section 15(1) rights; and, also, that section 11 violates her section 2(b) rights. The case is filed in the British Columbia Supreme Court (BCSC).

You are a clerk in the BCSC and your judge asks you to prepare a memorandum that discusses each of the following questions:

- i. Does the Charter apply to the Committee's order that tent residents leave the park? **10 marks**
- ii. Does section 10 of the bylaw infringe section 15(1) of the Charter? (do not discuss section 1) **30 marks**
- iii. Does section 11 of the bylaw infringe section 2(b) of the Charter, and, if so, can it be saved by section 1 of the Charter? **30 marks**

LAW 271, Section 3

30 **QUESTION 2**

“Care must be taken not to extend the notion of deference too far. While remaining sensitive to social and political context, and allowing for difficulties of proof inherent in that context, the courts must nevertheless insist that before the state can override constitutional rights, there be a reasoned demonstration of the good which the law may achieve in relation to the seriousness of the infringement. It is the task of the courts to maintain this bottom line if the rights conferred by our constitution are to have force and meaning.”

McLachlin CJ, *RJR-MacDonald Inc. v. Canada (Attorney General)*

Discuss the quote in relation to ONE of the following:

i. Section 2(b)

-OR-

ii. Section 1

-OR-

iii. Section 15

-OR-

iv. Any combination of the above

END OF EXAMINATION