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

FINAL EXAMINATION – DECEMBER 2021

LAW 347B.001
FEDERALISM

Professor Joel Bakan

TOTAL MARKS: 100

READING TIME ALLOWED: 10 MINUTES
WRITING TIME ALLOWED: 120 MINUTES

1. This is an **open book** examination, meaning that you can refer to the course casebook and supplements, handouts, and student notes.
2. ANSWER ALL QUESTIONS

THE EXAMINATION CONSISTS OF TWO MAIN QUESTIONS

QUESTION I

Total Marks: 70

Total Time: 84 minutes

Yasmin runs a small trucking company, Local Motion, in the Fraser Valley. It transports food from producers and wholesalers in the Valley to retailers throughout the lower mainland. Local Motion's operations and routes are entirely within the province, and most of the food it transports is produced and processed within the province. The company is doing well and Yasmin plans to expand its operations, including by building a new warehouse and leasing more trucks. But before doing so, she needs to apply to a new federal commission, the Climate Assessment Commission (CAC), for certification that her proposed expansion plans are climate-resilient. When she applies, she is denied (as explained more fully below).

The CAC was created after, in the fall of 2021, British Columbia was hit with severe rainstorms resulting from an atmospheric river, a phenomenon scientists attribute to climate change. The provincial government's response and preparation were widely criticized as being inadequate, and critics claimed consequences were adversely felt across Canada, beyond its borders, and within indigenous communities. Not least among the adverse impacts was the choking off of vital national and international supply chains as a result of roads, railway lines, bridges, tunnels, production facilities and other critical infrastructure suffering severe damage from flooding.

In response, the federal government introduced, and Parliament passed, the following legislation, known as the *Climate Resilience Act*:

1. Any new proposed essential infrastructure project shall meet climate-resilience standards.
2. A Climate Assessment Commission (CAC) shall, from time to time and as needed, promulgate climate resilience standard regulations, and assess and certify proposed essential infrastructure projects in accordance with those standards.
3. 'Climate resilience' shall mean the ability of a proposed project to anticipate, prepare for, and respond to hazardous events, trends, or disturbances related to climate.
4. 'Essential infrastructure project' shall mean,
 - a) Federal undertakings relating to communications, transportation, shipping, and ports, and all other infrastructure within federal jurisdiction, including aeronautics facilities;
 - b) Roads, highways, bridges, and tunnels that connect provinces to each other and to other countries;
 - c) Provincial transportation undertakings, petrochemical terminals, food processing plants, and warehouses.
5. Failure to obtain a CAC certification before proceeding with a proposed essential infrastructure project is an offence, punishable by a fine of no more than \$100,000, or imprisonment of no more than two years, or both.

(Question I, continued)

When the *Climate Resilience Act* was introduced in Parliament by the Minister of Environment and Climate Change, the Minister said: “The clear purpose of this new law is stated in its preamble: ‘to promote climate resilience in order to protect vital interprovincial and international supply chains in the event of increasingly common climate-related peril.’ Provinces on their own have neither the capacity nor the jurisdiction to do this.” During question period, the Minister was asked by an opposition member: “But why then does the *Act*, by virtue of section 4(c), include purely local and *intra*-provincial operations?” The Minister’s response: “National and international supply chains constitute a single, distinct, and indivisible system. If a local trucking company or food processor is disabled, the whole chain can be adversely impacted.”

As noted above, Yasmin’s application to the CAC for certification of Local Motion’s expansion plan was denied. One of the CAC’s regulations requires businesses to formulate and submit climate resilience plans and Yasmin had neglected to do that. Now, she challenges section 4(c) of the *Act*, claiming it trenches on provincial jurisdiction. “Purely local businesses like Local Motion, along with others included in section 4(c), have always been strictly within provincial jurisdiction,” she says. “This new *Act* is just a power grab by the feds.”

You are an articling student for Canada’s Attorney General and you are asked to prepare a memorandum that discusses each of the following questions:

- A. Is section 4(c) of the *Climate Resilience Act* valid? (Assume the *Act* as a whole is valid, and discuss both POGG and the Criminal Law power) **(60 marks)**
- B. Assuming section 4(c) is valid, would the doctrine of interjurisdictional immunity preclude application of provincial climate-resilience standards to proposed essential infrastructure projects caught by the section? **(10 marks)**

QUESTION II**Total Marks: 30****Total Time: 36 minutes**

How are competing conceptions of Canada as a federal state manifest in the Supreme Court of Canada's case law on the *Constitution Act 1867*'s division of powers?

Discuss the question in relation to ONE of the following:

A. The Peace, Order and Good Government power

-OR-

B. The Criminal Law Power

-OR-

C. Validity Doctrines (pith and substance, double aspect, ancillary doctrine)

-OR-

D. Operability (Paramountcy)

-OR-

E. Applicability (Interjurisdictional Immunity)

-OR-

F. Any combination of the above.