

THIS EXAMINATION CONSISTS OF 4 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 347B
Federalism

Section 2
Professor Kong

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS AND 15 MINUTES

- NOTE:
1. This is an open book examination, meaning that you may refer to class notes, the casebook, a printed version of the online supplemental materials, and a copy of the *Constitution Acts, 1867 to 1982*. The use of any other materials, including library books, is not permitted.
 2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

Question 1 (Worth 70 Marks)

In November of 2021, Parliament passed a law entitled “A Law to Build Back Better” (“the BBB Law”). The preamble of the BBB Law states:

“Parliament is committed to ensuring that Canada emerges from the public health crisis of COVID 19 stronger than ever. Federal action is needed to address this grave national situation. Parliament is committed to building a sustainable and prosperous future for all, from sea to sea to sea.”

Section 1 of the BBB Law prohibits landlords from raising rents on tenants or evicting them, for a period of 12 months, from the coming into force of the BBB Law.

Section 2 creates the Pandemic Response Agency.

Section 2(1) gives the Pandemic Response Agency the power to issue penalties for landlords who violate section 1. These penalties may take the form of fines, and in the case of repeated violations, the penalties will increase in severity, potentially including 6 months of imprisonment.

Section 2(2) empowers the Pandemic Response Agency to continually oversee and periodically review all powers that are exercised under the BBB Law.

Professor Lipsett of the University of British Columbia has written a report which concludes that during the pandemic, federal control over rents is necessary. According to Professor Lipsett, a given province may refrain from setting limits on rent increases in order to avoid attracting impecunious tenants from other provinces. Professor Lipsett’s research discloses that these tenants typically require significant social spending by the provinces in which they reside. As a consequence, provinces will refrain from taking any actions that will increase the numbers of these tenants within provincial borders. Professor Lipsett’s report further finds that in the current dire economic circumstances, rental increases may cause mass evictions. The report concludes that mass evictions would create social unrest and economic uncertainty, further negatively impacting the national economy.

In November of 2021, the legislature of British Columbia passed a law entitled “A Law to Provide Economic Security for All” (“the PESA Law”). The preamble of the PESA Law states:

“British Columbians are in this pandemic together. The legislature of British Columbia will ensure that the economic burdens of COVID 19 are spread evenly throughout society. Landlords are struggling to maintain their properties, as renters of modest means struggle to pay their rent. This Act creates the “fair maintenance fee” to respond to these challenges.”

Section 1 of the PESA Law defines the “fair maintenance fee”. It provides that for a period of 12 months, from the coming into force of the PESA Law, any tenant household with an income of greater than \$100, 000 shall pay to the landlord a charge (“the fair maintenance fee”) in the amount of 1% of the tenant’s annual rent.“

Section 2 of the PESA Law provides that a landlord may evict any tenant who is required to pay the fair maintenance fee, but fails to do so.

(Question 1, continued)

In legislative debates, the Premier said:

“If we do not act now, rental properties across the province will be taken over by predatory multinational rental management companies. The rental market is global. We need to take these measures to stabilize the provincial rental market and protect British Columbia’s renters and landlords.”

Please discuss any federalism issues that arise from these facts. Be careful to (i) make arguments, (ii) refer to relevant authorities, and (iii) draw conclusions. Refer **only** to materials that we have covered in this class when you answer this question.

You will be evaluated on the following dimensions:

Accuracy: In your answer, do you present the facts accurately? Do you refer to relevant legal materials accurately?

Precision: Do you address only those facts which are relevant to addressing the federalism issues? Have you left out any significant facts in your analysis? Have you appealed to the legal authorities (and only those authorities) that are relevant to addressing the federalism issues?

Coherence: If there is a relevant line of cases, have you presented it plausibly?

Logic: Do your conclusions follow from your premises? Have you avoided asserting conclusions that are unsupported by arguments?

Organization and Clarity: Have you made it easy for the reader to follow your arguments? Have you divided the question into manageable and logical parts? Do you express yourself in clear and precise prose?

Question 2 (Worth 30 Marks)

Please write an essay agreeing or disagreeing with the following statement: “In its federalism jurisprudence, the Supreme Court of Canada has consistently respected provincial autonomy.” In answering this question, you must refer to at least two cases covered in this course.

You will be evaluated on the following dimensions:

Substance: Do you engage thoughtfully with the course materials? Do you make specific references to the materials and offer compelling interpretations of them? Do you build on insights from the class discussions and avoid merely summarizing them?

Organization and Clarity: Have you made it easy for the reader to follow your arguments? Have you divided the question into manageable parts? Do you express yourself in clear and precise prose?

(Question 2, continued)

Logic: Do you make well-supported arguments? Do your conclusions follow from your premises?
Do you avoid merely asserting conclusions?

END OF EXAMINATION