
**THIS EXAMINATION CONSISTS OF FOUR PAGES.
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.**

THE UNIVERSITY OF BRITISH COLUMBIA FACULTY OF LAW

**Final Exam
DECEMBER 13, 2021**

Law 347B

**Federalism Law Section 003
Professor Margot Young**

TOTAL MARKS: 100

**TIME ALLOWED: 2 HOURS
(PLUS 15 MINUTES READING TIME)**



1. This is an OPEN BOOK examination. You may bring in any notes or course materials. But you may not bring in any textbooks, such as Hogg.
2. You have 15 minutes reading time, in addition to the 2 hours allowed for the exam. You cannot start writing in your exam booklets during this time but you can make notes during this time on a piece of scrap paper which is not to be handed in.
3. Identify and discuss fully the points that could be raised on all sides of each issue, giving some sense of the relative strength of the arguments.
4. Full citation of cases is not necessary. You may refer to cases in short form.
5. This examination is designed to test material covered in this course—both assigned reading and material covered in the lectures. Do not concern yourself with statutes, cases, or other sources not covered in the course materials or lectures, or not assigned for study for this exam.
6. Budget your time according to the recommended time set out for each question and the marks assigned for each question.
8. GOOD LUCK!

THIS EXAMINATION CONSISTS OF FOUR QUESTIONS. YOU HAVE TO ANSWER ALL QUESTIONS.

PART 1

The federal government is concerned about the upcoming flu season, in particular about what a high flu infection rate might look like in combination with surging COVID cases. The government has decided to implement a National Immunization Strategy that will provide for mandatory flu vaccination and for flu immunization registries. They are not, however, mandating COVID vaccinations.

In a recent speech, the federal Minister of Health chastised provincial health authorities for failure to ensure that medical resources were used most effectively in the struggle against COVID. They stressed the severity of the risk viral disease represents to the health of Canadians and the danger of pandemics to national well-being, comparing a combined flu/COVID pandemic to the outbreak of war. The worry, the Minister stated, is the number of Canadians who decline to get a voluntary flu inoculation and what a high rate of flu cases will mean for health resources already overtaxed in dealing with the COVID pandemic.

The government has passed the *National Flu Immunization Control Act* (NFICA). The Act states in its preamble that:

The purpose of the Act is to provide a legislative response to a public health crisis of substantial and pressing concern and, in particular,

- to safeguard medical resources necessary to ongoing efforts in relation to the COVID pandemic;
- to prevent dangerous health implications of combined flu and COVID outbreaks;
- to protect the health of Canadians in the face of potential rapid influenza infection rates;
- to protect those most vulnerable to influenza infection from exposure to the virus;
- to enhance public awareness of the dangers of failure to immunize;
- to fulfill Canada's international obligations under the World Health Organization's protocols on influenza vaccination;
- to strike the right balance between the rights of individuals to choose freely their own health care options and the larger concerns of public health epidemics and endemics.

The Act establishes mandatory vaccination provisions for all health care workers, all childcare centres workers, and all hospital staff such as cleaners, kitchen workers and administrators. Vaccinations will be mandatory once an Influenza Health Advisory (IHA) has been announced. Exemptions exist for foreign nationals visiting Canada for a period under three months for the purposes of medical educational or diagnostic consultation services in Canadian hospitals.

NFICA also establishes the Office of the Director of Immunization. The Director is responsible for issuing an IHA, once the Director decides that the rate of infections and number of influenza cases have reached a critical point and that compulsory vaccinations are therefore necessary. The Director has broad discretion to make this decision.

At the urging of the Canadian Coalition of Immunization Awareness and Promotion, the federal government has included in the legislation several provisions establishing a central record of all vaccines individuals have received as well as a single immunization schedule so that

Please turn over page.

.

vaccinations are timed similarly across all jurisdictions in Canada. Health care providers administering immunizations are required to register all immunizations, of any sort, in the central national registry.

Violation of the provisions of the Act constitutes an offence punishable by way of summary conviction, with the penalty of a fine not exceeding \$2,000 or three months' imprisonment.

Section 9 of the NFICA establishes the right to a civil cause of action for a private individual who believes that he or she has had infectious contact with an individual who is required to be vaccinated but has not been vaccinated.

The provincial government of British Columbia is also concerned about the upcoming influenza season and has passed the *Vaccination Act* (VA). This Act stipulates the following:

s. 6 Every health care worker in any health care facility situate in the Province of British Columbia must have been vaccinated with the approved annual influenza vaccination by October 1 of the year for which that vaccine has been approved.

Failure to adhere to this section of the VA is punishable by a fine not exceeding \$2,000 and/or imprisonment of 3 months.

You are an articling student for the British Columbia Ministry of Attorney General. Your principle is very confident that the provincial legislation is *intra vires* the provincial government's jurisdiction over health, health care, and hospitals. You are not asked to discuss the validity of the VA. Assume it is valid.

Your principle, however, has asked you to research and report on the following constitutional law issues.

Question 1 (40 marks/40 minutes)

Is NFICA *intra vires* the federal government under its s. 91(27) Criminal Law powers? In particular, is section 9 of NFICA valid?

Question 2 (15 marks/20 minutes)

Assume the federal and provincial acts are valid. Discuss any operability issues for the provincial VA.

Question 3 (15 marks/20 minutes)

How might the provincial government use arguments about interjurisdictional immunity in this situation? Discuss and show possible use of such arguments.

Please turn over page.

.

PART II

Question 4 (30 marks/40 minutes)

Discuss:

Canadian federalism law illustrates well a clear divide between law and politics. Whether a particular piece of legislation lies in federal or provincial jurisdiction is simply a matter of logical application of doctrinal rules. The drafters of sections 91 and 92 of the *Constitution Act, 1867* set up a division of powers that remains clear, straightforwardly applicable, and adequate to Canada in the 21st century.

In your answer, reference at least two commentators we have read or discussed and, at least, three cases we have studied.

END OF EXAM