

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

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION - APRIL 2022

**LAW 347B
Federalism**

**Section 004
Professor Asha Kaushal**

TOTAL MARKS: 100

**TIME ALLOWED: 2 HOURS
and 10 minutes reading time**

- NOTE:
1. This is an open book examination.
 2. You have 10 MINUTES of reading time, in addition to the 2 HOURS allowed for the exam. You must not start writing in your exam booklets or typing on your computer during this reading time but you may make notes on a piece of paper that should not be handed in.
 3. Full citation of cases is not necessary. You may refer to cases in short form (*e.g., Morgentaler*).
 4. This examination is designed to test material covered in this course – both assigned readings and lecture materials. Only refer to materials covered in course materials or lectures.
 5. The facts and scenarios in this exam are fictional. No knowledge of actual events or legislation is required to answer the question. If you need to make assumptions to answer the question, please indicate what those assumptions are and what, if anything, follows from them.
 6. Good luck!

THIS EXAMINATION CONSISTS OF 2 QUESTIONS.

Question 1:

An endangered species is a species that is likely to become extinct in the near future. Some famous endangered species include the giant panda, the blue whale, and the snow leopard.

In a recent documentary about endangered species, a celebrated US politician-turned-celebrity cautioned people about extinction and the point of no return. The documentary received international attention and created a groundswell of support. Organizations such as the World Wildlife Fund started campaigns to raise funds and awareness so they could lobby the government for legislative changes.

Both the federal and provincial governments have jurisdiction to legislate to protect endangered species. To that end, they have entered into various agreements to coordinate their efforts, and Parliament passed the *Species at Risk Act* (SARA).

The federal government now wants to contribute to the conservation of big cat species. It is providing grants to eligible non-profit big cat conservation initiatives and assisting in the purchase of large tracts of land in various provinces for use by these big cat conservation centres.

Federal regulations have been enacted under SARA to facilitate this grant program which stipulate that the tracts of land must meet certain size requirements to ensure that the big cats have sufficient space to roam, feed, and breed.

Alberta is one of the few places in Canada where big cats historically flourished but they were nearly driven to extinction by cattle farmers' efforts to eradicate them to protect their herds. A year ago, the federal government purchased a tract of land in Junction, Alberta.

Junction attracts many tourists in light of its two award-winning zoos. One of these zoos recently attempted to expand, however residents are concerned that the proposed expansion will place the zoo too close to residential areas, exposing citizens to offensive odours and placing large dangerous animals in close proximity to human dwellings.

In response to these concerns, the municipality passed a by-law which mandates that any commercial or non-profit enclosure designed to house animals must be situated a minimum of five miles from any residentially zoned area.

The boundaries of the federally purchased tract of land for the new conservation centre violate the municipal by-law and the conservation initiative is now concerned about building its centre. There are no other areas of sufficient size around Rosewood to house a big cat conservation centre.

Question 1 (35 marks)

Both legislative initiatives are *intra vires* their respective powers. The big cat conservation initiative wants to know if it must comply with the municipal by-law. How might you advise them?

Question 2:

Cryptocurrency is a digital or virtual currency that is secured by cryptography, which makes it very difficult to counterfeit. One of its defining features is that it is neither reliant on nor enforced by a central authority such as a government or a bank.

Many experts believe that cryptocurrency and the blockchain technology it relies upon are highly disruptive and volatile. There is widespread underlying concern that cryptocurrencies could threaten established financial systems. Cryptocurrency use is common in criminal-related activities and is associated with high rates of fraud. It is not considered legal tender in Canada but can be used in stores or online when vendors accept the medium.

Several provinces have regulated cryptocurrencies under their securities laws. The federal government stepped into the legislative field with the *Proceeds of Crime Act* (PCA) in 2015, to combat money laundering and terrorist financing. The PCA was primarily concerned with reporting mechanisms.

These measures have proven ineffective and the world of cryptocurrency and blockchain technology continues to accelerate. Other countries have begun to regulate cryptocurrencies by recognizing and regulating the least volatile among them.

Earlier this year, the federal government tabled legislation titled the *Fair and Stable Currency Act* (FSCA) to regulate the use of cryptocurrencies in several domains.

The Preamble of the FSCA reads:

*Recognizing the accelerating development of virtual and digital currencies;
Understanding the value of safe and secured currency;
Concerned about the fraud, money laundering, and terrorist financing risks associated with digital and virtual currencies; and
Recognizing the borderless nature of the virtual and digital worlds [...]*

The FSCA establishes a regulatory body, the Fair and Stable Currency Board, that will facilitate cryptocurrency transactions between parties. The Act also contains several regulatory provisions that mandate how cryptocurrencies may be used, including section 6:

Corporations and places of business that provide goods and services or enter into contracts or agreements which deal in or permit the exchange of cryptocurrencies must comply with the following terms:

- a. Collecting data from users when they cash out or exchange their cryptocurrency tokens; and
- b. Placing minimal fees on transactions and exchanges.

The broader purpose of the Board is to collect data on cryptocurrency usage in Canada and advise federal Cabinet on any associated risks to the Canadian economy. Such collection of data is contingent on access to such currency at various points of sale. The framework aims to support the possibility of registered cryptocurrency exchanges in the near future.

The proposed legislation applies to transactions conducted within any province that elects to opt-in to this federal regulatory scheme.

The federal government wants to clear up any confusion about the constitutionality of *FSCA*. You work as an articling student for the federal Department of Justice. In preparation for submitting a reference question to the Supreme Court of Canada, your supervising lawyer has asked you to answer the following questions:

QUESTION 2 (65 marks)

Is the federal legislation a valid exercise of the federal power over trade and commerce under Section 91(2) of the *Constitution Act, 1867*?

END OF EXAMINATION