THIS EXAMINATION CONSISTS OF 4 PAGES

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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 347B

Federalism

Section 1

Professor Joel Bakan

**TOTAL MARKS**: 100

**TIME ALLOWED**: 2 HOURS

plus 15 minutes of reading time

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**NOTE:** 1. This is an open book examination.

 2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 2 QUESTIONS

### QUESTION 1

# **Total Marks: 70**

Beyond Human Inc. is a small start-up tech firm in Vancouver. It is owned and operated by a brilliant computer scientist, Maria Mehdi. The company recently announced that one of its artificial intelligence (AI) programs had achieved sentience, in the sense of having full human capacities of intellect and emotion, as well as being able to design and build ever-better versions of itself without human involvement. Beyond Human named the new machine Transcend.

In response to this news, the federal government enacts the *Ensuring Canada’s Humanity Act*, which includes rules that govern how AI programs can be built, operated and programmed, and provisions mandating government oversight through random periodic inspections. The Act also creates a new cabinet position for a Minister of Artificial Intelligence. Sections 4-9 of the Act provide as follows:

1. Any AI project with potential for sentience shall be reviewed by the Minister of Artificial Intelligence.
2. The Minister shall, through regulations, create “sentience” definitions and standards that will be used to assess whether an AI project is sentient.
3. The definitions and standards will be continuously reviewed and modified by the Minister to accord with the best and latest science.
4. This Act will apply to all federal undertakings involved in AI development, and all other undertakings involved in AI development, regardless of size, operations or location
5. It is an offense for any person to develop an AI that is advanced enough to meet the sentience definitions and standards established by the Minister.
6. Anyone found in violation of section 8 is liable to imprisonment of not more than 10 years.

When the Prime Minister brings the *Ensuring Canada’s Humanity Act* to Parliament as a Bill for debate and a vote, he states:

The clear purpose of this new law is stated in its preamble: ‘to minimize the risks to Canada, and global society, of new AI technologies that could overpower and cause great harm to human beings. This is potentially a Frankenstein story on a massive scale. It requires a federal response as provinces on their own have neither the capacity nor the jurisdiction to deal with what is really a very pressing problem of national and international dimension, and one that could have cataclysmic consequences.”

During debate, a main opposition point is that, due to section 7, the Act effectively creates federal jurisdiction over the entire AI industry, including small local start-ups, like Beyond Human, that fall squarely within provinces’ jurisdiction to regulate local businesses under sections 92(13) and (16) of the *Constitution Act* 1867. Nonetheless, the Bill passes and becomes law.

One of the first targets of the new law is Beyond Human Inc. and Maria Mehdi. They are required to submit Transcend to the Minister of Artificial Intelligence for review under the Act and Regulations and, as a result of that review, they are issued orders that Transcend be destroyed under supervision of federal officers, and all further development of sentient AI at Beyond Human cease. They are warned that failure to comply will lead to charges under section 9 of the Act.

Maria launches a constitutional challenge to section 7 of the Act claiming that, by virtue of that section, the Act trenches on provincial jurisdiction.

**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**:

1. Is section 7 of the *Ensuring Canada’s Humanity Act* valid? (Assume the *Act* as a whole is valid, and discuss both POGG and the Criminal Law power) (**60 marks**)
2. Assuming section 7 is valid, would the doctrine of interjurisdictional immunity preclude application of provincial AI standards to local start-ups like Beyond Human Inc.?

(**10 marks**)

**QUESTION 2**

# **Total Marks: 30**

The Supreme Court of Canada’s case law on the *Constitution Act* 1867’s division of powers reflects competing conceptions of Canada as a federal state.

**Explain how these competing conceptions are manifest in relation to** **ONE of the following:**

1. The Peace, Order and Good Government power

 **-OR-**

1. The Criminal Law Power

**-OR-**

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

**-OR-**

4. Operability (Paramountcy)

 **-OR-**

5. Applicability (Interjurisdictional Immunity)

 **-OR-**

6. Any combination of the above.

**END OF EXAMINATION**

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