THIS EXAMINATION CONSISTS OF 5 PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION - APRIL 2023

LAW 347B

Federalism

Section 4

Professor Asha Kaushal

**TOTAL MARKS:** 100

**TIME ALLOWED:** 2 HOURS PLUS 10 MINUTES OF READING TIME

(Students can type or write their exam answers during the reading time)

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**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 may type or write your exam answers during the allotted reading time.

 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.

During the election campaign, the Prime Minister repeatedly promised to make it a priority to legalize cannabis. He described the *status quo* as inherently dangerous, stating that it ‘made marijuana too easy to access for youth and funded crime, organized gangs, and guns’. Following his election, the Prime Minister moved quickly to set up a task force.

The task force was asked to study the implications of legalizing cannabis for the division of powers in Canada and for public health and safety in Canada. Their report, *Proposed* *Legal Frameworks for Legalizing Cannabis*, provided the basis for what would become the federal government’s *Cannabis Act.*

When the report was tabled in Parliament, several objections were raised to legalization. Some members opposed the legalization of drugs altogether; some members were concerned about the perceived ease and availability of cannabis and the decline of public order; still others were concerned about federal government overreach.

Despite these objections, in 2018, Parliament enacted the *Cannabis Act*. The *Cannabis Act* amends several other pieces of legislation to make cannabis legal and also sets out new laws about possession and distribution. Specifically, it amended both the Controlled Drugs and Substances Act (*CDSA*) and the Criminal Code to allow for the legalization of cannabis activity in Canada.

In parliamentary debates about the change, federal government ministers repeatedly referred to three objectives: to keep cannabis out of the hands of youth; to keep profits out of the pockets of criminals; and to protect public health and safety by allowing adults access to legal cannabis.

In terms of possession and distribution, the *Cannabis Act* prohibits the possession by and distribution to persons under 18 years of age and criminalizes certain advertisements and some sales of cannabis products. Adults who are 18 years or older may:

* possess up to 30 grams of legal cannabis
* share up to 30 grams of legal cannabis with other adults
* purchase cannabis from a provincially-licensed retailer or, in jurisdictions without a retail framework, purchase cannabis online
* grow a maximum of 5 cannabis plants for personal use

Much like alcohol, the provinces and territories have jurisdiction over the production, distribution, and retail sale of cannabis within their jurisdiction. For example, in Alberta, people can purchase cannabis products at private retail stores and through government operated online stores. In Ontario, purchases must be made through government operated retail and online stores. In British Columbia, sales are available at both government and private retail and online stores.

The long title of the *Cannabis Act* is *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*. Section 2 of the *Cannabis Act* sets out its purpose in some detail:

2. The purpose of this Act is to protect public health and public safety and, in particular, to

(a) protect the health of young persons by restricting their access to cannabis;

(b) protect young persons and others from inducements to use cannabis;

(c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;

(d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;

(e) reduce the burden on the criminal justice system in relation to cannabis;

(f) provide access to a quality-controlled supply of cannabis; and

(g) enhance public awareness of the health risks associated with cannabis use.

The *Cannabis Act* contains several measures to prevent youth from accessing cannabis. These include both age restrictions and promotion restrictions. Sections 10-14 discourage youth cannabis use by prohibiting the promotion of cannabis except in very narrow circumstances and by prohibiting the packaging or labelling cannabis in a way that is appealing to youth. Penalties for violating these prohibitions include a fine of up to $5 million dollars or 3 years imprisonment.

Sections 17-20 create criminal offences related to providing cannabis to youth: giving or selling cannabis to youth and using a youth to commit a cannabis-related offence both carry maximum penalties of 14 years imprisonment.

The legalization of cannabis seems to have largely accomplished its objectives. Governments and licensed private retailers control most of the supply of cannabis, keeping profits out of the criminal economy. Sellers have been careful to ensure that purchasers are 18 years of age or older. The federal government has created quality regulations and set strict industry-wide standards. Public education efforts about safety and health risks are ongoing. Some people complain about the prevalence of cannabis in public spaces, but otherwise the legalization effort has not generated much controversy.

There is still not much clear data on whether more individuals consume cannabis now that it is legal, or whether youth consume more or less of it than before. Nor is there sufficient scientific data about the health effects of small amounts of cannabis to conclude that it is harmful to health outcomes.

Jacques lives in Nova Scotia. He is a twenty five year old graphic designer who consumes a lot of cannabis. Jacques was delighted to see the legalization of cannabis in 2018, and is a frequent visitor to his neighbourhood retail cannabis store called *Dutch*. He became friendly with two of the owners, and they began talking about which strains to grow for personal use. They sold him some seedlings which he turned into five cannabis plants that sit on his windowsill.

The owners of *Dutch* assured him that he was permitted to grow up to five plants. They pointed to section 25 of the federal government’s Cannabis Act, which prohibits any adult from cultivating, propagating, or harvesting more than five cannabis plants in their residence.

In 2022, the Nova Scotia government enacted the *Provincial Limits Act*. The legislation responded to public concerns about cannabis use. A series of town hall meetings were held in 2021. Local individuals raised a series of complaints about social disorder and harm to public health and safety. They complained about the consumption of cannabis in public spaces and around families. Dozens of people raised the issue of smell and smoke fumes. Parents were worried about a general atmosphere of youth access to cannabis and social use encouragement, including through the use of cannabis in public spaces.

Section 2 of the *Provincial Limits Act* sets out its purpose: to prevent and reduce cannabis harm. Several provisions in the *Act* are concerned with matters of public health. The *Provincial Limits Act* places a number of further restrictions on cannabis. It raises the minimum age for cannabis possession to 21 years of age, lowers the personal possession limit to 15 grams, eliminates the cultivation of plants in residences, and restricts the consumption of cannabis in public spaces.

Section 7 of the *Provincial Limits Act* prohibits the possession of any cannabis plant as well as any cultivation of cannabis for personal recreational use. Section 7 reads:

7. It is prohibited to cultivate cannabis for personal purposes.

(a) The prohibition against cultivating cannabis applies, in particular, to the planting of seeds and plants.

(b) Anyone who contravenes this prohibition by cultivating cannabis plants in their dwelling house commits an offence and is liable to a fine of up to $1000.

Jacques and his five cannabis plants are affected by section 7 of the *Provincial Limits Act*. *Dutch’s* owners contacted him once they had reviewed the *Provincial Limits Act* with their lawyers and explained that he would have to get rid of his plants.

Before choosing the life of a cannabis-loving graphic designer, Jacques briefly attended Schulich Law School at Dalhousie University. He dropped out after his first year, but he completed the mandatory Constitutional Law course, among other 1L classes. He is concerned that the *Provincial Limits Act* might be overreach by the provincial government.

A local constitutional litigation firm in Halifax helped Jacques bring the case to court. The lower courts split on the issues, and the case will be heard by the Supreme Court of Canada in two weeks.

You are a clerk for Justice Inderwal at the Supreme Court of Canada. Justice Inderwal has asked you to write a brief memo responding to the two issues raised by Jacques. Jacques made the following two arguments in the court of first instance:

* + 1. The *Provincial Limits Act* is *ultra vires* the provincial government; and
		2. Alternatively, section 7 of the *Provincial Limits Act* conflicts with the *Cannabis Act*.

**Question 1 (60 marks):**

Is the *Provincial Limits Act* valid?

**Question 2 (40 marks):**

Regardless of your answer to Question 1, please assume for this question that both pieces of legislation are *intra vires*. Does section 7 of the *Provincial Limits Act* conflict with the *Cannabis Act*?

**END OF EXAMINATION**

**Have a great summer!**