**THIS EXAMINATION CONSISTS OF FOUR (4) PAGES (INCLUDING THIS PAGE)**

**PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 509

Administrative Law

Section 5

Russo

**TOTAL MARKS:** 100

**TIME ALLOWED:** THREE (3) Hours

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**NOTES:**

1. This is an open-book examination. Candidates may have with them any **hard-copy written material** they wish. **Laptops are only permitted for the use of ExamSoft.**
2. **Use of other electronic or communication devices such as mobile phones, tablets, smartwatches, etc. are not permitted.** Phones should be turned off or in airplane mode.
3. **Read the questions carefully and understand** what you are being asked to do before you begin your answer.
4. You may refer to cases in short form (e.g. “*Baker*” or “*Vavilov*”).

**GOOD LUCK!**

**PART I: READ THE FACTS AND ANSWER THE QUESTIONS THAT FOLLOW [65 MARKS]:**

1. [35 MARKS]

Under the *Evacuated Communities Act [“Act”]*, the Newfoundland Minister of Municipal and Inter-Governmental Affairs established a relocation plan for rural communities that request relocation assistance. Resettlement is one aspect of the Newfoundland government's plans to diversify and modernize its economy, after the decline in cod stocks. The new plan therefore encouraged rural Newfoundlanders to move to designated "growth centres” with modern amenities, rather than to places thought as not economically viable.

Relocation is voluntary. Upon receipt of a request, the Ministry holds a relocation vote to determine whether 90 percent of a community’s residents wish to relocate. If the vote is to relocate, no individual is forced to move, though their participation in relocation is incentivized through cash payments. The program is not designed to reimburse all persons for all costs associated with relocation, but to offset some of the financial disadvantage that could result from it.

Residency affects the payment to which applicants are entitled. A *resident* would receive $250,000. An *applicant* would receive only $10,000 if found to be a non-resident owner.

Pursuant to the *Act*, “*residency*” means that the applicant resided in an affected community for at least 183 days in each of two, 12-month periods prior to the relocation request and they are not permanent residents of another community. There is a medical exemption in the *Act*, meaning that time spent away from a community temporarily for medical reasons, supported by a doctor’s note, is included as “*residency*” in the count of 183 days.

Mary claimed to be a resident of Smallville, which had voted to relocate. She claimed she had medical problems and could not live alone in her home anymore and requested relocation assistance. She had resided there for the past 34 years but she could not satisfy the 183 days in the past two 12-month periods. She signed an affidavit saying that this was because “I can’t stay here in the colder months due to medical and mobility issues. This is my only permanent residence.” During the winter months, she lived with her son in nearby Metropolis. All of Mary’s mail went to her Smallville address, and all of her tax returns and other government documents listed that address as her permanent address. The Ministry agrees she would meet the residency requirements if these months were included.

The Ministry sent Mary a letter stating, “...we have determined you to be a non-resident property owner of Smallville. This determination is based on an extensive review of your Affidavit and supplementary information you provided that you established permanent residency in Metropolis.”

During an internal appeal, a Reviewer travelled to Smallville to meet with Mary. She provided the Reviewer with a doctor’s note, stating: “Mary has osteoarthritis of both knees and is unable to walk very far or walk up and down stairs without assistance. She also has other medical problems. She is not able to live alone without assistance in her home in Smallville.”

The Reviewer’s Decision merely repeats the information above and does not contain details or analysis of Mary’s appeal because the Reviewer’s recommendation for her case was consistent with the Minister’s initial finding. It also contains the following conclusion: “The Appellant is also not ‘temporarily’ absent for medical reasons. Her inability to live for long periods of time in Smallville is not just a temporary feature of her life. This is not the circumstance anticipated by the medical exception in the *Act*. She is now only a seasonal resident of Smallville in the summer and accordingly an *applicant* under the *Act*.”

During your research, you learn that the same Reviewer recommended allowing the appeals of two other people, on the basis that, except for a few days, “they would have satisfied the required 183 days per year in the community” because they had “been unable to live in Smallville during the winter months. Therefore, I believe that due to medical reasons, an exception to the 183 days requirement is warranted.”

Mary is on a fixed income and given the community’s decision to relocate, she could not keep her house in Smallville. She could either attempt to sell it (likely at a substantial loss) or abandon it.

1. Advise Mary whether the Reviewer made a reasonable decision.
2. [20 MARKS]

Maxwell Friedman is a lawyer who has practiced law in B.C. for more than 48 years. He is a criminal defence lawyer who does a lot of impaired driving cases. In 2008, the Registrar of Motor Vehicles issued Max a vanity license plate: “DUI DR.” He renewed his plate annually for 6 years without incident. At that time, the registrar received two complaints from MADD Canada and MADD Greater Vancouver Area Chapter that Max’s plate “glorified drinking and driving.”

The application form for vanity plates indicates that “words or symbols socially unacceptable, offensive, not in good taste, or implying an official authority” are not accepted. The registrar also has a Policy Guide on the acceptability of licence plate configurations, including an “objectionable words/symbols list.” According to the Policy, the registrar will deny an application if it contains a message that would alarm, threaten, offend, or mislead a reasonable person.

“DUI” was not on the objectionable list when Max’s plate was first issued. Nevertheless, the registrar made the decision to revoke the plate. On Friday, November 28, 2014, the registrar sent Max a letter advising that the licence plates had been “erroneously issued,” and requested Max return the two “DUI DR” plates in his possession within 14 days.

The letter offered no further explanation as to why the registrar was requesting Max return the licence plates. Max called the registrar and explained that “DUI DR” was an acronym that he had adopted in association with the area of law he practiced (and indeed referred to “driving under the influence”). He disputed that the plates were “erroneously issued.” Max followed up with a letter to that effect, requesting reasons for the registrar’s decision and to see the copy of any complaints received about the plate. Max did not return the plates.

On February 18, 2015, the registrar sent Max a letter informing him of the authorization of the seizure of Max’s licence plates and that the plates were no longer assigned to Max in the Motor Vehicle database. The registrar also forwarded Max new licence plates, registered in his name. Max returned them. The registrar, in turn, seized the “DUI DR” plates and wrote to Max to inform him of same. Max applied for judicial review, claiming a breach of procedural fairness.

1. Was Max owed a duty of fairness?
2. Assuming that Max was owed some duty of fairness here – what would it be?
3. [10 MARKS]  
     
   The federal government appointed a commissioner (a retired judge) to conduct a politically sensitive inquiry into alleged misuse of public funds. Three months into a nine-month hearing, the Commissioner granted a series of interviews. Some of the comments made were that the program in question was run in a “catastrophically horrible way,” that the answer given by the senior minister in charge of the program in his testimony was the “most important and only answer that counted,” that the “really juicy stuff” was yet to come.

He categorized one of the witnesses as a “charming scoundrel” and said that one alleged diversion of public funds to put the Minister’s name on promotional baseballs as “a laughable bougie attempt to look classy.” [*Bougie*: *Aspiring to be a higher class than one is*].

The Minister had not yet testified at the time he made the comments.

1. What kind of bias is at issue?
2. What test and evidence would a court likely use to find bias here?

**PART II: CHOOSE & ANSWER ONLY ONE (1) OF THE FOLLOWING [35 MARKS]:**

**USE RELEVANT CASES OR ARTICLES FROM THE COURSE TO SUPPORT YOUR ANSWER**

1. Aboriginal Admin Law – Consider our classes about Aboriginal Administrative Law:
2. What does the concept of “Aboriginal Administrative law” signify to you?
3. How might Indigenous law reshape the design and structures of tribunals?
4. What is your opinion of attempts to reform the *Indian Act* in context of Administrative Law?

OR

1. Rule of Law – Consider in context of our discussion of “deference as respect”:
2. What does the phrase “reasons which could be offered in support of a decision” mean?
3. Just how much “weight” should the views of an administrative decision-maker hold?
4. Should the weight of these views change according to the facts or nature of the decision being reviewed?

OR

1. Remedies - Consider the issue of human rights and these questions relating to remedies:
   1. Do you think it’s appropriate to use law to simultaneously enforce rights, compensate for wrongs and “cure” systemic problems?
   2. Is it appropriate for a tribunal to continue to come up with new orders to try to achieve the best outcome for the parties?
   3. Can external third parties really change organizational culture and create dialogue and, if not, what other legal options are left?

**END OF EXAMINATION**