Section 1
Professor: David M. Rosenberg, Q.C.

TOTAL MARKS: 100
TIME ALLOWED: 3 HOURS

NOTE:

1. This is an open book examination.

2. ANSWER ALL QUESTIONS

3. There is a 500 word limit for each question.

4. Examinations are to be anonymous, submitted pursuant to Student Code.

THIS EXAMINATION CONSISTS OF FOUR QUESTIONS.
Question 1

This question is worth 25 MARKS. Your answer must be 500 words or less.

In the context of the law on Aboriginal Rights and Title explain the following concepts and their relationship to each other:

(a) Honour of the Crown;

(b) Breach of fiduciary duty;

(c) Duty to consult and accommodate.

Include in your answer, a discussion of the obligation of the Crown to act with diligence as well as the obligation to not “take up” too much treaty land.

Question 2,

This question is worth 25 MARKS. Your answer must be 500 words or less.

The Government of British Columbia passes the *Clean Energy Development Act* and announces that it has done so because it is in the interests of all British Columbians to secure clean, inexpensive, hydroelectric power. Pursuant to that Act, the Crown authorizes the damming of a river which will result in the flooding of 500 hectares of land within the area which the Supreme Court of Canada declared was Tsilhqot’in aboriginal title land. The Tsilhqot’in bring an application to set aside the authorization:

(a) What facts will you as counsel for the Tsilhqot’in seek to put before the Court to support an application to set aside the Crown authorization. Please feel free to imagine facts that would support your position.

(b) What facts will you as counsel for the Crown seek to put before the Court in support of the validity of the Crown authorization. Please feel free to imagine facts that would support your position.

(c) As a Judge who hears the application, how will you determine the validity or invalidity of the authorization. What are the steps that you will go through in reaching your decision.
Question 3,

This question is worth 25 MARKS. Your answer must be 500 words or less.

You have been asked to provide an opinion to a First Nation in British Columbia. The First Nation has no treaty with the Crown but claims to have members who have hunted, fished and lived throughout a vast territory of land within British Columbia for hundreds of years. The First Nation wants to proceed with establishing aboriginal title to their land. They have specifically asked you how they should proceed, and what area they should claim. What advice would you give them with respect to:

(a) Whether or not to go to Court;

(b) The size of the area they should claim; and

(c) The boundaries or description of the area they should claim.

Specifically refer to the reasons of Cromwell, J.A. (as he then was) in the decision of R v. Marshall, 2003 NSCA 105 at paragraphs 135 to 138.

Question 4

This question is worth 25 MARKS. Your answer must be 500 words or less.

Assume the Squamish Nation proceeds to Court and claims title to Stanley Park. They prove that in 1846 they exclusively occupied the area that is now Stanley Park. As the Judge who hears the case:

(a) Will you accept a limitations defence based on Provincial legislation;

(b) If you are satisfied that the Squamish have proven aboriginal title to Stanley Park, what remedies will you award.

END OF EXAMINATION