Note: this is an open book examination. Students may bring their casebooks, notes and reading lists into the examination room.
The opioid problem in Canada is in the news regularly and is a subject of concern to governments at all levels. Deaths are occurring at the rate of about two per day. Various approaches have been suggested. Alberta recently gave third reading to a bill restricting the sale of pill presses used to make fentanyl pills.

Assume that the British Columbia government is persuaded to copy Alberta and decides to make the legislation even tougher. The British Columbia bill will be introduced when the legislature sits again in the spring. You have been retained by the Ministry of the Attorney General to advise it on the constitutional validity of the bill. The Ministry provides you with a very short draft bill which will be an amendment to the Pharmacy Operations and Drug Scheduling Act, SBC 2003 c. 77. The operative provisions are only three in number.

Section 1 defines “designated equipment as “a pill or tablet press, tablet machine, capsule filling machine or pharmaceutical mixer” or anything else specified in regulations made by the Lieutenant Governor in Council.

Section 2 provides that no-one shall own, operate or possess designated equipment without a licence.

Section 3 creates penalties for breach. It imposes a fine of not more than $100,000 for a first offence; a fine of not more than $200,000 or a year’s imprisonment for a second offence; and a fine of $500,000 or two years imprisonment or both for a third offence.
The Ministry informs you that all new pill presses are imported but that there is some selling of used pill presses by pharmacists going out of business.

Draft a memorandum for the Ministry setting out any arguments which might be made by a person challenging the constitutional validity of the statute and setting out your considered view of the likely outcome of any challenge.

2. Some months ago, British Columbia declared that opioid deaths in the province constituted a public health emergency. There has been pressure recently on the federal government to declare an emergency at the federal level.

Based on your knowledge of the case law, can the federal government enact emergency legislation? If so, would there be any limitations on federal legislative jurisdiction?

END OF EXAMINATION