THIS EXAMINATION CONSISTS OF 3 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER
THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW
MID-YEAR EXAMINATION - December 12 2016
LAW 201.002
Canadian Constitutional Law - Federalism
Professor J. Mack

TOTAL MARKS: 100
TOTAL TIME ALLOWED: 60 minutes (plus ten minutes reading time)

1. This examination is OPEN BOOK. Candidates may use any materials they have brought into the examination room (with the exception of library and text books) during the examination and the reading period.

2. Do not concern yourself with statutes, cases or other sources not covered in the course materials.

3. Be brief in your discussion of each point raised. It is better to cover more points in brief than fewer points in detail.

4. State clearly any facts you assume in answering the question.

5. You should describe the arguments that might be made on both sides of an issue, and give some sense of the relative strength of the arguments.

6. Full citations of cases are not necessary. You may refer to cases in short form

GOOD LUCK!

THIS EXAM CONSISTS OF ONE MAIN QUESTION (with three sub-questions)
Question (100 Marks)

In 2000, the courts held that citizens have a constitutional right to obtain marijuana for medical purposes. In 2001 Parliament introduced the *Marijuana for Medical Purposes Regulations (MMPR)*. Individuals were required to purchase medical marijuana through a federally licensed producer and could not grow their own. Only 36 producers were licensed. In February 2016, the Federal Court ruled the MMPR’s terms presented patients with unreasonable and unconstitutional barriers to access medical marijuana.

On August 24, 2016 Parliament introduced the *Access to Cannabis for Medical Purposes Regulations (ACMPR)*. One of the ACMPR’s purposes, as stated preamble, is to expand access to medical marihuana. Persons with medical documentation now either grow their own marihuana, appoint a designated grower, or purchase it from a licensed producer. It is illegal for anyone other than a licensed producer to sell marijuana. The license obtained from *Health Canada* entitles a producer to produce, sell and ship the product. Currently there are still only 36 marijuana producers (five of which are in Vancouver BC). Parliament is in the process of streamlining the registration process to allow for more licensed producers.

As of January, 2015 170 unlicensed marijuana dispensaries were opened for business in the City of Vancouver. Given how few licensed producers were available, courts were imposing light criminal sanctions. The City of Vancouver faced heavy pressure from Vancouver Business Associations and Neighborhood Associations to crack down on the burgeoning dispensary industry. Municipal Council Penny Chan told the Vancouver Sun (April 1, 2015) that “The City of Vancouver has to act on this problem. By leaving the dispensary businesses unregulated, Canada is becoming a Narco-Nation. We see this happening already, with many of the dispensaries providing a front for organized criminals such as the Hells Angels.” Ms. Chan publicly backed away from these comments when she took lead on the City’s Medical Marijuana file, saying “As a municipal government, our interest is strictly in regulating the business of dispensing marijuana. The criminal aspects of the marijuana trade are for the Feds to consider.”

In June 2015 Vancouver city council passed *By-Law 54: A By-law to Amend 4450. By-law 4450* consolidates all city by-laws pertaining to the issuing of licenses and regulation of businesses, trades, professions and other occupations. *By-law 54* provides for the regulation of businesses selling medical marijuana. The legislation created two classes of marijuana businesses: 1) A *Compassion Club*, which must be a nonprofit society and must provide a range of healthcare services in compliance with specific criteria set out in the by-law. 2) A *Retail Dealer –Marijuana Related*. Further, both of these businesses are only allowed to operate:

1. In commercial zones
2. At least 300 m from:
   - Schools
   - Community centers
   - Neighbourhood houses
• Youth facilities that serve vulnerable youth
• Other marijuana-related businesses

3 With a business license (the license fee is $1,000 for compassion clubs or $30,000 for medical marijuana-related retail dealers)
4 With a development permit that includes a standard community notification process
5 With a signed good neighbour agreement

By-law 54 does not require applicants to obtain a federal license to sell marijuana. The by-law also regulates sales methods which require that retail dealers cannot mail or deliver the product off site. Non-compliant dispensaries are fined $250.00 for each day that they are open without a license and forced to close after 6 months of non-compliance. The City has licensed 6 dispensaries under bylaw. 110 have closed.

When By-Law 54 was first discussed in council, some members criticized the federal government's licensed medical marijuana system under the MMPR, attributing the growth of dispensaries to lack of access to medical marijuana. However, in press releases, city officials stressed that Vancouver was "not regulating the sale of the marijuana as a product... but simply regulating the business itself". The Federal Government disagrees.

Parliament is planning to challenge the constitutional validity of By-Law 4450. **Presume you are an articled student with the Federal Government's Department of Justice and have been asked to draft a memo answering the following:**

Assuming the validity of both the ACMRP and By-law 4450 (outside of the by-law 54 amendments):

1) Is By-Law 54 valid according to the powers set out in sections 91 and 92 of the Constitution Act 1867? (60 marks, 35 minutes)

2) Assuming By-Law 54 is valid, is it nonetheless inoperative? (25 marks, 15 minutes)

3) Assuming By-Law 54 is valid, is it nonetheless inapplicable? (15 marks, 10 minutes)

End of Exam