



**NATIONAL COMMITTEE ON ACCREDITATION**

**SAMPLE EXAMINATION**

**CONSTITUTIONAL LAW**

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## Time: 3 hours

### **Instructions:**

1. Think carefully about your work before you start writing. Credit will be given for concise, clear and well-organized answers.
2. There are four Parts to the exam. You must answer all four Parts.
3. The number of points allocated to specific Parts of the exam is indicated, as is the time you should devote to each question. Be sure to allocate your time accordingly. If you run out of time to answer the whole examination, no points will be awarded for unanswered questions.
4. Time constraints require that you address your answers succinctly and directly to the specific questions posed. No points will be awarded for addressing questions other than those posed.
5. Throughout the exam, points will be awarded for accurately setting out the relevant legal rules; citing as authority the relevant constitutional provisions, cases, and readings listed on the syllabus; applying the relevant legal rules to the facts and precise provisions at issue; and articulating clear conclusions on the questions posed.
6. Candidates should attribute any direct quotes from authors or judgments to their source. Lengthy quotations are inadvisable as the exam is testing your ability to undertake an independent analysis of the specific questions posed.
7. Please double-space your answers.



**Part I**

**25 points (5 points per question)**  
**Suggested time: 45 minutes**

In a few sentences or short paragraphs on each question, assess the accuracy of the following five statements. The statements may be true, false or somewhere in between (e.g., partly true, partly false; misleading; incomplete etc.). Your characterization of the statements as true, false etc. is less important than supporting your characterization with compelling reasoning. Be sure to direct your response precisely to the statement in question. Points will be given for supporting your answers with references to relevant case law, constitutional provisions and readings listed in the course syllabus wherever possible.

1. Hospitals are bound to comply with the *Charter of Rights and Freedoms*.
2. The Prime Minister is Canada's head of state.
3. The "notwithstanding clause" in s.33 of the *Canadian Charter of Rights and Freedoms* enables legislatures to pass laws that will operate even though they conflict with other provisions of the Canadian constitution.
4. The provincial legislatures of Manitoba, New Brunswick and Quebec are the only three provincial legislatures subject to constitutional requirements that they pass laws in both English and French.
5. The Aboriginal rights of Métis peoples recognized and affirmed by s.35 of the *Constitution Act, 1982* include practices, customs or traditions that were defining features of Métis societies at the time of first contact with Europeans.



**Part II****Points: 30 (5 points each)****Suggested time: 55 minutes**

Which legislative bodies have jurisdiction to enact laws in relation to the following subject matters? In each case, indicate whether it is Parliament alone, or the provincial legislatures alone, or both Parliament and the provincial legislatures, that can pass laws in relation to the stated subject matter. Provide a brief explanation for your answer that makes reference to the relevant head (or heads) of power in the *Constitution Act, 1867* as well as any relevant case law interpreting the scope of the relevant federal and/or provincial legislative powers.

1. The terms and conditions of employment of flight attendants working for airlines.
2. Pollution in marine waters that lie within the boundaries of a province.
3. Regulation of the legal profession.
4. Obligations set out in international treaties signed and ratified by Canada.
5. The promotion and sale of insurance by banks.
6. Retail sales of tobacco products to minors.



### Part III

**15 points**

**Suggested time: 25 minutes**

Bill C-22, currently before the House of Commons, proposes to change the formula in the *Constitution Act, 1867* that determines the number of seats each province will have in the House of Commons.

The existing formula, set out in s.51 of the *Constitution Act, 1867*, allocates seats based on “representation by population” (or the principle of proportionate representation), although exceptions are made to ensure that the number of seats to which smaller provinces are entitled does not diminish over time. Because of these exceptions, if s.51 were not amended, the provinces with the fastest growing populations (Ontario, B.C. and Alberta) would see their number of seats in the House of Commons fall below the number they should have based solely on the principle of representation by population.

Bill C-22 proposes to put in place a revised formula that will better reflect the principle of “rep by pop” or proportionate representation. It does this by altering the formula so that, after the next decennial census, the number of seats in B.C. and Alberta would be increased so that their proportion of the seats in the House of Commons will match their proportion of the Canadian population. Under the Bill C-22 formula, Ontario’s proportion of seats would increase as well, but Ontario’s seats would still be significantly less than the number of seats necessary to match its proportion of the Canadian population.

The federal government is taking the position that Bill C-22 can be enacted by Parliament alone without the consent of any provincial legislatures. Members of the opposition have argued that Bill C-22 cannot be enacted without the approval of at least seven provincial legislatures representing at least half of the Canadian population.

What provisions in Part V of the *Constitution Act, 1982* could be cited in favour of the federal government’s position? What provisions in Part V of the *Constitution Act, 1982* could be cited in favour of the opposition’s position? In your view, what is the legally correct position regarding which amending procedure in Part V of the *Constitution Act, 1982* is applicable?

**Part IV****30 points****Suggested time: 55 minutes**

Bill C-6, currently before the House of Commons, proposes to amend the *Canada Elections Act* to require that voters reveal their faces before voting in person.

Section 143 of the *Canada Elections Act* currently reads as follows:

143.(1) Each elector, on arriving at the polling station, shall give his or her name and address to the deputy returning officer and the poll clerk, and, on request, to a candidate or his or her representative.

(2) If the poll clerk determines that the elector's name and address appear on the list of electors, then, subject to subsection (3), the elector shall provide to the deputy returning officer and the poll clerk the following proof of his or her identity and residence:

(a) one piece of identification issued by a Canadian government, whether federal, provincial or local, or an agency of that government, that contains a photograph of the elector and his or her name and address; or

(b) two pieces of identification authorized by the Chief Electoral Officer each of which establish the elector's name and at least one of which establishes the elector's address.

(3) An elector may instead prove his or her identity and residence by taking the prescribed oath if he or she is accompanied by an elector whose name appears on the list of electors for the same polling division and who

(a) provides to the deputy returning officer and the poll clerk the piece or pieces of identification referred to in paragraph (2)(a) or (b), respectively; and

(b) vouches for him or her on oath in the prescribed form.

(4) If the deputy returning officer is satisfied that an elector's identity and residence have been proven in accordance with subsection (2) or (3), the elector's name shall be crossed off the list and, subject to section 144, the elector shall be immediately allowed to vote.

Bill C-6 would amend s.143 by adding the following subsections after subsection 3:

(3.1) An elector shall have an uncovered face when the elector is proving his or her identity under subsection (2) or (3) or providing identification under paragraph (3)(a).

(3.2) Despite subsection (3.1), an elector who is proving his or her identity under paragraph (2)(b) or subsection (3) is not required to have an uncovered face if

(a) the deputy returning officer is of the opinion that uncovering it would be harmful to the elector's health; and

(b) the elector takes the prescribed oath attesting to the fact that uncovering it would be harmful to his or her health.

The government has stated that the purpose of the proposed amendment is to safeguard the integrity of the voting process by providing greater protection against voter fraud.

The issue of voting with a face covering came to the fore in the summer and early autumn of 2007 when the Chief Electoral Officer, Marc Mayrand, indicated in response to questions from the media that he would not require women who wear veils or burkas to remove their face covering in order to vote. During a press conference on 10 September 2007, Mr. Mayrand explained that the voter identification requirements of the Act do not require voters with a covered face to remove their face covering. He noted that voters are provided with two alternatives to voting without photo identification (i.e., providing two pieces of non-photo identification, or taking an oath, as stipulated in ss.143(2) and (3) respectively). He further noted that the Act provides for other means of voting that do not require the visual comparison of a voter with his or her photograph, such as voting by mail, an option that approximately 80,000 electors exercised in the 2006 election.

The Canadian Muslim Congress (CMC) is upset about the impact that the Bill will have, if passed, on the small number of Muslim women who are Canadian citizens and have sincerely held religious beliefs that require them to cover their faces in public. The CMC has contacted you, a renowned constitutional expert, to seek your views on the constitutionality of the Bill. They have asked you to assist them with the preparation of a brief for presentation to the committees that will be studying the Bill in the House of Commons and the Senate. To this end, they have asked you to advise them on whether, in your view, the new legal requirement to uncover one's face prior to voting in person, as proposed by Bill C-6, would violate s.2(a) or s.15 of the *Charter of Rights and Freedoms*. Prepare a memo to the CMC addressing these issues. (Note: You need not address whether the Bill violates the right to vote in s.3 of the *Charter*, a different expert will be addressing this issue.)

**END OF EXAM**