



SUPREME COURT OF CANADA

CITATION: Opsis Airport
Services Inc. v. Quebec
(Attorney General), 2025 SCC
17

APPEALS HEARD: December 11, 2024
JUDGMENT RENDERED: May 30, 2025
DOCKETS: 40786, 40791

BETWEEN:

Opsis Airport Services Inc.
Appellant

and

**Attorney General of Quebec and
Director of Criminal and Penal Prosecutions**
Respondents

- and -

**Attorney General of Canada, Attorney General of Ontario,
Canadian Telecommunications Association, Aéroports de Montréal,
Aéroport de Québec inc. and Canadian Bankers' Association**
Interveners

AND BETWEEN:

Quebec Maritime Services Inc. and Michel Fillion
Appellants

and

**Attorney General of Quebec and
Director of Criminal and Penal Prosecutions**
Respondents

- and -

**Attorney General of Canada, Attorney General of Ontario
and Canadian Telecommunications Association**
Interveniers

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal,
O'Bonsawin and Moreau JJ.

REASONS FOR The Court
JUDGMENT:
(paras. 1 to 85)

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Opsis Airport Services Inc.

Appellant

v.

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2025 SCC 17

File Nos.: 40786, 40791.

2024: December 11; 2025: May 30.

Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O’Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Constitutional law — Interjurisdictional immunity — Aeronautics — Navigation and shipping — Enterprise providing airport security services and enterprise working in international marine transportation sector served with statements of offence charging them with having contravened provisions of provincial statute requiring them to hold licence to carry on private security activity — Whether provincial statute is constitutionally inapplicable to enterprises by virtue of doctrine of interjurisdictional immunity — Constitution Act, 1867, s. 91, (10) — Private Security Act, CQLR, c. S-3.5.

Opsis Airport Services Inc. (“Opsis”) is an enterprise that provides airport security services; it operates the emergency call centre at the Pierre Elliott Trudeau International Airport in Montréal. Quebec Maritime Services Inc. (“QMS”) is an

enterprise that works in the international marine transportation sector; it performs loading operations on transatlantic ships out of a terminal located in La Malbaie. F is an employee of QMS who monitors and controls access to the port facility. Opsis, QMS and F received statements of offence charging them with having contravened the provisions of the *Private Security Act* (“PSA”), a statute enacted by the Quebec legislature, that required them to hold a licence to carry on a private security activity. It is common ground that Opsis, QMS and F did not comply with the requirements of the PSA. However, they contested their statements of offence on the basis that the PSA is constitutionally inapplicable to them by virtue of the doctrine of interjurisdictional immunity because, according to them, the PSA impairs the core of exclusive federal powers.

In the case involving Opsis, the trial justice held that the doctrine of interjurisdictional immunity was of no assistance and accepted the guilty pleas. That judgment was reversed by the Superior Court, which set aside the guilty verdicts, finding that the PSA as a whole should be declared constitutionally inapplicable to Opsis. In its opinion, airport security necessarily forms part of the core of the federal aeronautics power, and Opsis’s activities fall within this core. It found an impairment of the core of the federal power, and it was of the view that the three aspects of the provincial legislative scheme creating the impairment could not be easily isolated from the rest of the PSA. The Court of Appeal overturned the Superior Court’s decision and affirmed the guilty verdicts. It agreed that Opsis’s activities fall within the core of

Parliament's aeronautics power, but it found that that the *PSA* did not impair the core of this power.

In the case involving QMS and F, the trial judge found that the *PSA* was inapplicable to them because it impairs the core of exclusive federal jurisdiction over marine security and labour relations in a federal undertaking, and he acquitted QMS and F. On appeal, the Superior Court found that the impairment test was not met and convicted QMS and F. The Court of Appeal dismissed the appeal brought by QMS and F. Reaffirming the substance of its reasons in the case involving Opsis, it was of the view that the application of the *PSA* does not create an impairment.

Held: The appeals should be allowed.

Some aspects of the licensing scheme established by the *PSA* have the effect of giving the Bureau de la sécurité privée, the administrative body created by the provincial legislature, the final say on the manner of conducting the security activities of Opsis and QMS, which fall within the core of an exclusive federal power. These impairing aspects of the *PSA* cannot be severed from the rest of the statute, which means that the statute must be declared wholly inapplicable to Opsis, QMS and F pursuant to the doctrine of interjurisdictional immunity.

The doctrine of interjurisdictional immunity serves to protect the core of an exclusive power — either federal or provincial — from being impaired by the other level of government. It is rooted in the notion of exclusivity that appears in the text of

ss. 91 and 92 of the *Constitution Act, 1867*. Though it is constrained by principle and precedent, the doctrine of interjurisdictional immunity plays an essential role in relation to federalism, because it makes it possible to balance the need for intergovernmental flexibility with the need for predictable results. The application of the doctrine depends on two conditions being met: (1) intrusion on the core of an exclusive head of power of the other level of government, and (2) impairment of the core of the exclusive head of power. The core of a power is its basic, minimum and unassailable content. This notion serves to identify and delineate the authority that is absolutely necessary to enable Parliament or a provincial legislature to effectively achieve the purpose for which the power was conferred. The jurisprudence will frequently serve as a useful guide in identifying the core of an exclusive head of power; however, the fact that the core of a power has never been recognized in the jurisprudence is not determinative.

Not every degree of intrusion will trigger the application of the doctrine of interjurisdictional immunity: there must be an impairment. Impairment implies that there are adverse consequences; it must involve more than mere effects, without necessarily amounting to paralysis or sterilization. The core of the exclusive power of Parliament or a provincial legislature must be seriously or significantly trammled. It is not necessary to show that there is a conflict between the laws of the two levels of government or even that the government benefiting from the immunity is exercising its exclusive authority. For predictability to be ensured, it is important to take into account the effects of the application of the impugned statute, whether they have materialized or not.

With regard to the first condition, in the case involving Opsi, it can be inferred from the guidance provided in the Court’s jurisprudence that airport security, insofar as it is related to the security of air transportation itself, is at the core of the aeronautics power. Aeronautics comes within Parliament’s exclusive jurisdiction as part of its power to make laws for the peace, order and good government of Canada under s. 91 of the *Constitution Act, 1867*. Opsi’s activities unquestionably fall within the core of the aeronautics power because they are related to the security of air transportation itself. The application of the *PSA* to Opsi’s activities leads to the conclusion that there is an intrusion on the core of an exclusive head of power. As for the case involving QMS and F, the Court has held in its jurisprudence that dockside unloading and storage operations are integral to shipping. Even without any specific precedent in this regard, there is no doubt that the security of marine facilities and their operations is at the core of the federal navigation and shipping power under s. 91(10) of the *Constitution Act, 1867*. QMS’s activities at the terminal — and by extension the activities carried on by its employee, F — fall squarely within the core of this exclusive federal power. The application of the *PSA* to QMS and F thus constitutes an intrusion on the core of an exclusive head of power.

With regard to the second condition, the power conferred on the Bureau de la sécurité privée to suspend, cancel or refuse to renew an agent licence clearly reveals the potential for impairment. Furthermore, the power to issue directives to an agency licence holder regarding its activities gives the Bureau de la sécurité privée a broad discretion and has the effect of subjecting activities falling within the core of an

exclusive power of Parliament to the control of an administrative body created by the provincial legislature.

The Quebec legislature would not have enacted the *PSA* without the impairing provisions, which are truly unseverable from the rest of the statute and essential to the whole of which they form part. Since a targeted declaration of inapplicability might change the nature of the legislative scheme intended by the legislature, the appropriate remedy is to read down the statute as a whole so that Opsis, QMS and F are excluded from its scope.

Cases Cited

Considered: *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 S.C.R. 725; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536; *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 S.C.R. 467; *Attorney General of Quebec v. IMTT-Québec inc.*, 2019 QCCA 1598, 30 C.E.L.R. (4th) 1; *Commission de transport de la Communauté urbaine de Québec v. Canada (National Battlefields Commission)*, [1990] 2 S.C.R. 838; **referred to:** *Société québécoise des infrastructures v. Agences Robert Janvier ltée*, 2020 QCCA 1140; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53; *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610; *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831; *Quebec*

(Attorney General) v. Canada (Attorney General), 2015 SCC 14, [2015] 1 S.C.R. 693; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58, [2019] 4 S.C.R. 228; *Sharp v. Autorité des marchés financiers*, 2023 SCC 29; *Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 749; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134; *Halton (Regional Municipality) v. Canadian National Railway Co.*, 2024 ONCA 174, 171 O.R. (3d) 41; *Vancouver International Airport v. Lafarge Canada Inc.*, 2011 BCCA 89, 331 D.L.R. (4th) 737; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327; *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86; *Johannesson v. Rural Municipality of West St. Paul*, [1952] 1 S.C.R. 292; *Air Canada v. Ontario (Liquor Control Board)*, [1997] 2 S.C.R. 581; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453; *Re Orangeville Airport Ltd. and Town of Caledon (1976)*, 11 O.R. (2d) 546; *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23, [2012] 2 S.C.R. 3; *ITO — International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752; *Procureure générale du Québec v. Leclerc*, 2018 QCCA 1567; *Regina v. TNT Canada Inc.*, 58 O.R. (2d) 410; *Aeroguard Co. v. British Columbia (Attorney General) (1998)*, 50 B.C.L.R. (3d) 88; *Montréal (City) v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, [2008] 2 S.C.R. 698; *Ontario (Attorney General) v. G*, 2020 SCC 38, [2020] 3 S.C.R. 629; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96.

Statutes and Regulations Cited

Aeronautics Act, R.S.C. 1985, c. A-2.

Canada Shipping Act, 2001, S.C. 2001, c. 26.

Canadian Aviation Security Regulations, 2012, SOR/2011-318, ss. 115 to 118, 191.

Constitution Act, 1867, ss. 91, 92.

Marine Transportation Security Act, S.C. 1994, c. 40.

Marine Transportation Security Regulations, SOR/2004-144, ss. 305, 306.

Private Security Act, CQLR, c. S-3.5, ss. 1, 2, 4, 6, 7, 8, 9, 12, 13, 16, 19, 27, 29, 30, 39, 41, 42, 69 to 74, 107(6), 111 para. 1(2), (3), 112 para. 1(1), 114 to 122.

Professional Code, CQLR, c. C-26, s. 23.

Regulation respecting standards of conduct of agent licence holders carrying on a private security activity, CQLR, c. S-3.5, r. 3, s. 6.

Regulation respecting the training required to obtain an agent licence to carry on private security activities, CQLR, c. S-3.5, r. 2, s. 1.

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APPEAL from a judgment of the Quebec Court of Appeal (Gagnon, Ruel and Lavallée JJ.A.), 2023 QCCA 506, [2023] AZ-51930379, [2023] J.Q. n° 2767 (Lexis), 2023 CarswellQue 4698 (WL), setting aside a decision of David J., 2020 QCCS 4772, [2020] AZ-51736658, [2020] J.Q. n° 19704 (Lexis), 2020 CarswellQue 15257 (WL), setting aside the conviction entered by Presiding Justice of the Peace Fontaine, 2018 QCCQ 9803, [2018] AZ-51559548, [2018] J.Q. n° 12791 (Lexis), 2018 CarswellQue 12123 (WL). Appeal allowed.

APPEAL from a judgment of the Quebec Court of Appeal (Gagnon, Ruel and Lavallée JJ.A.), 2023 QCCA 325, [2023] AZ-51922271, [2023] J.Q. n° 2764 (Lexis), 2023 CarswellQue 4699 (WL), affirming a decision of Bouchard J., 2020 QCCS 3952, [2020] AZ-51725525, [2020] J.Q. n° 11214 (Lexis), 2020 CarswellQue 13328 (WL), setting aside the acquittals entered by Asselin J.C.Q., 2019 QCCQ 5447, [2019] AZ-51626699, [2019] J.Q. n° 7654 (Lexis), 2019 CarswellQue 8402 (WL). Appeal allowed.

François Tremblay and *Marie-Philippe Lavoie*, for the appellant Opsis Airport Services Inc.

Sean Griffin, *Geneviève Claveau* and *Jean-Philippe Dionne*, for the appellants Quebec Maritime Services Inc. and Michel Fillion.

Luc-Vincent Gendron-Bouchard, Samuel Chayer and Frédéric Perreault,
for the respondent Attorney General of Quebec (40786).

François-Olivier Barbeau and Frédéric Perreault, for the respondent
Attorney General of Quebec (40791).

Written submissions only by *Étienne Fafard-Mongeau*, for the respondent
Director of Criminal and Penal Prosecutions.

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General of Canada.

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Ontario.

Isabelle Vendette, Adam Goldenberg and Simon Bouthillier, for the
intervener Canadian Telecommunications Association.

Mathieu Quenneville, Elizabeth Cullen and Emy-Jade Viens, for the
interveners Aéroports de Montréal and Aéroport de Québec inc.

Guy J. Pratte, Mathieu Lévesque and Patrick Cajvan, for the intervener
Canadian Bankers' Association.

English version of the judgment delivered by

THE COURT —

[1] These appeals afford this Court an opportunity to look once again at the contours of the doctrine of interjurisdictional immunity. Since the landmark case of *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, the Court has continued, for the reasons mentioned in that case, to take a cautious approach to the applicability and scope of this doctrine. Despite this Court’s hesitation to make increased use of this doctrine, our jurisprudence shows that it still remains useful. The reasons that follow are in line with the decisions rendered by this Court since *Canadian Western Bank*.

[2] In the two cases in question, the appellants received statements of offence charging them with having contravened certain provisions of the *Private Security Act*, CQLR, c. S-3.5 (“*PSA*”), a statute enacted by the Quebec legislature. It is common ground that the appellants did not comply with the requirements of the *PSA*. However, the appellants contested their statements of offence on the basis that the *PSA* is inapplicable to them by virtue of the doctrine of interjurisdictional immunity. A majority of the Quebec Court of Appeal rejected the appellants’ arguments, which they have raised again before this Court. We would allow the appeals. Some aspects of the licensing scheme established by the *PSA* have the effect of giving the administrative body created by the provincial legislature the final say on the manner in which the appellants’ security activities falling within the core of an exclusive federal power are

conducted. These impairing aspects of the *PSA* cannot be severed from the rest of the statute, which means that the statute must be declared wholly inapplicable to the appellants pursuant to the doctrine of interjurisdictional immunity. Before getting to the heart of the matter, some background will help to clarify the origin of these appeals, which have moved forward in parallel.

I. Background

A. *Opsis Case*

[3] The appellant Opsis Airport Services Inc. (“Opsis”) is an enterprise that provides airport security services. It was retained by the Aéroports de Montréal corporation to operate the emergency call centre at the Pierre Elliott Trudeau International Airport. Opsis’s responsibilities at that airport include: operating the call centre’s computer systems, interpreting the various signals from the surveillance monitors, providing camera surveillance of various interior and exterior locations to detect anomalies or identify why an alarm has sounded, and answering emergency calls. As discussed at length by the judges of the Court of Appeal (2023 QCCA 506 (“C.A. reasons (Opsis)”), at paras. 15-29 and 120-30), Opsis’s activities are highly regulated by federal legislation. In particular, the *Canadian Aviation Security Regulations, 2012*, SOR/2011-318, under the *Aeronautics Act*, R.S.C. 1985, c. A-2, impose numerous requirements on the operator of an aerodrome like the Pierre Elliott Trudeau International Airport. Among other things, these regulations define the training requirements for aerodrome security personnel (ss. 115 to 118) and provide

that the operator of an aerodrome must establish and implement an airport security program that meets a number of criteria (s. 191).

[4] The dispute between the respondents and Opsis arose when the latter received two statements of offence charging it with having [TRANSLATION] “operated an enterprise that carries on a private security activity without holding an agency licence of the appropriate class”, thereby contravening ss. 4 and 114 *PSA* (A.R., vol. II, at pp. 1 and 5).

B. *QMS Case*

[5] The appellant Quebec Maritime Services Inc. (“QMS”) is an enterprise that works in the international marine transportation sector. It performs loading operations on transatlantic ships out of the Pointe-au-Pic terminal in La Malbaie. The role of the appellant Michel Fillion, as an employee, is to monitor and control access to this port facility. As the judges of the Court of Appeal noted (2023 QCCA 325 (“C.A. reasons (QMS)”), at paras. 16-37 and 106-18), QMS’s activities at the Pointe-au-Pic terminal are highly regulated by federal legislation, including the *Canada Shipping Act, 2001*, S.C. 2001, c. 26, and the *Marine Transportation Security Act*, S.C. 1994, c. 40, under which a large number of regulations have been made. For example, the *Marine Transportation Security Regulations*, SOR/2004-144, which were made under the *Marine Transportation Security Act*, provide that a marine facility security officer must have, by training or job experience, a range of knowledge (s. 305), including with

respect to “access control and monitoring techniques” (s. 305(g)). These regulations also set out a list of responsibilities for marine security officers (s. 306).

[6] The dispute between the respondents and QMS and its employee, Mr. Fillion, arose following the receipt of statements of offence served by the Bureau de la sécurité privée (“Bureau”). Mr. Fillion was charged with having [TRANSLATION] “carried on a private security activity without holding an agent licence of the appropriate class”, thereby contravening ss. 16 and 116 *PSA* (A.R., vol. VI, at p. 85). QMS was charged with having [TRANSLATION] “employed a person referred to in section 16 who did not hold an agent licence as required under that section”, thereby contravening s. 117 *PSA* (p. 88).

II. Judicial History

A. *Opsis Case*

(1) Court of Québec, 2018 QCCQ 9803

[7] Opsis pleaded guilty to the offences with which it was charged, subject to the trial justice’s decision on the constitutional question it raised, namely that the *PSA* is inapplicable to it by virtue of the doctrine of interjurisdictional immunity. Opsis’s position was rejected by the trial justice. She stated that the purpose of the *PSA* is essentially [TRANSLATION] “to verify the good moral character of those carrying on these security activities and the solvency situation of the enterprise for which a licence

application is filed” (para. 16), adding that the “evidence [was] silent on the impact that the statute has on airport security activities” (para. 21). The trial justice therefore held that the doctrine of interjurisdictional immunity was of no assistance to Opsis and accepted its guilty pleas.

(2) Quebec Superior Court, 2020 QCCS 4772

[8] The Superior Court judge allowed Opsis’s appeal. He first stated that [TRANSLATION] “[a]irport security necessarily forms part of the core of the federal aeronautics power” (2020 QCCS 4772 (“Sup. Ct. reasons (Opsis)”), at para. 72) and that Opsis’s activities fall squarely within this core. The judge then found that an impairment exists. He reached this conclusion after analyzing three aspects of the *PSA* and the regulations made under it: the imposition of certain standards of conduct on Opsis’s employees, the Bureau’s power to issue binding directives and the inspection and investigation powers granted to the Bureau. In the end, the judge was of the view that the *PSA* as a whole should be declared constitutionally inapplicable to Opsis because the three aspects of the provincial legislative scheme creating the impairment [TRANSLATION] “cannot be easily isolated from the rest of the [*PSA*]” (para. 132). He added that it [TRANSLATION] “is difficult to imagine that [the] provincial legislature would have intended to apply a licence system ‘piecemeal’ and thus deprive the [Bureau] of part of its powers” (para. 132).

(3) Quebec Court of Appeal, 2023 QCCA 506

(a) *Majority Reasons*

[9] The majority, per Lavallée J.A., overturned the Superior Court’s decision. They agreed that Opsis’s activities fall within the core of Parliament’s aeronautics power, but they rejected Opsis’s argument that the *PSA* and the regulations thereunder impair the core of this power. They faulted the Superior Court judge for misdirecting himself [TRANSLATION] “on the magnitude of the effects required since *Canadian Western Bank* to find an impairment and on the burden of proof required to find an impairment” (para. 166).

[10] In fact, in the majority’s view, Opsis had not shown that the establishment of standards of conduct by the provincial legislative scheme allows the Bureau to dictate how the activities of Opsis’s employees should be carried on. To conclude otherwise would be to disregard the general nature of the *PSA* and the regulations thereunder, in addition to [TRANSLATION] “decid[ing] a constitutional dispute on the basis of hypotheticals and conjectures” (para. 176).

[11] Similarly, in the majority’s opinion, the mere possibility of the Bureau issuing directives to Opsis does not constitute an impairment. Finding the doctrine of interjurisdictional immunity applicable on the basis of a [TRANSLATION] “purely speculative” impairment might unduly expand the scope of this doctrine (para. 202 (emphasis deleted)). From the same perspective, the Bureau’s inspection and investigation powers — which serve to ensure compliance with the *PSA* and the

regulations thereunder — do not impair the core of the federal aeronautics power either (para. 207).

(b) *Dissenting Reasons*

[12] The first part of the reasons of the dissenting judge, Ruel J.A., concerned an issue that he raised himself. According to Ruel J.A., [TRANSLATION] “a distinction should be drawn between public security activities and services, which ‘protec[t] public property and spaces’, and private security services, which involve private security personnel who ‘act on behalf of their employer, and not necessarily on behalf of the public’” (para. 42, quoting Statistics Canada, *Private security and public policing*, December 2008 (online)). The dissenting judge therefore asserted that he [TRANSLATION] “do[es] not think that the *PSA* applies to Opsis’s activities at the Pierre Elliott Trudeau International Airport, which relate to public safety and security in an airport setting” (para. 61).

[13] Despite this conclusion, which he considered determinative, the dissenting judge addressed the question of interjurisdictional immunity in the second part of his reasons. Like the majority, he recognized that [TRANSLATION] “aeronautical safety and security fall within [the] unassailable core” of the federal aeronautics power (para. 67). Unlike his colleagues, however, he found no error in the Superior Court judge’s reasoning.

[14] That being said, the dissenting judge was of the view that an approach different from the one adopted by the Superior Court judge can be taken, because [TRANSLATION] “[i]t is the provincial private security scheme as a whole that must be assessed against the exclusive federal aeronautics power, not its individual parts” (para. 70). In light of the broad scope of the *PSA*, the dissenting judge found that the application of this statute to Opsi’s activities [TRANSLATION] “would subject large segments of aeronautical and airport safety and security to the control and ‘largely discretionary decisions’ of the [Bureau] and the responsible provincial minister” (para. 75). This would constitute an impairment because it [TRANSLATION] “would significantly limit the federal government’s power and ability to fully and coherently regulate the safety and security of air transportation and aeronautical facilities” (para. 77).

B. *QMS Case*

(1) Court of Québec, 2019 QCCQ 5447

[15] The Court of Québec judge began by accepting that, on the facts, QMS and Mr. Fillion had contravened the *PSA* (para. 38). Nevertheless, he went on to accept QMS’s arguments and found that this statute and the regulations thereunder are inapplicable to QMS and Mr. Fillion because they impair the core of [TRANSLATION] “exclusive federal jurisdiction over marine security and labour relations in a federal undertaking” (para. 121). In reaching this conclusion, he found that the application of the *PSA* and the regulations thereunder creates [TRANSLATION] “uncertainty with

respect to the implementation of the security plan” (para. 126) and prevents QMS “from acting freely in hiring, dismissing and training its safety and security employees” (para. 133). The Court of Québec judge also expressed the view that the doctrine of federal paramountcy should apply (paras. 134-49). He declared ss. 16, 116 and 117 *PSA* inapplicable and inoperative in relation to QMS and Mr. Fillion, and he acquitted them.

(2) Quebec Superior Court, 2020 QCCS 3952

[16] The Director of Criminal and Penal Prosecutions and the Attorney General of Quebec appealed successfully. In essence, the Superior Court judge found that the impairment test was not met. In his opinion, the Bureau’s powers with respect to agent licences and its ability to impose [TRANSLATION] “normative measures . . . related to the training and hiring of QMS’s employees carrying on marine security activities” are at most “a form of constraint” (para. 93). The judge stated, among other things, that the *PSA* and the regulations thereunder are generally concerned with [TRANSLATION] “the probity of the person applying for a licence and not with the application of marine security rules” (para. 106). Lastly, he was of the view that the doctrine of federal paramountcy could not be relied upon.

(3) Quebec Court of Appeal, 2023 QCCA 325

(a) *Majority Reasons*

[17] The majority, again per Lavallée J.A., dismissed the appeal brought by QMS and Mr. Fillion. The majority agreed that, despite the absence of a specific precedent, [TRANSLATION] “[a] large part of QMS’s activities” (para. 174) relates to the core of Parliament’s exclusive jurisdiction over “Navigation and Shipping” (s. 91(10) of the *Constitution Act, 1867*). However, reaffirming the substance of their reasons in the Opsi case, the majority rejected QMS’s argument that the application of the *PSA* and the regulations thereunder creates an impairment. They also declined to apply the doctrine of federal paramountcy.

(b) *Dissenting Reasons*

[18] For the same reasons as in the Opsi case, Ruel J.A., dissenting, found that the *PSA* and the regulations thereunder were not applicable to QMS and Mr. Fillion, who in his opinion carry on not private security activities, but rather, public security activities. With regard to the doctrine of interjurisdictional immunity, the dissenting judge accepted that security surrounding marine longshoring operations is necessary to make the navigation and shipping power effective for the purposes for which it was conferred on Parliament and therefore forms part of the core of this power (paras. 60-62). Accordingly, on the basis of his reasoning in the Opsi case, the dissenting judge concluded that the appeal should be allowed. Because the application of the *PSA* and the regulations thereunder limits [TRANSLATION] “significantly . . . the federal government’s power and ability to fully and coherently regulate the safety and security of marine transportation and facilities” (para. 65), he was of the view that the

impairment test was met. In light of this conclusion, the dissenting judge did not address the issue relating to the doctrine of federal paramountcy.

III. Overview of the PSA and the Regulations Thereunder

[19] The *PSA* governs private security activities in a variety of sectors (s. 1). Among these sectors are security guarding, “namely, watching or protecting persons, property or premises mainly to prevent crime and maintain order” (s. 1(1)), and “activities related to electronic security systems”, including video surveillance systems (s. 1(4)). It can be said in general terms that this [TRANSLATION] “statute’s purpose is to protect the public” (*Société québécoise des infrastructures v. Agences Robert Janvier ltée*, 2020 QCCA 1140, at para. 52). Lavallée J.A. correctly identified four aspects of the *PSA* that make it possible to achieve the Quebec legislature’s objectives, namely [TRANSLATION] “the establishment of a licensing scheme, the creation of a self-regulatory body, the granting of inspection and investigation powers and the enactment of coercive measures” (C.A. reasons (Opsis), at para. 137). These four elements will be discussed below.

[20] The licensing scheme established by the *PSA* has two dimensions. The first relates to the “agency licence”. Any person operating an enterprise that carries on a private security activity must hold such a licence (s. 4). An application for an agency licence must be filed by a natural person who is engaged full time in the activities of the enterprise and who acts as its representative (s. 6). This person has to meet several conditions: be of “good moral character”, never have been convicted of a criminal

offence related to the activity for which the licence application is filed, take the training provided by the Bureau and “meet any other condition determined by regulation” (s. 7). The first two conditions mentioned above must also be met by the owner of the enterprise, by every partner or shareholder having a major interest in the enterprise and by every director (s. 8). In addition, the enterprise for which the agency licence application is filed must operate at least one establishment in Quebec, be solvent, be covered by “liability insurance with the coverage and other features determined by regulation” and furnish “security in the amount and form determined by regulation to guarantee the performance of its obligations” (s. 9).

[21] The second dimension of this scheme relates to the “agent licence”. Such a licence must be held by “[a] natural person carrying on a private security activity and that person’s immediate superior” (s. 16 para. 1). Among other things, the holder of an agent licence must have the “training required by regulation”, be of “good moral character” and not have been convicted of a criminal offence related to the activity for which the licence application is filed (s. 19).

[22] The *PSA* creates a self-regulatory body, the Bureau (s. 39). The Bureau’s mission is to protect the public and, to this end, its responsibilities include ensuring the enforcement of the *PSA* and the regulations thereunder, issuing agency licences and agent licences and providing training for the representatives of agency licence holders (s. 41). One of the key powers granted to the Bureau is that of suspending, cancelling or refusing to renew agency and agent licences. This power can be exercised where, for

example, a licence holder “no longer meets the conditions prescribed by this Act or a regulation under this Act for obtaining [a] licence”, “fails to pay the annual fee” or “was found guilty of an offence under this Act or a regulation under this Act” (ss. 29 and 30).

[23] In the specific case of the agency licence, the Bureau, “[t]o protect the public”, may “at any time” issue directives to the holder of such a licence regarding its activities and require that it “replace its representative if the representative no longer meets the conditions prescribed in section 7” (s. 42). If these instructions are not complied with, the Bureau may exercise its power to suspend, cancel or refuse to renew an agency licence (s. 29(4) and (5)).

[24] In the specific case of the agent licence, this same power may be exercised where the holder “has violated the standards of conduct determined by regulation” (s. 30 para. 1(5)). The relevant regulation in this regard is the *Regulation respecting standards of conduct of agent licence holders carrying on a private security activity*, CQLR, c. S-3.5, r. 3. In particular, this regulation stipulates that agent licence holders must act with competence and professionalism and must, among other things, exercise their functions without being negligent or careless and by showing “the highest degree of integrity, competence, vigilance, diligence and care that one is reasonably entitled to expect from an agent licence holder” (s. 6).

[25] Under the *PSA*, the Bureau also has inspection and investigation powers (ss. 69 to 74). For example, an authorized inspector may, at any reasonable time, enter

any premises where a private security activity is sold as a service or carried on and “require the persons present to provide any information about the activities sold as services or carried on in those premises that is necessary for the discharge of inspection functions” (s. 70). In addition, the *PSA* contains various penal provisions setting out fines for the contravention of some of its sections (ss. 114 to 122).

[26] Finally, we note that the *PSA* provides that the government may make certain regulations. For example, after consulting with the Bureau, the government can determine “standards for badges and other identification, and the characteristics of the uniforms to be worn by agent licence holders” as well as “conditions for the use of equipment and animals by agent licence holders, particularly the training required” (s. 111 para. 1(2) and (3)). The government can also “determine the training required to obtain an agent licence” (s. 112 para. 1(1)).

IV. Issues

[27] These appeals raise three questions:

1. Do the *PSA* and the regulations thereunder apply to the appellants’ activities?
2. Should the *PSA* be declared constitutionally inapplicable to the appellants pursuant to the doctrine of interjurisdictional immunity?

3. Should the *PSA* be declared constitutionally inoperative in relation to the appellants pursuant to the doctrine of federal paramountcy?

[28] The first question concerns the interpretation of the *PSA*, while the other two concern the applicability of constitutional doctrines. They are pure questions of law subject to the standard of correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8). Further, since the Court is of the view that the application of the doctrine of interjurisdictional immunity is dispositive of the appeals, it will not be necessary to address the third question.

V. Do the *PSA* and the Regulations Thereunder Apply to the Appellants' Activities?

[29] Before a constitutional analysis is undertaken based on the doctrine of interjurisdictional immunity, it must be ensured that the particular facts of the case in question fall within the impugned statute (*Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53, at para. 40). The dissenting judge of the Court of Appeal was of the view that the *PSA* does not apply to the appellants' security activities because they are public and not private in nature (C.A. reasons (Opsis), at para. 59; C.A. reasons (QMS), at para. 9). According to him, the public nature of the appellants' security activities derives from the fact that their activities are conducted in public places, namely port and airport facilities. Before this Court, the appellants have taken up the dichotomy adopted by the dissenting judge. With respect, this dichotomy does not exist in the *PSA*. A brief interpretation exercise will suffice to confirm this.

[30] Section 1 of the *PSA* sets out a list of activities to which this “Act applies”. Section 2 of the *PSA* states that the statute does not apply when the activities referred to in s. 1 are carried on by certain persons, including peace officers. This is the only exception to s. 1 specified by the Quebec legislature. The *PSA* does not provide for any exception to s. 1 on the basis, for example, of the industry in which the activity is carried on. The interplay between the first two sections of the *PSA* therefore suggests that this statute of general application is concerned with *activities* but that its scope is limited by the exemption created for certain *persons* carrying on these activities. The fact that private enterprises perform private security activities in public places has no impact on the scope of the *PSA*. In these appeals, it is not in dispute that Opsis and QMS carried on activities referred to in s. 1(1) to (6) and that they do not employ persons mentioned in s. 2.

[31] The distinction suggested by the dissenting judge is also contradicted by the statute itself. If, as the dissenting judge wrote, the *PSA* does not apply to the activities of entities in the sector of public security, as he defined the concept (C.A. reasons (Opsis), at para. 42), then certain exceptions set out in s. 2 that clearly concern persons involved in public security, like peace officers and other police force employees, would be pointless. The rule of interpretation to the effect that the legislature does not speak in vain (see *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 S.C.R. 610, at para. 87, citing *Attorney General of Quebec v. Carrières Ste-Thérèse Liée*, [1985] 1 S.C.R. 831, at para. 28) is a further

indication that the distinction drawn by the dissenting judge must be rejected. This first ground of appeal is therefore dismissed.

VI. Should the PSA Be Declared Constitutionally Inapplicable to the Appellants Pursuant to the Doctrine of Interjurisdictional Immunity?

A. *General Principles*

[32] The doctrine of interjurisdictional immunity serves to protect the core of an exclusive power — either federal or provincial — from being impaired by the other level of government. It is rooted in the notion of exclusivity that appears in the text of ss. 91 and 92 of the *Constitution Act, 1867* (*Canadian Western Bank*, at para. 34) and is thus anchored in our law, since the primacy of the written Constitution is “one of the fundamental tenets of our constitutional framework” (*Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14, [2015] 1 S.C.R. 693, at para. 18; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 53).

[33] In *Canadian Western Bank*, this Court stated that the doctrine of interjurisdictional immunity should be applied with restraint (para. 67). This approach can be explained by the tension that exists between this doctrine and the modern conception of cooperative federalism, which favours, “where possible, the ordinary operation of statutes enacted by *both* levels of government” (para. 37 (emphasis in original); *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 S.C.R. 725, at para. 63).

[34] Though it is “constrained by principle and precedent”, the doctrine of interjurisdictional immunity continues to play an essential role in relation to federalism, because it makes it possible to “balanc[e] the need for intergovernmental flexibility with the need for predictable results” (*Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 (“*COPA*”), at para. 58).

[35] When the doctrine applies, “the impugned provisions remain valid but are declared inapplicable to matters that would fall under the core of the exclusive head of power of the other order of government” (*Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58, [2019] 4 S.C.R. 228, at para. 90; *Marcotte*, at para. 64). This involves reading down the impugned provisions (*Sharp v. Autorité des marchés financiers*, 2023 SCC 29, at para. 113, quoting P. W. Hogg and W. K. Wright, *Constitutional Law of Canada* (5th ed. Supp.), at §§ 15:15-15:16, and citing H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at para. VI-2.56).

[36] The application of the doctrine depends on two conditions being met: (1) intrusion on the core of an exclusive head of power and (2) impairment of the core of the exclusive head of power. Each of these conditions, as will be discussed below, significantly limits the scope of the doctrine of interjurisdictional immunity.

(1) First Condition: Intrusion on the Core of an Exclusive Head of Power

[37] For the doctrine of interjurisdictional immunity to apply, the first requirement is that the impugned provision or provisions intrude on the core of an

exclusive head of power of the other level of government. The core of a power is its “basic, minimum and unassailable” content (*Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 749 (“*Bell Canada (1988)*”), at p. 839; *Canadian Western Bank*, at para. 50; *COPA*, at para. 35; *Desgagnés Transport*, at para. 93). This notion serves to identify and delineate “the authority that is absolutely necessary” to enable Parliament or a provincial legislature to effectively achieve the purpose for which the power was conferred (*Canadian Western Bank*, at para. 77; *COPA*, at para. 35; *Desgagnés Transport*, at para. 93). The consideration of evidence can sometimes assist in determining the core of an exclusive head of power (see, e.g., *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 S.C.R. 467, at para. 66).

[38] It is clear that the concept of core is “necessarily narrower” than the concept of the scope of the power (*Desgagnés Transport*, at para. 95; see also Brun, Tremblay and Brouillet, at para. VI-2.62). The jurisprudence will frequently serve as a “useful guide” in identifying the core of an exclusive head of power (*COPA*, at para. 36, citing *Canadian Western Bank*, at para. 77; *Marine Services*, at para. 55). It was noted in *Canadian Western Bank* that the application of the doctrine of interjurisdictional immunity should “in general” be reserved for situations already covered by precedent (para. 77). As the Quebec Court of Appeal has rightly observed, the words used by Binnie and LeBel JJ. in that case reflect an intention “to favour the application of the doctrine of interjurisdictional immunity when a precedent exists, without, however,

necessarily prohibiting it in the other situations” (*Attorney General of Quebec v. IMTT-Québec inc.*, 2019 QCCA 1598, 30 C.E.L.R. (4th) 1, at para. 173).

[39] The jurisprudence subsequent to *Canadian Western Bank* has maintained the flexibility of the approach adopted by the Court (see, e.g., *Rogers*, at para. 61, where the adverb “generally” is used, and *Desgagnés Transport*, at para. 93, where the adverb “usually” is used). In *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134, McLachlin C.J. also noted that the fact that the core of a power has never been recognized in the jurisprudence “is not determinative”, since it remains possible that new exclusive fields of jurisdiction will be identified in the future (para. 67).

(2) Second Condition: Impairment of the Core of the Exclusive Head of Power

[40] Since *Canadian Western Bank*, it has been well settled that not every degree of intrusion will trigger the application of the doctrine of interjurisdictional immunity: there must be an impairment (para. 48; *COPA*, at para. 43; *Desgagnés Transport*, at para. 92). Impairment implies that there are adverse consequences, and it must therefore involve more than mere effects, without necessarily amounting to paralysis or sterilization (*Canadian Western Bank*, at para. 48). The core of the exclusive power of Parliament or a provincial legislature must be seriously or significantly trammled (*COPA*, at para. 45; *Marine Services*, at paras. 56, 60 and 64; *Marcotte*, at para. 64; *Rogers*, at paras. 59 and 70).

[41] The impairment test strikes an appropriate balance and continues to reflect a “growing resistance to the broad application of interjurisdictional immunity based on modern conceptions of cooperative federalism and a perceived need to promote efficacy over formalism” (*COPA*, at para. 44). Moreover, for the doctrine of interjurisdictional immunity to apply, it is not necessary to show that there is a conflict between the laws of the two levels of government or even that “the government benefiting from the immunity [is] exercising its exclusive authority” (*PHS*, at para. 59; see also *Canadian Western Bank*, at para. 34; *COPA*, at para. 52; Brun, Tremblay and Brouillet, at para. VI-2.66; G. Régimbald and D. Newman, *The Law of the Canadian Constitution* (2nd ed. 2017), at §5.91).

[42] Determining whether the core of an exclusive power has been impaired is a question of law: the analysis focuses solely on the effects of the statute of the other level of government on the core of an exclusive power (*COPA*, at para. 57). Even though the evidence adduced by the parties will in most cases be helpful, the analysis does not depend on it. Indeed, “the focus of the inquiry must be on the power itself” (para. 48).

[43] It has been said in our jurisprudence that an impairment must relate to the core of the exclusive power of the other level of government *or* to “the vital or essential part of an undertaking it duly constitutes” (*Canadian Western Bank*, at para. 48; see also paras. 51-52). The intervener the Canadian Telecommunications Association stresses the importance of this passage, which implies that there are two ways for the

application of the doctrine of interjurisdictional immunity to be triggered. However, it must be emphasized that the focal point of the doctrine is the core of the exclusive power. From this perspective, assessing how the impugned statute affects “the vital or essential part” of an undertaking is rather an *approach* that can indicate in concrete terms that the impugned statute has an impairing effect on the core of the exclusive power (J. G. Furey, “Interjurisdictional Immunity: The Pendulum Has Swung” (2008), 42 *S.C.L.R.* (2d) 597, at p. 601).

[44] This is in fact what was suggested in *Bell Canada (1988)*, which still contains some relevant teachings despite those regarding the necessary degree of intrusion being rendered obsolete by *Canadian Western Bank*. Beetz J. clearly stated that consideration of a statute’s effects on the activities of an undertaking may provide a strong indication of whether there is an unacceptable degree of intrusion:

If the application of a provincial statute to a federal undertaking has the effect of impairing or paralyzing it, that *a fortiori* is an almost certain sign that such application bears upon the specifically federal nature of the undertaking and constitutes an encroachment on the exclusive legislative authority of Parliament. [p. 860]

[45] The usefulness of such an approach is illustrated, *inter alia*, by *Marcotte*, in which the Court looked at the practical effects of the impugned provisions of a provincial statute on the appellants’ banking operations and determined that those effects were insufficient to find that the core of Parliament’s exclusive jurisdiction over banking was impaired (paras. 66-67 and 69). Similarly, in *Rogers*, the Court considered how the impugned regulatory measure interfered in concrete terms with the activities

of a telecommunications undertaking. That inquiry led the Court to find that the regulatory measure in question “seriously and significantly impaired the core of the federal power over radiocommunication” (paras. 71-72). *Rogers* shows that, ultimately, considering the effects of an impugned statute on a vital or essential part of an undertaking relates to the analysis of the second condition that must be met for the doctrine to apply, namely an impairment of the core of an exclusive power.

[46] Even where the evidence is silent in this regard, it is possible to take into account the effects of the impugned statute’s application that may amount to an impairment:

In deciding what constitutes impairment the Court cannot disregard potential impairment or effects, especially when, as here, far-reaching provincial statutes are at issue here designed to be accompanied by a large number of regulations, ordinances or remedial orders, or which can have major as well as minor effects on the undertaking, effects which cannot be foreseen at the time the Court must rule on whether the statute is applicable, as is true for example with exercise of the right of refusal.

(Bell Canada (1988), at p. 862)

[47] While much water has flowed under the bridge since Beetz J. made these remarks, they remain relevant. *COPA* provides a good illustration of this point. In that case, two private citizens had built an aerodrome that was registered under a statute enacted by Parliament. The aerodrome was situated in a designated agricultural region. However, a provision of a provincial statute relating to the preservation of agricultural land prohibited the use of a lot in such a region for any purpose other than agriculture without the prior authorization of an administrative body (para. 9). The Court held that

this provincial provision “does impair the federal power to decide when and where aerodromes should be built” (para. 47). Discussing the nature of the impairment, McLachlin C.J. did not confine her analysis to the particular facts of the appeal in *COPA*; she considered the effects of the application of the provision in issue:

Section 26 of the [*Act respecting the preservation of agricultural land and agricultural activities*, R.S.Q., c. P-41.1 (“*ARPALAA*”)] significantly restricts, or impairs, Parliament’s power to determine where aerodromes may be constructed. Section 26 of the *ARPALAA* does not sterilize Parliament’s power to legislate on aeronautics; the doctrine of paramountcy would permit Parliament to legislatively override provincial zoning legislation for the purpose of establishing aerodromes. But the *ARPALAA* would nevertheless seriously affect the manner in which the power can be exercised. Instead of the current permissive regime, Parliament would be obliged to legislate for the specific location of particular aerodromes. Such a substantial restriction of Parliament’s legislative freedom constitutes an impairment of the federal power. [Emphasis deleted; para. 48.]

[48] Similar reasoning was applied by Gonthier J. in *Commission de transport de la Communauté urbaine de Québec v. Canada (National Battlefields Commission)*, [1990] 2 S.C.R. 838, where the effects of the application of a permit system created by a provincial statute were considered. Gonthier J. found that, if it applied, “[t]he consequence . . . would be to make the setting up, substance and maintenance of the federal transport service subject to the largely discretionary control of the Commission des transports and the government, when these aspects are within exclusive federal jurisdiction” (p. 860). Consideration of the effects of the application of impugned legislation has also led appellate courts to find impairments (*IMTT*, at paras. 218-21; *Halton (Regional Municipality) v. Canadian National Railway Co.*, 2024 ONCA 174,

171 O.R. (3d) 41, at paras. 75-76; *Vancouver International Airport v. Lafarge Canada Inc.*, 2011 BCCA 89, 331 D.L.R. (4th) 737, at para. 59).

[49] For example, in *IMTT*, a decision of the Quebec Court of Appeal, the doctrine of interjurisdictional immunity was relied on by an enterprise carrying on activities that fell within the core of Parliament’s maritime jurisdiction. The impugned sections of the provincial statute subjected “development projects to a discretionary provincial authorization” that could be granted only after an environmental assessment had been carried out, which meant that “Quebec’s Minister of the Environment and the Government of Quebec can authorize or refuse to authorize a project, place conditions on such an authorization and, since the 2017 amendments, even regulate a project piecemeal” (para. 206). Before the Court of Appeal, the province’s Attorney General argued that courts should “assume that the provincial authorities will exercise their discretionary powers so as not to interfere with the [core of a] federal head of power” (para. 220). This argument was convincingly rejected:

This argument does not withstand analysis, because its direct result would be to circumvent the exclusive federal jurisdiction over federal public property used for federal purposes.

The Government of Quebec has no constitutional jurisdiction to approve projects on federal public property used for purposes or activities related to an exclusive federal head of power

. . . The principle of environmental precaution cannot, in and of itself, serve as the basis for the environmental assessment of a project if the level of government carrying out the assessment has no decision-making jurisdiction with respect to the project. Allowing a level of government to require the assessment of a project that falls exclusively within the jurisdiction of the other level of government, without the requirement that it exercise a decision-making power based on an otherwise valid

constitutional jurisdiction, would jeopardize the Canadian constitutional balance. [paras. 220-22]

[50] We agree with that approach. Predictability is key to “the proper functioning of the division of powers” (*PHS*, at para. 65, citing *Canadian Western Bank*, at paras. 23-24), and for predictability to be ensured, it is important to take into account the effects of the application of the impugned statute, whether they have materialized or not. This must be so because the analysis is essentially based on the interpretation of the statute of the other level of government. There is no valid reason to take a “wait and see” position (see *Halton*, at para. 76) when the interpretation of a legislative provision or scheme clearly reveals the potential (*Bell Canada (1988)*, at p. 862) for impairment of the core of an exclusive power.

B. *Application to the Facts*

(1) Preliminary Remarks

[51] We note that a court must conduct a pith and substance analysis “before inquiring into the application of the doctrines of interjurisdictional immunity and federal paramountcy, both of which are predicated on the constitutional validity of the impugned statute or measure” (*Rogers*, at para. 35; see also *Canadian Western Bank*, at para. 76; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 17). In these appeals, it is not in dispute that the *PSA*’s purpose is to regulate the private security industry and that this statute comes within provincial jurisdiction

over property and civil rights (s. 92(13) of the *Constitution Act, 1867*; C.A. reasons (Opsis), at para. 134; C.A. reasons (QMS), at para. 95). Its validity is not in issue.

[52] In addition, this Court has previously suggested that it is “generally” preferable for federal paramountcy to be considered before interjurisdictional immunity in “the absence of prior case law favouring its application to the subject matter at hand” (*Canadian Western Bank*, at para. 78). This suggestion was made in order to favour, where possible, the concurrent application of statutes enacted by both levels of government. However, some authors have criticized this suggestion, noting that a statute’s *applicability* should be considered before its *operability* (see Hogg and Wright, at § 15:16; R. Elliot, “Interjurisdictional Immunity after *Canadian Western Bank* and *Lafarge Canada Inc.*: The Supreme Court Muddies the Doctrinal Waters — Again” (2008), 43 *S.C.L.R.* (2d) 433, at pp. 495-96). It must in fact be recognized that, in most cases, this latter approach will be the most logical and appropriate one. Indeed, in all of our decisions subsequent to *Canadian Western Bank* that have dealt with both doctrines, namely *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86, *COPA, Marine Services, Marcotte and Desgagnés Transport*, the doctrine of interjurisdictional immunity has been addressed first. That being said, it is not out of the question that, in some circumstances, it will be expedient to consider the doctrine of federal paramountcy before that of interjurisdictional immunity. It sometimes also happens that only the doctrine of federal paramountcy is relied upon. A party is not required to raise the doctrine of interjurisdictional immunity

first, or even at all, if it chooses to base its challenge exclusively on the doctrine of federal paramountcy.

[53] Here, the debate has focused on the applicability of the doctrine of interjurisdictional immunity, and this doctrine was discussed first by the judges of the Court of Appeal in the QMS case (paras. 56 and 148). We note as well that, in the Opsi case, the appellant is raising arguments in this Court for the first time concerning the doctrine of federal paramountcy, an issue that the courts below did not have an opportunity to address. There are also precedents directly applicable to the subject matter of the dispute in the Opsi case and, as we will see, these precedents also apply to the QMS case by analogy. In this context, it is appropriate to proceed directly to consider the doctrine of interjurisdictional immunity.

(2) First Condition

(a) *Opsi Case*

[54] Aeronautics falls within Parliament's exclusive jurisdiction as part of its power to make laws for the peace, order and good government of Canada (s. 91 of the *Constitution Act, 1867*). It has been recognized to be a matter of national importance (see *COPA*, at paras. 28-31, citing *Johannesson v. Rural Municipality of West St. Paul*, [1952] 1 S.C.R. 292, and *Air Canada v. Ontario (Liquor Control Board)*, [1997] 2 S.C.R. 581, at para. 72).

[55] A number of precedents have dealt more specifically with the relationship between this exclusive federal jurisdiction and airports. It is now accepted that “the federal aeronautics jurisdiction encompasses not only the regulation of the operation of aircraft, but also the regulation of the operation of airports” (*Air Canada*, at para. 72; *COPA*, at para. 31). As McLachlin C.J. noted, “Canada’s airports and aerodromes constitute a network of landing places that together facilitate air transportation and ensure safety” (*COPA*, at para. 33). Estey J. also recognized several decades ago that “in any practical consideration it is impossible to separate the flying in the air from the taking off and landing on the ground and it is, therefore, wholly impractical, particularly when considering the matter of jurisdiction, to treat them as independent one from the other” (*Johannesson*, at p. 319; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453, at para. 27).

[56] Furthermore, in *Lafarge*, Binnie and LeBel JJ. quoted with approval the comments of MacKinnon J.A. of the Ontario Court of Appeal to the effect that “airports are an integral and vital part of aeronautics and aerial navigation, and cannot be severed from that subject-matter so as to fall under a different legislative jurisdiction” (para. 64, quoting *Re Orangeville Airport Ltd. and Town of Caledon* (1976), 11 O.R. (2d) 546 (C.A.), at p. 549).

[57] It can be inferred from the guidance provided in our jurisprudence that airport security, insofar as it is related to the security of air transportation itself, is at the core of the aeronautics power. This is self-evident, because [TRANSLATION]

“[w]ithout safety and security measures, there would simply be no civil aviation” (C.A. reasons (Opsis), at para. 12, per Ruel J.A., dissenting; see also para. 67). Indeed, this observation echoes the statement in *Canadian Western Bank* that “interprovincial and international carriers have a vital and essential interest in being able to land at an airport or having access to a safe harbour” (para. 54).

[58] The tasks associated with Opsis’s mandate at the Pierre Elliott Trudeau International Airport include providing camera surveillance of interior and exterior locations at the airport and operating the computer systems of the call centre, which receives some of its calls from the control tower (A.R., vol. II, at p. 137; Sup. Ct. reasons (Opsis), at para. 73). These activities unquestionably fall within the core of the aeronautics power because they are related to the security of air transportation itself. The application of the *PSA* to Opsis’s activities leads to the conclusion that the first condition for the applicability of the doctrine is met. There is an intrusion on the core of an exclusive head of power.

(b) *QMS Case*

[59] Parliament has jurisdiction over navigation and shipping under s. 91(10) of the *Constitution Act, 1867*. It is a broad power that “encompasses those aspects of navigation and shipping that engage national concerns which must be uniformly regulated across the country, regardless of their territorial scope” (*Marine Services*, at para. 61, quoting *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23, [2012] 2 S.C.R. 3, at para. 22). This Court has held that

“dockside unloading and storage operations are ‘integral’ to shipping” (*Lafarge*, at para. 35, quoting *ITO — International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752). In *Lafarge*, Binnie and LeBel JJ. stated the following about this exclusive head of power:

Historically, the federal navigation and shipping power has been broadly construed (*Queddy River Driving Boom Co. v. Davidson* (1883), 10 S.C.R. 222). The transportation needs of the country cannot be allowed to be hobbled by local interests. Nothing would be more futile than a ship denied the space to land or collect its cargo and condemned like the *Flying Dutchman* to forever travel the seas. Authority for the proposition that transportation undertakings need facilities to pick up and drop cargo, if any is required, is to be found in *Attorney-General for Ontario v. Winner*, [1954] A.C. 541 (P.C.). Effective regulation of harbour facilities are as essential to shipping as airports to aeronautics. [para. 64]

[60] Even without any specific precedent in this regard, there is no doubt that the security of marine facilities and their operations is at the core of the federal navigation and shipping power. A port facility plays the same role for ships that an aerodrome does for aircraft. As in the case of air transportation, [TRANSLATION] “[w]ithout robust and uniform safety and security measures, there could be no navigation and marine commerce” (C.A. reasons (QMS), at para. 60, per Ruel J.A., dissenting). The security of marine facilities is therefore a condition that is absolutely necessary for Parliament to “achieve the purpose for which exclusive legislative jurisdiction was conferred” (*COPA*, at para. 35, quoting *Canadian Western Bank*, at para. 77).

[61] QMS’s international longshoring activities at the Pointe-au-Pic terminal — and by extension the security guard activities carried on by its employee, Mr. Fillion — fall squarely within the core of this exclusive federal power. Indeed, the monitoring tasks performed by Mr. Fillion are part of a security plan required by federal marine security regulations, whose conformity must be approved by Transport Canada. The link between the security of marine facilities and QMS’s operations, whose purpose is to ensure the security of the Pointe-au-Pic terminal, is therefore clear. The application of the *PSA* to the appellants QMS and Mr. Fillion thus constitutes, as in the *Opsis* case, an intrusion on the core of an exclusive head of power.

(3) Second Condition

(a) *Methodological Clarifications*

[62] In these appeals, the respondents argue that the Court should apply a narrow approach that examines only the provisions on *obtaining* agency and agent licences to determine whether there is an impairment. They contend that this should be the case because the other aspects of the *PSA* are not [TRANSLATION] “in issue” (R.F. (*Opsis*), Attorney General of Quebec, at paras. 98-99; R.F. (QMS), at paras. 31-32).

[63] Respectfully, a licensing scheme like the one established by the *PSA* does not lend itself to a siloed analysis. There is very often no point in obtaining a licence if it cannot be kept or renewed. As a matter of logic, therefore, a licensing scheme will generally be “taken as a whole” (*National Battlefields Commission*, at p. 860), although

this may vary depending on the specifics of a dispute and the impugned legislation. That being said, given the narrow scope of the doctrine of interjurisdictional immunity, its application must be limited to the specific provisions of the impugned statute that impair the core of the exclusive power (*Marcotte*, at para. 65; *IMTT*, at para. 274; see also *COPA*, at paras. 15-16).

(b) *Impugned Aspects of the PSA and the Regulations Thereunder*

[64] Although the appellants are asking that the *PSA* as a whole be declared inapplicable, their arguments are focused on specific provisions that, in their opinion, constitute sources of impairment of the core of an exclusive federal power. To facilitate the analysis, we will deal separately with the various impugned aspects of the *PSA* in order to precisely identify the sources of impairment. It must nevertheless be borne in mind that the impugned provisions are interrelated and are part of the whole formed by the *PSA*, as will be discussed in the last part of these reasons.

(i) Requirements for Obtaining an Agency Licence

[65] As mentioned above (at paras. 21 et seq.), issuing an agency licence under the *PSA* is subject to various conditions. Essentially, an enterprise for which an agency licence application is filed must operate an establishment in Quebec, be solvent, be covered by liability insurance and furnish security in the form determined by regulation (s. 9). In addition, the enterprise's representative must be "of good moral character", never have been convicted of a criminal offence, and meet any other condition

determined by regulation (s. 7 para. 1). Similar requirements apply to the owner of the enterprise, to every director and to every partner or shareholder having a major interest in the enterprise (s. 8). The enterprise's representative must also "take the training provided by the Bureau within six months after the date on which the representative is designated" (s. 7 para. 2). Finally, the *PSA* sets out certain obligations related to obtaining a licence, including paying the annual fee determined by regulation (s. 12) and keeping the licence or a copy of it on display in a conspicuous place (s. 13).

[66] An enterprise must meet these administrative requirements in order to carry on activities referred to in the *PSA*. Given the mandatory nature of these requirements, when they are applied to an enterprise whose activities fall within the core of one of Parliament's exclusive fields of jurisdiction, they necessarily intrude on the core of such jurisdiction. This is not to say that the mere existence of a licensing scheme is sufficient to find an impairment that triggers the application of the doctrine of interjurisdictional immunity (*Procureure générale du Québec v. Leclerc*, 2018 QCCA 1567, at paras. 79-82; *Halton*, at para. 73, citing *Regina v. TNT Canada Inc.*, 58 O.R. (2d) 410 (C.A.)). However, this might be the case, for example where the requirements for obtaining a licence are so unreasonable that they constitute an impairment. Similarly, if training costs for the enterprise's employees are inordinately high, it will be possible to say that the licence is so restrictive that it can "be characterized as a colourable attempt to regulate or 'sterilize'" activities falling within the core of an exclusive power (*Aeroguard Co. v. British Columbia (Attorney General)* (1998), 50 B.C.L.R. (3d) 88 (S.C.), at para. 23). This will also be the case where

obtaining a licence is subject to the exercise of a broad discretion that has the effect of giving the other level of government the final say on the possibility of carrying on activities falling within the core of an exclusive power (see *National Battlefields Commission*, at pp. 859-60; *IMTT*, at paras. 218-22; *Halton*, at paras. 75-77). Everything depends on the legislative context in question.

[67] Here, it cannot be said that the conditions for obtaining a licence adversely affect the activities of an enterprise like Opsis. Several of these conditions are intended only to ensure that private security services are provided by enterprises with a minimum level of financial health. The conditions relating to representatives, owners, major shareholders or partners and directors are also not very onerous. Some might question the broadness of the “good moral character” criterion, but it is circumscribed and in reality confers a limited discretion on the Bureau. Section 27 *PSA* suggests that this criterion must be assessed in light of the verifications carried out by the Sûreté du Québec. As the Superior Court judge noted, this criterion [TRANSLATION] “does not refer to a simple value judgment and . . . is concerned rather with delinquent behaviour or facts indicating a lack of probity in the person in question” (Sup. Ct. reasons (Opsis), at para. 111, citing *Montréal (City) v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48, [2008] 2 S.C.R. 698, at paras. 24-29).

[68] The conditions for obtaining an agency licence do not in themselves have any impact on the manner in which Opsis must conduct its activities or on the airport security standards with which it must comply. From this perspective, there is no basis

— at this stage of the analysis — for finding an impairment of the core of an exclusive power of Parliament. It should be noted that the procedure for obtaining an agency licence does not concern the appellant QMS, as it is not an enterprise that carries on private security activities (s. 4 *PSA*).

(ii) Requirements for Obtaining an Agent Licence

[69] Most of the preceding comments can also be applied to the requirements for obtaining an agent licence. One specific criterion that must be met by a person applying for an agent licence is to “have the training required by regulation” (s. 19(1) *PSA*), that is, by the *Regulation respecting the training required to obtain an agent licence to carry on private security activities*, CQLR, c. S-3.5, r. 2.

[70] For the activities engaged in by Opsis employees to whom the *PSA* applies (s. 16), the *Regulation respecting the training* does not require any particular training (s. 1, *a contrario*). For the security guard activities carried on by Mr. Fillion for his employer, QMS, a minimum of 70 hours of training must be completed (s. 1(1)). Requiring some training for persons who have to carry on private security activities certainly has the effect of narrowing the pool of potential employees for enterprises like Opsis and QMS, but it cannot be said that this seriously hampers their activities. With regard to this aspect of the *PSA*, there is no basis for finding an impairment.

(iii) Requirements Relating to Standards of Conduct

[71] Section 30 para. 1(5) *PSA* provides in particular that the Bureau has the power to “suspend, cancel or refuse to renew the agent licence of a licence holder” where the holder “has violated the standards of conduct determined by regulation”. This provision must be read in conjunction with s. 107(6) *PSA*, which states that the Bureau “must” make regulations determining “the standards of conduct to be followed by agent licence holders in the exercise of their functions”. Under this provision, the Bureau has made the *Regulation respecting standards of conduct*. Part of s. 6 of this regulation is of particular interest:

6. Agent licence holders must act with competence and professionalism. They must carry on the private security activities that are assigned to them and exercise all related functions by showing the highest degree of integrity, competence, vigilance, diligence and care that one is reasonably entitled to expect from an agent licence holder.

In the exercise of their functions, they must not

(1) be negligent or careless;

[72] We also note that, under s. 118 *PSA*, “[a]ny person who orders or advises or who issues a directive or policy causing an agent licence holder to violate a standard of conduct is guilty of an offence and is liable to a fine of \$500 to \$5,000.”

[73] The majority of the Court of Appeal found that the standards of conduct established by regulation are of general application and do not permit the Bureau to control the manner in which the employees of Opsis or QMS must carry on their activities (C.A. reasons (Opsis), at para. 176; C.A. reasons (QMS), at para. 185). To conclude otherwise would be to rely on “hypotheticals and conjectures” (C.A. reasons

(Opsis), at para. 176; see also C.A. reasons (QMS), at paras. 222-23). The respondents share this view. The appellants instead urge the Court to adopt the position of the dissenting judge, who found that by seeking to take action in relation to agent licence holders as regards these standards of conduct, the Bureau [TRANSLATION] “would necessarily find itself having to regulate and applying the rules of aeronautical safety and security” (C.A. reasons (Opsis), at para. 81). He reached the same conclusion in the QMS case as regards the core of maritime jurisdiction (para. 64).

[74] We come to the same conclusion as the dissenting judge. The power to suspend, cancel or refuse to renew an agent licence conferred on the Bureau by s. 30 *PSA* clearly reveals the potential for impairment. The Bureau has the power to subject agent licence holders to standards of conduct whose content is determined by it alone (s. 107(6) *PSA*), and it is up to the Bureau to assess whether or not the standards are met, regardless of how general they are. As an illustration, the *Regulation respecting standards of conduct* prohibits licence holders from being “negligent or careless” in the exercise of their functions (s. 6 para. 2(1)), and the Bureau is free to decide what constitutes such negligent or careless conduct. A violation of these standards, whose contours are established by the Bureau, entitles the Bureau to exercise the powers specified by s. 30 *PSA*, which necessarily lead to the cessation of private security activities by the agent licence holder (s. 16 *PSA*).

[75] The agent licensing scheme established by the *PSA* thus allows an administrative body created by the provincial legislature to have “the final say” on the

manner in which activities — including those of the appellants — falling within the core of an exclusive federal power must be conducted, as was the case in *COPA* (paras. 1 and 46-48). In other words, such activities are “at the mercy” of the Bureau (*National Battlefields Commission*, at p. 859). But one of the purposes of the doctrine of interjurisdictional immunity is precisely to prevent one level of government from being able to “achieve indirectly what it lacks the authority to achieve directly” (K. Wilkins, “Exclusively Yours: Reconsidering Interjurisdictional Immunity” (2019), 52 *U.B.C. L. Rev.* 697, at p. 712). We therefore have no difficulty in concluding that, given the effect of s. 30 para. 1(5) *PSA*, which must be read in conjunction with the *PSA*’s other provisions concerning standards of conduct, there is in the instant cases an impairment of the core of Parliament’s exclusive aeronautics and maritime jurisdiction.

(iv) Power of the Bureau To Issue Directives Regarding an Agency Licence Holder’s Activities

[76] To “protect the public”, the Bureau may, in particular, issue “directives to an agency licence holder regarding the agency licence holder’s activities” (s. 42(1) *PSA*). Because this power relates solely to agency licences, it concerns the Opsi case only. Section 29(4) *PSA* provides that if an agency licence holder “fails to follow the directives issued by the Bureau”, its licence may be suspended, cancelled or not renewed.

[77] The majority of the Court of Appeal noted that this power represents at most a [TRANSLATION] “purely speculative impairment” as there is no certainty that the

Bureau will exercise it and, furthermore, that if it does, it will exercise it in a manner that impairs the core of the federal aeronautics power (C.A. reasons (Opsis), at paras. 202-3 (emphasis deleted)).

[78] Respectfully, we cannot accept that view for reasons similar to those just stated. Like the Bureau’s powers in relation to standards of conduct, the power to issue to an agency licence holder “directives . . . regarding the agency licence holder’s activities” gives the Bureau a broad discretion. This power is a sword of Damocles hanging over the head of an enterprise like Opsis, given that the Bureau has the authority to dictate how it must carry on its airport security activities and that, if it fails to comply, it may lose its agency licence (s. 29(4) *PSA*) and thus no longer be able to carry on private security activities (s. 4 *PSA*). It therefore seems clear that the application of s. 29(4), which must be read in conjunction with s. 42(1) *PSA*, has the effect of subjecting Opsis’s activities falling within the core of an exclusive power of Parliament to the control of an administrative body created by the provincial legislature. Here again, we have no difficulty in concluding that there is an impairment of the core of Parliament’s exclusive aeronautics power.

[79] The courts below also discussed the broad investigation and inspection powers granted to the Bureau (ss. 69 to 74 *PSA*). These powers in themselves have no effect on the activities of Opsis and QMS that fall within the core of an exclusive federal power. However, it can be said that these powers represent the vehicle by which the

Bureau is able to exercise certain powers that, as has just been found, amount to impairments.

(4) Scope of the Declaration of Inapplicability

[80] To summarize, two aspects of the *PSA*'s licensing scheme meet the second condition for the applicability of the doctrine of interjurisdictional immunity in these two appeals. First, with regard to agent licences, the impairment arises from the powers that the Bureau has where it determines that the standards of conduct for private security have been violated (s. 30 *PSA*). Second, with regard to agency licences, the impairment arises from the powers that the Bureau has where the directives it issues regarding private security activities are not complied with (s. 29 *PSA*).

[81] We must now determine whether only these two aspects of the *PSA* should be declared inapplicable to the appellants or whether it is instead appropriate to declare that the entire licensing scheme created by this statute is inapplicable to them. Given that the impairing provisions cannot be severed from the coherent whole formed by the *PSA*, this second avenue, in our view, is to be preferred.

[82] The fact is that the two impairing aspects of the *PSA* are related to the Bureau's essential function, namely its mission to protect the public, including by ensuring the enforcement of the *PSA* and the regulations thereunder (s. 41). Morissette J.A. rightly pointed out that the *PSA* gives the Bureau [TRANSLATION] "functions analogous to that of a professional order" (*Société québécoise des*

infrastructures, at para. 12). As expressly stated in s. 23 of the *Professional Code*, CQLR, c. C-26, a professional order must “in particular supervise the practice of the profession by its members” in order to accomplish its principal mission, which is “to ensure the protection of the public”.

[83] If the Bureau loses its power to suspend, cancel or refuse to renew the agent licence of a holder who violates the standards of conduct determined by regulation (s. 30 para. 1(5) *PSA*), this would significantly limit its ability to supervise private security activities. The same is true as regards the exercise of this power where an agency licence holder fails to follow the directives issued to it by the Bureau (s. 29(4)). The absence of these two impairing aspects of the *PSA* would deprive the Bureau of important tools to accomplish its primary mission of protecting the public. In that case, the Bureau’s power to issue directives to an agency licence holder (s. 42(1) *PSA*) and its power to make regulations determining standards of conduct to be followed by agent licence holders (s. 107(6) *PSA*) would cease to have binding effect and would become essentially symbolic.

[84] From this perspective, it seems clear that the Quebec legislature would not have enacted the *PSA* without the impairing provisions, which are truly unseverable from the rest of the statute and essential to the whole of which they form part. Since a targeted declaration of inapplicability might change the nature of the legislative scheme intended by the legislature, the appropriate remedy is to read down the statute as a whole so that the appellants are excluded from its scope (see, by analogy, *Ontario*

(Attorney General) v. G, 2020 SCC 38, [2020] 3 S.C.R. 629, at para. 114; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96, at paras. 50-51).

VII. Conclusion

[85] In light of our conclusions, it is not necessary to consider the parties' arguments on the doctrine of federal paramountcy. The *PSA* is declared constitutionally inapplicable to the appellants pursuant to the doctrine of interjurisdictional immunity. Opsis's appeal is allowed, with costs in this Court and in the Court of Appeal. The judgment of the Court of Appeal is set aside, and the judgment of the Superior Court is restored. The appeal of QMS and Mr. Fillion is also allowed, with costs in this Court and in the Court of Appeal. The judgments of the Court of Appeal and the Superior Court are set aside, and the judgment of the Court of Québec is restored in part, the declaration of inapplicability being replaced by the declaration we are making concerning the *PSA* as a whole.

Appeals allowed with costs in the Court and in the Court of Appeal.

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