

## Supreme Court Reaffirms Interjurisdictional Immunity Doctrine to Clarify Division of Powers

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On May 30, 2025, the Supreme Court of Canada (the **Supreme Court**) released its unanimous decision in [\*Opsis Airport Services Inc. v. Quebec \(Attorney General\)\*, 2025 SCC 17](#). In *Opsis*, the Supreme Court revisited the doctrine of interjurisdictional immunity, which protects the "core" of an exclusive jurisdictional power from being impaired by another level of government.

The Court's unanimous decision is notable given the context of Canada's modern practice of cooperative federalism, and the fact that the doctrine of interjurisdictional immunity can be at odds with this practice. The decision reaffirms that the doctrine still plays an important role in Canadian federalism by balancing the division of powers between levels of government and providing predictability in determining areas of core federal or provincial jurisdiction.

### Facts and history of the case

The decision deals with two cases that arose from charges under Quebec's *Private Security Act (PSA)*. The *PSA* sets out requirements for private security companies and agents to be licensed by the Bureau de la Sécurité Privée (the **Bureau**).

In the first case, Opsis Airport Services Inc. (**Opsis**) provided airport security services at the Pierre Elliott Trudeau International Airport (the **Airport**). Opsis's security services were regulated by federal legislation, including the *Canadian Aviation Security Regulations* and the *Aeronautics Act*. Opsis, however, was charged with two offences contravening the *PSA* for operating private security without an agency licence.

In the second case, Quebec Maritime Services Inc. (**QMS**) provided loading operations and control access support at the Pointe-au-Pic terminal (the **Terminal**). QMS's activities at the Terminal were similarly regulated by federal legislation, including the *Canada Shipping Act, 2001* and the *Marine Transportation Security Act*. Both QMS and a QMS employee were charged with an offence under the *PSA* for carrying on a private security activity without a licence.

The Quebec Court of Appeal held that both Opsis and QMS's security activities fell within the core federal powers over aeronautics and navigation and shipping, respectively. The majority at the Court of Appeal in both cases, however, held that the application of the *PSA* and accompanying regulations did not impair the core of either federal power. The Court of Appeal concluded that the mere possibility of the Bureau issuing directives was not enough to impair the core of either federal power, nor were the Bureau's inspection or investigation powers. Opsis and QMS appealed to the Supreme Court.

### The Supreme Court determines that the *PSA* was "constitutionally inapplicable" to the appellants

The Supreme Court began its analysis by discussing the history of the doctrine of interjurisdictional immunity, noting the restrained approach to the doctrine could be explained by the "tension that exists between this doctrine and the modern conception of cooperative federalism". Cooperative federalism favours a finding of the ordinary operation of statutes by both levels of government, where possible. Despite this tension, the Supreme Court clarified that the doctrine of interjurisdictional immunity still "plays an essential role in relation to federalism" by balancing the requirement for intergovernmental flexibility and predictability.

Two conditions need to be met for the doctrine of interjurisdictional immunity to apply:

- 1) There is an intrusion on the core of an exclusive head of power; and
- 2) There is an impairment of the core of the exclusive head of power.

The second condition confirms that not every degree of intrusion will trigger the application of the doctrine of interjurisdictional immunity. Rather, the Supreme Court reaffirmed a restrained approach to the doctrine by confirming that what is required is that the core of an exclusive power be "seriously or significantly trammelled". Significantly (and contrary to the reasons of the Quebec Court of Appeal), the Supreme Court also held that this second condition could be met when the *potential* for impairment was demonstrated by the interpretation of a legislative provision or scheme. In other words, parties need not "wait and see" whether the alleged impairment materializes for the doctrine to be applied. This is because, according to the Supreme Court, "predictability is key to the proper functioning of the division of powers".

The Supreme Court determined that Opsis's activities at the Airport, which included camera surveillance and call centre operations, were within the core of the federal aeronautics power. The Supreme Court cited previous decisions that inferred airport safety and security were critical to successful aviation and formed part of the core of the aeronautics power. Thus, Opsis's security work at the Airport was within the core of the aeronautics power and met the first condition for the doctrine of interjurisdictional immunity to apply.

Similarly, with respect to QMS, the Supreme Court determined that "security of marine facilities and their operations is at the core of the federal navigation and shipping power". The Supreme Court further accepted that a marine port carries on the same function for ships that an airport does for aircraft. Accordingly, the Supreme Court held that QMS's security activities at the Terminal fell within the core of the navigation and shipping power.

Regarding impairment, the Supreme Court found that the *PSA* impaired both the federal aeronautics power and the navigation and shipping power. The Supreme Court focused on section 30 of the *PSA*, which allows the Bureau to suspend, cancel, or refuse to renew an agent's licence where the holder violates the standards of conduct set out in the Bureau's regulations. The Supreme Court characterized this as giving the Bureau the "final say" on how security activities under the exclusive federal powers were to be conducted. Furthermore, section 29 of the *PSA* allows the Bureau to suspend, cancel, or refuse to renew a license if the agency licence holder fails to follow directives issued by the Bureau. The Supreme Court ultimately held that these two aspects of the *PSA* licensing scheme met the second condition for the doctrine of interjurisdictional immunity to apply.

With both conditions being met, the Supreme Court concluded that there was an impairment of the core of the two federal powers. Because the above impairing provisions could not be severed from the entirety of the *PSA* and were related to the Bureau's "essential function", the Supreme Court held that it was appropriate to read down the *PSA* to exclude Opsis and QMS from its scope.

## Takeaways

This decision reinforces that the doctrine of interjurisdictional immunity continues to play an important role in Canada's federalism framework. While at odds with the modern practice of cooperative federalism, the decision indicates that interjurisdictional immunity can still be applied to situations where the core of an exclusive head of power is being impaired. This ensures that the division of powers functions predictably and that heads of powers are respected. The unanimous decision by the Supreme Court could indicate that Canadian courts will be more likely to apply the doctrine in the future, should the circumstances warrant.

For businesses operating under areas of federal jurisdiction, the hope is that there will be more predictability in their regulation. However, it remains to be seen if the Supreme Court's decision in *Opsis*

opens the door to further challenges to provincial legislation thought to impair the core of an exclusive federal power. If you have any questions about the contents of this article or any related matters, feel free to reach out to any of the authors.