

**SUPREME COURT OF CANADA**

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| **Citation:** Rogers Communications Inc. *v.* Châteauguay (City), 2016 SCC 23, [2016] 1 S.C.R. 467 | **Appeal heard:** October 9, 2015  **Judgment rendered:** June 16, 2016  **Docket:** 36027 |

Between:

Rogers Communications Inc.

Appellant

and

City of Châteauguay and Attorney General of Quebec

Respondents

**And Between:**

Rogers Communications Inc.

Appellant

and

City of Châteauguay and Attorney General of Quebec

Respondents

- and -

Attorney General of Canada, Christina White,

Federation of Canadian Municipalities, City of Toronto,

Bell Mobilité Inc., TELUS Communications Inc.,

Vidéotron s.e.n.c. and Union des municipalités du Québec

Interveners

**Official English Translation**

**Coram:** McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

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| **Joint Reasons for Judgment:**  (paras. 1 to 77)  **Partially Concurring Reasons:**  (paras. 78 to 122) | Wagner and Côté JJ. (McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis and Brown JJ. concurring)  Gascon J. |

Rogers Communications *v.* Châteauguay (City), 2016 SCC 23, [2016] 1 S.C.R. 467

Rogers Communications Inc. Appellant

v.

City of Châteauguay and

Attorney General of Quebec Respondents

‑ and ‑

Rogers Communications Inc. Appellant

v.

City of Châteauguay and

Attorney General of Quebec Respondents

and

Attorney General of Canada,

Christina White,

Federation of Canadian Municipalities,

City of Toronto,

Bell Mobilité Inc.,

TELUS Communications Inc.,

Vidéotron s.e.n.c. and

Union des municipalités du Québec Interveners

**Indexed as:** Rogers Communications Inc. ***v.*** Châteauguay (City)

2016 SCC 23

File No.: 36027.

2015: October 9; 2016: June 16.

Present: McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

on appeal from the court of appeal for quebec

*Constitutional law — Division of powers — Radiocommunication — Pith and substance doctrine — Double aspect doctrine — Notice of establishment of reserve served by city to prevent construction of radiocommunication antenna system on its territory — Whether notice of reserve is ultra vires city on basis that it relates in pith and substance to exclusive federal power — Radiocommunication Act, R.S.C. 1985, c. R-2, s. 5(1)(f) — Constitution Act, 1867, ss. 91(29), 92(10)(a), (13), (16).*

*Constitutional law — Division of powers — Radiocommunication — Interjurisdictional immunity — Notice of establishment of reserve served by city to prevent construction of radiocommunication antenna system on its territory — Whether notice of reserve inapplicable by reason of doctrine of interjurisdictional immunity — Radiocommunication Act, R.S.C. 1985, c. R-2, s. 5(1)(f) — Constitution Act, 1867, ss. 91(29), 92(10)(a), (13), (16).*

Rogers Communications Inc. (“Rogers”), a Canadian corporation, offers various communication services everywhere in Canada. It holds a spectrum licence, which authorizes it to provide services in specified frequency ranges. This licence requires it to meet a number of obligations, one of which is to ensure an adequate network coverage in the geographic regions attributed to it. In the fall of 2007, Rogers decided to construct a new radiocommunication antenna system on the territory of the City of Châteauguay (“Châteauguay”) in order to fill gaps in its wireless telephone network. Pursuant to his powers under the *Radiocommunication Act*, the federal Minister of Industry authorized Rogers to install an antenna system on property located at 411 Boulevard Saint‑Francis in Châteauguay. Châteauguay, arguing that the health and well‑being of people living near such an installation would be at risk, adopted a municipal resolution authorizing the service of a notice of establishment of a reserve that prohibited all construction on the property in question for two years. A few days before the notice was due to lapse, it was renewed for two additional years. Rogers filed a motion to contest the notice of a reserve, arguing that the notice was unconstitutional because it constituted an exercise of the federal power over radiocommunication. Rogers also expressed the view that the notice was either inapplicable to it by reason of the doctrine of interjurisdictional immunity or inoperative by reason of the doctrine of federal paramountcy.

The Superior Court, applying administrative law principles, found that Châteauguay had acted in bad faith, and annulled the notice of a reserve and its renewal, as well as the resolutions on which they were based. The Court of Appeal set aside the Superior Court’s judgment and also rejected Rogers’ constitutional arguments.

*Held*: The appeal should be allowed. The notice of a reserve is unconstitutional.

*Per* McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Côté and Brown JJ.: The notice of a reserve is *ultra vires*, because it constitutes an exercise of the federal power over radiocommunication, which is an exclusive federal power. In analyzing the pith and substance of the notice of a reserve, a court must consider both its purpose and its effects. An analysis of the evidence in this regard leads to but one conclusion: the purpose of the notice of a reserve was to prevent Rogers from installing its radiocommunication antenna system on the property at 411 Boulevard Saint‑Francis by limiting the possible choices for the system’s location. The same conclusion applies with regard to the legal and practical effects of the notice of a reserve. Even if this measure addressed health concerns raised by certain residents, the fact remains that it would constitute a usurpation of the federal power over radiocommunication. The principle of co‑operative federalism is of no assistance in this case, as it can neither override nor modify the division of powers itself. It cannot be seen as imposing limits on the valid exercise of legislative authority. Nor can it support a finding that an otherwise unconstitutional measure is valid.

The notice of a reserve does not have a double aspect. Because the pith and substance of the notice of a reserve is the choice of the location of radiocommunication infrastructure, there is no equivalence between the federal aspect, that is, the power over radiocommunication, and the provincial aspects, namely the protection of the health and well‑being of residents living nearby and the harmonious development of the municipality’s territory. A finding that the siting of radiocommunication infrastructure has a double aspect would imply that both the federal and provincial governments can legislate in this regard, which would contradict the precedent established by the Privy Council in *In re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304, to the effect that the federal jurisdiction over the siting of such infrastructure is exclusive.

Although the application of the pith and substance doctrine suffices to dispose of the appeal, the application of the doctrine of interjurisdictional immunity is also discussed in order to clarify the law. The application of this doctrine is generally reserved for situations that are already covered by precedent. There is a precedent that supports the application of interjurisdictional immunity in this situation, namely the Privy Council’s decision in *Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52, which suggests that the siting of telecommunications infrastructure is at the core of the federal power. Moreover, the evidence in the record favours such a finding as regards the siting of radiocommunication antenna systems, given that it is the appropriate and specific siting of antenna systems that ensures the orderly development and efficient operation of radiocommunication in Canada. The siting of antenna systems is part of the core of the federal power over radiocommunication; any other conclusion would make it impossible for Parliament to achieve the purpose for which this power was conferred on it.

Thus, the notice of a reserve seriously and significantly impaired the core of the federal power over radiocommunication. The facts show that Rogers was unable to meet its obligation to serve the geographic area in question as required by its spectrum licence. The notice prevented Rogers from constructing its antenna system on the property at 411 Boulevard Saint‑Francis for two successive two‑year periods, and there was no alternative solution to which it could have turned on short notice. The notice of a reserve served on Rogers is therefore inapplicable by reason of the doctrine of interjurisdictional immunity.

*Per* Gascon J.: Contrary to the opinion expressed by the majority, the notice of a reserve is *intra vires* Châteauguay, and the appeal should be resolved on the basis not of the pith and substance doctrine, but of the doctrine of interjurisdictional immunity.

The determination of a legislative measure’s pith and substance is a delicate exercise of judgment that requires a court to consider and assess the impugned measure as a whole, weighing all its aspects. Although an overly general approach that would make the pith and substance analysis superficial is not recommended, the identification of the matter to which the measure relates requires the adoption of a flexible approach tailored to the modern conception of federalism, which allows for some overlapping and favours a spirit of co‑operation. It is therefore necessary to consider the context of the adoption of the resolution authorizing the notice of a reserve and the purpose of issuing the notice while bearing in mind the presumption of validity of a provincial or municipal measure. The factual context supports the existence of another normative perspective that relates to provincial jurisdiction. The history and the preamble to the municipal resolution show that Châteauguay opposed the construction of a tower on the property at 411 Boulevard St‑Francis not simply to control the siting of a radiocommunication system, but to respond to its residents’ concerns about their health and well-being. These matters correspond to a valid municipal purpose and fall within the provincial heads of power provided for in s. 92(13) and (16) of the *Constitution Act, 1867.*

As regards the effects of the notice of a reserve, its legal effect must be distinguished from its practical effect. Although in practice, the effect of the notice is to prohibit Rogers from constructing its radiocommunication tower on the property at 411 Boulevard St‑Francis, the notice’s legal effect opens the way for Châteauguay to exercise its powers of expropriation, which falls within its jurisdiction to regulate the development of its territory in accordance with its needs and priorities. This more nuanced understanding of the effects of the notice is in line with a more flexible conception of the pith and substance doctrine that is more consistent with the guiding principles already set out and that favours a more accurate understanding of the matter to which the notice actually applies.

The effects of a municipal measure must be considered in conjunction with its purpose. The fact that such a measure affects a federal head of power does not on its own explain why the action was taken. However, the evidence in the record does clearly show what motivated it, which, moreover, appears to outweigh its effects. Thus, if the resolution’s purposes and effects are considered as a whole in a comprehensive analysis of the pith and substance, the purposes that were pursued and achieved in establishing the land reserve were to ensure the harmonious development of the territory of Châteauguay, to allay its residents’ concerns and to protect their health and well‑being, despite the fact that there was clearly an effect on the siting of Rogers’ radiocommunication tower. This approach tends to support a finding that the actions of the governments at both levels are valid and to favour the key principles underlying the division of powers, including subsidiarity and co‑operative federalism.

On the basis of the doctrine of interjurisdictional immunity, the notice of a reserve nevertheless impairs the core of the federal power over radiocommunication. The choice of location or the siting of antenna systems is at the core of that power. By blocking the location decided on in accordance with the procedure provided for in the *Radiocommunication Act* and circular *CPC‑2‑0‑03* — *Radiocommunication and Broadcasting Antenna Systems*, the notice intrudes significantly on a vital and essential aspect of the power.

**Cases Cited**

By Wagner and Côté JJ.

**Distinguished:** *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536; **applied:** *Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52; **referred to:** *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *In re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304; *Capital Cities Communications Inc. v. Canadian Radio‑Television Commission*, [1978] 2 S.C.R. 141; *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, [2015] 3 S.C.R. 250; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53; *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14, [2015] 1 S.C.R. 693; *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419; *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641; *Alberta Government Telephones v. Canada (Canadian Radio‑television and Telecommunications Commission)*, [1989] 2 S.C.R. 225; *Téléphone Guèvremont Inc. v. Quebec (Régie des télécommunications)*, [1994] 1 S.C.R. 878; *Hodge v. The Queen* (1883), 9 App. Cas. 117; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59; *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 S.C.R. 457; *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 S.C.R. 6; *Telus Communications Co. v. Toronto (City)* (2007), 84 O.R. (3d) 656.

By Gascon J.

**Applied:** *Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52; **referred to:** *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662; *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; *Kuchma v. Rural Municipality of Tache*, [1945] S.C.R. 234; *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453; *Reference re Employment Insurance Act (Can.), ss. 22 and 23*, 2005 SCC 56, [2005] 2 S.C.R. 669; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53; *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2; *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783; *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453; *Ward v. Canada (Attorney General)*, 2002 SCC 17, [2002] 1 S.C.R. 569; *Hodge v. The Queen* (1883), 9 App. Cas. 117; *In re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304; *Capital Cities Communications Inc. v. Canadian Radio‑Television Commission*, [1978] 2 S.C.R. 141; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536; *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 S.C.R. 725.

**Statutes and Regulations Cited**

*Act respecting the preservation of agricultural land and agricultural activities*, R.S.Q., c. P‑41.1.

*Cities and Towns Act*, CQLR, c. C‑19, ss. 29.4, 570.

*Constitution Act, 1867*, ss. 91 preamble, (29), 92(10)(*a*), (13), (16).

*Expropriation Act*, CQLR, c. E‑24, ss. 69 et seq.

*Radiocommunication Act*, R.S.C. 1985, c. R‑2, s. 5(1)(f).

**Authors Cited**

Canada. Health Canada. Consumer and Clinical Radiation Protection Bureau. *Limits of Human Exposure to Radiofrequency Electromagnetic Energy in the Frequency Range from 3 kHz to 300 GHz (Safety Code 6)*. Ottawa: Health Canada, 2009.

Canada. Industry Canada. Spectrum Management and Telecommunications. *CPC‑2‑0‑03 — Radiocommunication and Broadcasting Antenna Systems*,issue 4, June 2007.

City of Châteauguay. Conseil municipal. Résolution no 2010‑904, adoptée lors de la séance ordinaire du 4 octobre 2010 (en ligne: www.ville.chateauguay.qc.ca/Proces‑verbal‑seance‑2010‑10‑04).

Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. Supp. Toronto: Carswell, 2007 (updated 2015, release 1).

Lederman, W. R. “Classification of Laws and the British North America Act”, in W. R. Lederman, ed., *The Courts and the Canadian Constitution*. Toronto: McClelland and Stewart, 1964, 177.

Lederman, W. R. *Continuing Canadian Constitutional Dilemmas: Essays on the Constitutional History, Public Law and Federal System of Canada*. Toronto: Butterworths, 1981.

Monahan, Patrick J., and Byron Shaw. *Constitutional Law*, 4th ed. Toronto: Irwin Law, 2013.

Ryan, Michael H. “Telecommunications and the Constitution: Re‑Setting the Bounds of Federal Authority” (2010), 89 *Can. Bar Rev.* 695.

APPEAL from a judgment of the Quebec Court of Appeal (Morissette, Dutil and Léger JJ.A.), 2014 QCCA 1121, 113 L.C.R. 233, [2014] AZ‑51078720, [2014] J.Q. no 5163 (QL), 2014 CarswellQue 13182 (WL Can.), setting aside in part a decision of Perrault J., 2013 QCCS 3138, [2013] R.J.Q. 1177, 110 L.C.R. 81, [2013] AZ‑50985779, [2013] J.Q. no 7419 (QL), 2013 CarswellQue 8577 (WL Can.). Appeal allowed.

John B. Laskin, Nicholas Kennedy, Pierre Y. Lefebvre and Vincent Cérat Lagana, for the appellant.

Patrice Gladu and Sébastien Dorion, for the respondent the City of Châteauguay.

Benoît Belleau, Simon Larose and Hugo Jean, for the respondent the Attorney General of Quebec.

Pierre Salois and François Joyal, for the intervener the Attorney General of Canada.

No one appeared for the intervener Christina White.

Stéphane Émard‑Chabot, for the intervener the Federation of Canadian Municipalities.

Darrel A. Smith and *Jared Wehrle*, for the intervener the City of Toronto.

Mathieu Quenneville, Stephen Schmidt, Valérie Beaudin and Roudine Ishak, for the interveners Bell Mobilité Inc., TELUS Communications Inc. and Vidéotron s.e.n.c.

Marc‑André LeChasseur, for the intervener Union des municipalités du Québec.

English version of the judgment of McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Côté and Brown JJ. delivered by

Wagner and Côté JJ. —

1. Introduction
2. Wireless telephony now dominates the means by which Canadian individuals and businesses communicate with one another every day. The use of mobile telephones on this scale requires an efficient national radiocommunication network, the existence of which inevitably gives rise to regulatory difficulties. Although it is well established that Parliament has exclusive jurisdiction in the sphere of radiocommunication, this appeal raises the question whether a municipality may intervene in the siting of a radiocommunication antenna system. If the answer is yes, the scope of that intervention must be determined.
3. Pursuant to his powers under the *Radiocommunication Act*, R.S.C. 1985, c. R‑2, the Minister of Industry (“Minister”) authorized Rogers Communications Inc. (“Rogers”) to install an antenna system on property located at 411 Boulevard Saint‑Francis in the municipality of Châteauguay for the purpose of improving its cellular telephone network. The City of Châteauguay (“Châteauguay”), arguing that the health and well‑being of people living near such an installation would be at risk, adopted a municipal resolution authorizing the service of a notice of establishment of a reserve (“notice of a reserve”) that prohibited all construction on the property at 411 Boulevard Saint‑Francis for two years pursuant to the *Cities and Towns Act*, CQLR, c. C‑19, and the *Expropriation Act*, CQLR, c. E‑24. A few days before the reserve was due to lapse, it was renewed for two additional years.
4. Rogers argues that the notice of a reserve is unconstitutional. In its opinion, the issuance of the notice constitutes an exercise of the federal power over radiocommunication and is therefore *ultra vires* the province. Rogers is also of the view that the notice is either inapplicable to it by reason of the doctrine of *interjurisdictional immunity* or inoperative by reason of the doctrine of *federal paramountcy*. Finally, Rogers contests the validity of the notice from the standpoint of municipal law.
5. The respondents, Châteauguay and the Attorney General of Quebec (“AGQ”), counter that the notice of a reserve is *intra vires* the province, as its issuance constitutes a valid exercise of the provincial powers over property and civil rights in the province and generally all matters of a merely local or private nature. They also argue that the notice is neither inapplicable to Rogers nor inoperative by reason of the doctrine of interjurisdictional immunity or that of federal paramountcy. Finally, they submit that, under municipal law, the issuance of the notice constitutes a valid exercise of powers delegated to Châteauguay.
6. We are of the opinion that in light of the purpose and the effects of the notice of a reserve, its pith and substance is the siting of a radiocommunication antenna system, which represents an exercise of federal jurisdiction. The notice is therefore *ultra vires* the province. In the circumstances, the notice impairs the core of the federal power over radiocommunication in that it compromises the orderly development and efficient operation of radiocommunication in Canada. In addition, it is inapplicable to Rogers by reason of the doctrine of interjurisdictional immunity.
7. Facts
8. Rogers, a Canadian corporation, offers various communication services — including that of wireless telephony, a form of radiocommunication — everywhere in Canada. It holds a spectrum licence, which authorizes it to provide services in specified frequency ranges. This licence requires it to meet a number of obligations, one of which is to ensure an adequate network coverage in the geographic regions attributed to it. To do this, Rogers must install and operate radio stations.
9. In the fall of 2007, Rogers decided to construct a new radiocommunication antenna system on the territory of the city of Châteauguay in order to fill gaps in its wireless telephone network. For this, it identified an optimal “search area” within which there were a few sites that might enable it to ensure that its network provided adequate coverage.
10. Rogers has no power of expropriation. To be able to construct its installation in the established search area, it must therefore reach an agreement with an owner of property located there. It is in this context that Rogers entered into a lease with the owner of the property at 411 Boulevard Saint‑Francis in December 2007.
11. Before installing its system, Rogers also had to obtain the Minister’s approval for a specific site under s. 5(1)(f) of the *Radiocommunication Act*. To do this, it had to submit to a 120‑day public consultation process, as was required by circular *CPC‑2‑0‑03 — Radiocommunication and Broadcasting Antenna Systems* (“*Circular*”), published by Industry Canada. The *Circular* required that both the public and the land‑use authority (“LUA”) — Châteauguay in this case — be consulted. The purpose of this consultation was to identify concerns about the proposed installation and ensure that the licence holder reached an understanding with the LUA. Following the consultation process, the Minister had to decide whether the licence holder had met the requirements of the *Circular*. The Minister could also resolve any impasse reached in the discussions between the parties regarding the construction of the antenna system by making a final decision in that regard.
12. In March 2008, Rogers notified Châteauguay of its intention to set up a radiocommunication system on the property at 411 Boulevard Saint‑Francis and initiated the consultation process required by the *Circular*.
13. Châteauguay expressed its opposition to the project on April 28, 2008. It argued that the project would contravene the municipality’s zoning by‑law and would be visually disagreeable, and expressed a concern for a potential adverse impact on the health and safety of people living in an adjacent residential area. Châteauguay accordingly proposed three alternatives to Rogers: (1) to install another antenna on an existing site; (2) to increase the power of the signal from an existing antenna; or, as a last resort, (3) to construct the proposed antenna system on another lot located at 50 Boulevard Industriel.
14. On August 28, 2008, Rogers advised Châteauguay that it had studied the proposed alternatives, but that the existing sites were inadequate and the property at 50 Boulevard Industriel was not available. It responded to Châteauguay’s concerns regarding the health and safety of its residents by adding that its installation would comply with the standards of Health Canada’s *Safety Code 6*.
15. In September 2008, Châteauguay reiterated its disagreement with the installation of an antenna system on the property at 411 Boulevard Saint‑Francis. It nonetheless asked Rogers to identify measures that could be taken to mitigate the project’s effects and improve its visual aspect. In February 2009, Châteauguay issued a building permit to Rogers for the property at 411 Boulevard Saint‑Francis.
16. After it had issued the permit, Châteauguay received a petition signed by more than a hundred residents who opposed the construction of the antenna system on the property at 411 Boulevard Saint‑Francis. They argued that, according to certain studies, such installations are harmful to health and to the environment. On May 19, 2009, Châteauguay’s municipal council adopted a resolution that authorized Châteauguay to request that the project at 411 Boulevard Saint‑Francis be halted and that the consultation process be resumed.
17. In the summer of 2009, the Minister of Health advised Châteauguay that *Safety Code 6* provides adequate protection to the public. However, the Minister of Industry noted some flaws in Rogers’ initial public consultation process and asked it to resume its negotiations with Châteauguay. Rogers submitted willingly to this request. The building permit issued to Rogers expired on August 18, 2009; at that time, the work had not yet begun.
18. On September 21, 2009, the Minister determined that the second consultation process had been completed satisfactorily. The parties nevertheless tried to find an alternative site that would have less of an impact on residents. With this in mind, Châteauguay identified two possible lots located at 20 and 50 Boulevard Industriel. The owners of those lots showed little interest in doing business with Rogers, however.
19. On December 15, 2009, Châteauguay proposed the property at 50 Boulevard Industriel as an alternative site for the new antenna system. It informed Rogers at that time that it intended to acquire that property either by mutual agreement or by way of expropriation. Rogers agreed to consider the property at 50 Boulevard Industriel on condition that the transaction take place no later than February 15, 2010. A few days later, the Minister confirmed that the consultation process conducted for 411 Boulevard Saint‑Francis also applied to 50 Boulevard Industriel.
20. On January 18, 2010, Châteauguay’s municipal council adopted a resolution authorizing the acquisition of the property at 50 Boulevard Industriel by mutual agreement or by way of expropriation. However, the intervener Christina White had purchased that property three days earlier, on January 15, 2010. The new owner was served with a notice of expropriation on February 16, 2010, and she responded by filing a motion to contest Châteauguay’s right to expropriate the property.
21. Representatives of Rogers, Châteauguay and the Minister met on April 15, 2010. Rogers asked the Minister, in particular, to exercise his powers under the *Circular* and to resolve the impasse, as it could no longer wait to construct its antenna system and was concerned that the expropriation proceeding would drag on.
22. On July 26, 2010, the Minister confirmed that Rogers had met the consultation requirements, and resolved the impasse between the parties by approving the installation of the antenna system on the property at 411 Boulevard Saint‑Francis. Rogers therefore informed Châteauguay that it did not intend to locate its installation at 50 Boulevard Industriel and that it had decided to go ahead with the construction of the antenna system at 411 Boulevard Saint‑Francis.
23. On October 1, 2010, Châteauguay proposed to Rogers that the work be delayed until a decision was rendered in the expropriation proceeding. In exchange, Châteauguay undertook not to appeal any adverse decision in that proceeding and not to oppose the construction of the antenna system on the property at 411 Boulevard Saint‑Francis if Rogers were unable to install one at 50 Boulevard Industriel by May 15, 2011.
24. On October 4, 2010, before Rogers had even responded to Châteauguay’s proposition, the municipal council adopted resolution No. 2010‑904, which authorized steps to establish a reserve for the purposes of a land reserve on the property at 411 Boulevard Saint‑Francis. Châteauguay justified this resolution by referring to concerns related to the interests and well‑being of its residents, as well as to the development of its territory.
25. A few days later, Rogers rejected Châteauguay’s offer of October 1, 2010 and confirmed that it intended to begin installing the new antenna system on the property at 411 Boulevard Saint‑Francis. On October 12, Châteauguay served the notice of a reserve with respect to that property. Rogers then filed a motion to contest the notice and intervened in the expropriation proceeding between Châteauguay and Ms. White. On October 2, 2012, Châteauguay renewed the reserve for an additional two‑year period.
26. Judgments of the Courts Below
    1. Superior Court, 2013 QCCS 3138, 110 L.C.R. 81
27. Perrault J. held that Châteauguay had acted to further a valid municipal purpose in expropriating the property at 50 Boulevard Industriel. She noted that it was reasonable and rational, given that the evidence disclosed that the question of radiofrequency energy is controversial, to believe that Châteauguay would ensure that an antenna system would be installed at a safe distance from nearby residences.
28. Having said this, Perrault J. added that, in this case, the discretion conferred on a municipality to establish a reserve under the *Cities and Towns Act* and the *Expropriation Act* had been exercised in bad faith as regards the property at 411 Boulevard Saint‑Francis and that Châteauguay’s exercise of that discretion had thus constituted an abuse of power.
29. Perrault J. was of the opinion that the act of issuing the notice of a reserve had been intended to harm Rogers or, at the very least, that it had been so inconsistent with the legislative context in which it was carried out that to find that the city had acted in good faith was impossible. She annulled the notice of a reserve and its renewal, as well as the resolutions on which they were based. Because the case had been resolved on the basis of administrative law principles, she found that it was not necessary to consider the constitutional issues.
    1. Court of Appeal, 2014 QCCA 1121, 113 L.C.R. 233 (Morissette, Dutil and Léger JJ.A.)
30. In the Court of Appeal’s opinion, the motion judge had erred in finding that Châteauguay had acted in bad faith in serving the notice of a reserve. The court found that the power of expropriation and the power to serve such a notice could in fact be exercised for reasons related to the health and well‑being of the people living in the city. The court was therefore of the view that the motion judge could not, after holding that Châteauguay had acted for municipal purposes and in the interest of its residents in expropriating the property at 50 Boulevard Industriel, conclude that Châteauguay or its agents had acted in bad faith in serving the notice with respect to the property at 411 Boulevard Saint‑Francis.
31. On the constitutional issues, the Court of Appeal agreed with Rogers that the notice of expropriation and the notice of a reserve must be considered as a whole in order to identify their pith and substance. It also referred to the principle stated by this Court that federalism must be applied flexibly by favouring the pith and substance and double aspect doctrines.
32. After considering the notice of expropriation and the notice of establishment of a land reserve as a whole, the Court of Appeal stated that their purpose was [translation] “to respond to concerns of the citizens of Châteauguay concerning possible repercussions of radio waves on their health and to ensure a harmonious development of its territory”: para. 78. The court accordingly concluded that the pith and substance of the notice of expropriation and the notice of a reserve was not to encroach upon the federal power over radiocommunication. It also expressed the opinion that Parliament does not have exclusive jurisdiction over telecommunications: para. 79.
33. The Court of Appeal added that the doctrine of interjurisdictional immunity does not apply in this case. It explained that its understanding of *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at para. 77, was that this doctrine applies only where, in specific cases, there are precedents in which its application has been favoured. The court found that Rogers was wrong to invoke *In re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304 (P.C.), and *Capital Cities Communications Inc. v. Canadian Radio‑Television Commission*, [1978] 2 S.C.R. 141, as they were not precedents in which the doctrine of interjurisdictional immunity had been applied with respect to the siting of radiocommunication antenna systems in search areas. The Court of Appeal noted, on the contrary, that the Privy Council had held in *Toronto Corporation v. Bell Telephone Co. of Canada*,[1905] A.C. 52 (“*Bell*”), that cities may intervene as regards the siting of telephone poles on their territories.
34. Finally, the Court of Appeal held that the doctrine of federal paramountcy cannot apply in the instant case. First of all, there is no operational conflict, since Rogers has been authorized to construct its antenna system on the property at 411 Boulevard Saint‑Francis but could also use the property at 50 Boulevard Industriel. It would thus be possible for Rogers to comply with the federal authorization granted by the Minister while at the same time satisfying Châteauguay’s requirements with respect to the location of the antenna system within the search area.
35. The Court of Appeal also found that there is no frustration of the purpose of the federal legislation. It observed, relying on *114957* *Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, that municipalities may add to regulations made by the federal government where those regulations are permissive in nature. In the case at bar, the purpose of the federal regulation was to [translation] “allow for the deployment of telecommunication networks while respecting local populations”: C.A., at para. 91. Thus, in the court’s view, the purposes of the notice of a reserve were to ensure the well‑being of residents and the harmonious development of the municipality’s territory. It accordingly allowed the appeal on the basis that these purposes could be achieved “without encroaching on the fulfilment of the federal [rule]”: para. 92.
36. Issues
37. This appeal raises the following issues:
38. Is the notice of a reserve *ultra vires* Châteauguay on the basis that it relates in pith and substance to an exclusive federal power?
39. Is the notice of a reserve inapplicable by reason of the doctrine of interjurisdictional immunity?
40. Is the notice of a reserve inoperative by reason of the doctrine of federal paramountcy?
41. Is the notice of a reserve ultra vires Châteauguay in light of the principles of municipal law?
42. Analysis
    1. Application of the Constitutional Doctrines
43. The first step in a division of powers analysis is to determine whether the level of government or the entity exercising delegated powers possesses the authority under the Constitution to enact the impugned statute or adopt the impugned measure: *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, [2015] 3 S.C.R. 250, at para. 30; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53 (“*Marine Services*”), at paras. 47‑48; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 (“*COPA*”), at para. 22; *Canadian Western Bank*, at para. 25; *Kitkatla* *Band v.* *British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146, at para. 52. This is achieved by characterizing the “pith and substance” of the statute or measure: *Marine Services*, at para. 48.
44. A court must conduct the 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. If the doctrine of interjurisdictional immunity applies, the impugned measure remains valid but has no application with regard to the core of the power of the other level of government that it impairs: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134, at para. 58. Similarly, where the doctrine of federal paramountcy applies, the impugned provincial measure is rendered inoperative to the extent of its incompatibility with the federal legislation: *Canadian Western Bank*, at para. 69; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113, at para. 74.
    * 1. Pith and Substance Doctrine
45. In analyzing the pith and substance of the notice of a reserve, the Court must consider both its purpose and its effects: *Goodwin*, at para. 21; *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14, [2015] 1 S.C.R. 693, at para. 29; *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837, at paras. 63‑64; *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453, at paras. 20‑22. The purpose of a municipal measure, like that of a law, is determined by examining both intrinsic evidence, such as the preamble or the general purposes stated in the resolution authorizing the measure, and extrinsic evidence, such as that of the circumstances in which the measure was adopted: *Lacombe*, at paras. 20‑22; *COPA*, at para. 18; *Canadian Western Bank*, at para. 27. As for the effects of a municipal measure, they are determined by considering both the legal ramifications of the words used and the practical consequences of the application of the measure: *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at pp. 482‑83.
46. When conducting a pith and substance analysis, a court must avoid adopting the watertight compartments approach, which this Court has in fact rejected. The fact that a measure has what are merely incidental effects on an exclusive head of power of the other level of government does not suffice to justify declaring that measure to be *ultra vires*: *COPA*, at para. 18.
47. Our colleague correctly points out, at para. 85 of his reasons, that when the courts apply the various constitutional doctrines, they must take into account the principle of co‑operative federalism, which favours, where possible, the concurrent operation of statutes enacted by governments at both levels: *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 22, quoting *Lacombe*, at para. 118, per Deschamps J. (dissenting); *Marine Services*, at para. 50, citing *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641; *Canadian Western Bank*, at para. 37.
48. However, although co‑operative federalism has become a principle that the courts have invoked to provide flexibility for the interpretation and application of the constitutional doctrines relating to the division of powers, such as federal paramountcy and interjurisdictional immunity, it can neither override nor modify the division of powers itself. It cannot be seen as imposing limits on the valid exercise of legislative authority: *Quebec (Attorney General) v. Canada (Attorney General)*, at paras. 17‑19. Nor can it support a finding that an otherwise unconstitutional law is valid. This Court commented as follows in *Reference re Securities Act*, at para. 62:

In summary, notwithstanding the Court’s promotion of cooperative and flexible federalism, the constitutional boundaries that underlie the division of powers must be respected. The “dominant tide” of flexible federalism, however strong its pull may be, cannot sweep designated powers out to sea, nor erode the constitutional balance inherent in the Canadian federal state.

1. In the instant case, Rogers argues that the sole purpose and effect of the notice of a reserve was to prevent it from constructing its antenna system on the property at 411 Boulevard Saint‑Francis and that the notice therefore relates in pith and substance to the siting of radiocommunication infrastructure, a matter that falls within exclusive federal jurisdiction.
2. The respondents counter that to ascertain the pith and substance of the notice of a reserve, it is necessary to distinguish the purpose being pursued from the means employed to achieve it. In the respondents’ view, Châteauguay’s ultimate purpose in establishing the reserve was to protect the health and well‑being of its residents living close to the property at 411 Boulevard Saint‑Francis and to ensure the development of its territory. There is no question that these are matters that fall within the provincial powers in relation to “Property and Civil Rights in the Province” and “Generally all Matters of a merely local or private Nature in the Province” (s. 92(13) and (16) of the *Constitution Act, 1867*), and that the notice of a reserve is therefore *intra vires* the province.
3. To begin, we should point out that Parliament has exclusive jurisdiction over radiocommunication and that this jurisdiction includes the power to choose the location of radiocommunication infrastructure: *In re Regulation and Control of Radio Communication in Canada*; *Capital Cities Communications*, at pp. 160‑61. Moreover, under ss. 91(29) and 92(10)(*a*) of the *Constitution Act, 1867*, Parliament clearly has a broader jurisdiction over telecommunications undertakings where such undertakings operate outside the limits of a province: *Bell*; *Alberta Government Telephones v. Canada (Canadian Radio‑television and Telecommunications Commission)*, [1989] 2 S.C.R. 225; *Téléphone Guèvremont Inc. v. Quebec (Régie des télécommunications)*, [1994] 1 S.C.R. 878.
4. In the case at bar, a detailed and rigorous review of the evidence in the record reveals the following:

Châteauguay did not serve the notice of a reserve until October 12, 2010, after the Minister had approved the installation of Rogers’ antenna system on the property at 411 Boulevard Saint‑Francis;

the notice of a reserve was served immediately after Rogers refused Châteauguay’s proposal to delay installing the system until a decision was rendered in the expropriation proceeding in respect of the property at 50 Boulevard Industriel; and

the notice of a reserve was served immediately after Rogers announced its intention to begin installing the system on the property at 411 Boulevard Saint‑Francis.

1. Even a flexible and generous interpretation of this evidence leads to but one conclusion: the purpose of the notice of a reserve was to prevent Rogers from installing its radiocommunication antenna system on the property at 411 Boulevard Saint‑Francis by limiting the possible choices for the system’s location. This conclusion is inescapable, and it echoes that of the Superior Court. Contrary to our colleague’s assertion at para. 89 of his reasons, Perrault J. did not rule on the constitutionality of the notice of a reserve. Rather, she found that [translation] “[c]learly, by establishing the notice of reserve on the [property at] 411 Saint‑Francis, the primary purpose of the City was to block the Rogers project, i.e. installation of an antenn[a] system on this land” (para. 163). This finding of fact is relevant to the pith and substance analysis regardless of where it appears in the motion judge’s reasons.
2. The same conclusion applies with regard to the legal and practical effects of the notice of a reserve. From a legal standpoint, it prohibited all construction on the property at 411 Boulevard Saint‑Francis for an initial period of two years. From a practical standpoint, it prevented Rogers from constructing its antenna system on the property of its choice.
3. Thus, the pith and substance of the notice of a reserve is not the protection of the health and well‑being of residents or the development of the territory but, rather, the choice of the location of radiocommunication infrastructure. Even if the adoption of a measure such as this addressed health concerns raised by certain residents, it would clearly constitute a usurpation of the federal power over radiocommunication.
4. We agree completely with the flexible and generous approach our colleague advocates at para. 94 of his reasons. However, flexibility has its limits, and this approach cannot be used to distort a measure’s pith and substance at the risk of restricting significantly an exclusive power granted to Parliament. A finding that a measure such as the one adopted in this case relates in pith and substance to a provincial head of power could encourage municipalities to systematically exercise the federal power to choose where to locate radiocommunication infrastructure while alleging local interests in support of their doing so.
5. The situation in this appeal is distinguishable from the situation in *COPA*, in which the impugned provincial statute was, by its very nature, legislation related to land use planning and agriculture: *COPA*, at para. 21. The *Act respecting the preservation of agricultural land and agricultural activities*, R.S.Q., c. P‑41.1, is a law of general application that has numerous legal and practical effects, one of which was found to be a prohibition against building aerodromes in designated areas. The legislation at issue in *COPA* affected the federal aeronautics power only incidentally. It was thus different from the notice of a reserve at issue in the instant case, whose purpose, as well as its legal effect and its practical effect, was to choose the location of Rogers’ antenna system.
6. The situation in the case at bar more closely resembles the circumstances of *Lacombe*. In that case, a municipal zoning by‑law that prohibited water aerodromes and aerodromes had been adopted to protect the use of Gobeil Lake by vacationers. As in the instant case, even though the stated objective of the by‑law fell under provincial jurisdiction, its real purpose and effect was to prohibit water aerodromes and aerodromes in designated areas in the municipality, which essentially constituted an exercise of the federal aeronautics power. This Court therefore declared the by‑law to be *ultra vires* under the Constitution.
7. Moreover, we cannot accept the AGQ’s argument that the notice of a reserve has a double aspect. The double aspect doctrine has traditionally been applied by courts to justify measures dealing with subjects that could fall equally under two distinct heads of power, one federal and the other provincial. As the Privy Council explained in *Hodge v. The Queen* (1883), 9 App. Cas. 117, at p. 130, “subjects which in one aspect and for one purpose fall within sect. 92, may in another aspect and for another purpose fall within sect. 91”. This “double aspect” doctrine allows governments at two levels to enact similar statutes or regulations “when the contrast between the relative importance of the two features is not so sharp”: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 182, citing W. R. Lederman, “Classification of Laws and the British North America Act”, in *The Courts and the Canadian Constitution* (1964), 177, at p. 193, reprinted in Lederman, *Continuing Canadian Constitutional Dilemmas* (1981), 229, at p. 244; *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59, at pp. 64‑65; see also *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 S.C.R. 457, per LeBel and Deschamps JJ., at para. 185; *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 S.C.R. 6, at para. 22; *Mangat*, at paras. 49‑50.
8. As we explained above, in the case at bar, the pith and substance of the notice of a reserve is the choice of the location of radiocommunication infrastructure. We cannot see in this an equivalence between the federal aspect, that is, the power over radiocommunication, and the provincial aspects, namely the protection of the health and well‑being of residents living nearby and the harmonious development of the municipality’s territory.
9. Furthermore, a finding that the siting of radiocommunication infrastructure has a double aspect would imply that both the federal and provincial governments can legislate in this regard, which would contradict the precedent established by the Privy Council in *In re Regulation and Control of Radio Communication in Canada* to the effect that the federal jurisdiction over the siting of such infrastructure is exclusive.
10. For these reasons, we are of the opinion that the notice of a reserve is *ultra vires*, because it constitutes an exercise of the power over radiocommunication, which is an exclusive federal power.
11. It is true that a spectrum licence holder has no powers of expropriation. When it cannot find an owner interested in leasing or selling property to it, it must, in principle, either rely on the municipality’s co‑operation to expropriate the land it seeks to use or have recourse to the Minister’s power of expropriation. Our conclusion that the notice of a reserve is *ultra vires* does not mean that when a municipality supports a spectrum licence holder in the process for the installation of an antenna system, it is exercising a federal power. When a municipality supports a spectrum licence holder by expropriating property, the pith and substance of the measures it takes is not the choice of the location of an antenna system, as that location has already been approved by the Minister pursuant to his or her power under s. 5(1)(f) of the *Radiocommunication Act*. In such a case, the municipality’s actions relate to the development of its territory, and there is no question from the perspective of the division of powers that it is entitled to do so.
12. This being said, a municipal measure is not *intra vires* simply because it has a positive effect on the exercise of the federal power over radiocommunication, just as it is not necessarily *ultra vires* because it has a negative effect on the exercise of that power. The distinction we are making is instead based on the premise that when a municipality aids a spectrum licence holder by expropriating property for the licence holder’s benefit, its purpose in doing so is not to choose the location of the antenna system. On the other hand, when the purpose of a municipal measure is to prevent or block the spectrum licence holder from, or to delay it in, constructing its antenna system at the location approved by the Minister pursuant to federal legislation, the municipality is, for the purposes of the pith and substance analysis, exercising the federal power to choose the location of the antenna system.
13. Thus, although the application of the pith and substance doctrine suffices to dispose of the appeal, we are nonetheless of the opinion that it would be helpful, in order to clarify the law, to consider the application of the doctrine of interjurisdictional immunity in this case.
    * 1. Doctrine of Interjurisdictional Immunity
14. The doctrine of interjurisdictional immunity requires that it be determined whether the notice of a reserve *applies* in a situation in which it has an impact on the federal power over the siting of radiocommunication antenna systems.
15. Rogers and the Attorney General of Canada (“AGC”) submit that the notice is inapplicable. They rely on interjurisdictional immunity and state that this doctrine protects activities falling within the core of a federal power against impairment by provincial legislation or by measures adopted by entities to which the provinces have delegated their powers. The respondents argue that the doctrine of interjurisdictional immunity protects only the core of the federal power, which does not extend to the choice of a particular site within a search area defined by Rogers. In the alternative, they submit that the notice of a reserve does not constitute a sufficiently serious intrusion on the exercise of the federal power, as its effect is only to delay the project.
16. The doctrine of interjurisdictional immunity protects the “core” of a legislative head of power from being impaired by a government at the other level: *COPA*, at para. 26. Its application involves two steps. The first is to determine whether a statute enacted or measure adopted by a government at one level trenches on the “core” of a power of the other level of government. If it does, the second step is to determine whether the effect of the statute or measure on the protected power is sufficiently serious to trigger the application of the doctrine: *COPA*, at para. 27.
17. In *Canadian Western Bank*, the Court explained that the doctrine of interjurisdictional immunity must be applied with restraint, since a broad application of interjurisdictional immunity appears to be “inconsistent . . . with the flexible federalism that the constitutional doctrines of pith and substance, double aspect and federal paramountcy are designed to promote”: para. 42; see also para. 67.
18. This is why the application of the doctrine of interjurisdictional immunity is generally reserved for situations that are already covered by precedent. The Court explained this as follows in *Canadian Western Bank*, at paras. 77‑78:

As we have already noted, interjurisdictional immunity is of limited application and should in general be reserved for situations already covered by precedent. This means, in practice, that it will be largely reserved for those heads of power that deal with federal things, persons or undertakings, or where in the past its application has been considered absolutely indispensable or necessary to enable Parliament or a provincial legislature to achieve the purpose for which exclusive legislative jurisdiction was conferred, as discerned from the constitutional division of powers as a whole, or what is absolutely indispensable or necessary to enable an undertaking to carry out its mandate in what makes it specifically of federal (or provincial) jurisdiction. . . .

In the result, while in theory a consideration of interjurisdictional immunity is apt for consideration after the pith and substance analysis, in practice the absence of prior case law favouring its application to the subject matter at hand will generally justify a court proceeding directly to the consideration of federal paramountcy. [Emphasis added.]

1. The Court of Appeal held that the doctrine of interjurisdictional immunity could not apply in the instant case. It concluded, at para. 82, that the doctrine did not apply on the basis that what is at issue in this case is the siting of radiocommunication antenna systems within a search area established in advance by the federal undertaking and that there is no precedent in which the doctrine has been applied in such a case.
2. With respect, we are of the opinion that there is in fact a precedent with respect to the issue in the case at bar, namely the Privy Council’s decision in *Bell*, which suggests that the siting of telecommunications infrastructure is at the core of the federal power. That case dealt with the power of Bell, a company that had been incorporated under a special Act of Parliament, to lay cables under and erect poles along the streets and highways of the city of Toronto for the purpose of carrying on its business. At issue was the constitutionality of an Ontario law that required Bell to obtain the City of Toronto’s consent before exercising that power. The Privy Council held that the provincial law was unconstitutional, stating that “no provincial legislature was or is competent to interfere with [Bell’s] operations, as authorized by the Parliament of Canada” (p. 57).
3. In *Canadian Western Bank*, Binnie and LeBel JJ. stated, at para. 40, citing cases that included *Bell*, that “[t]he doctrine of interjurisdictional immunity was . . . applied to protect ‘essential’ parts of federal ‘undertakings’”. They later added that “[o]ne of the first cases to find a valid provincial law inapplicable to a federal undertaking was [*Bell*]”: para. 57. In writing this, they appear to have acknowledged that *Bell* is a precedent that allows for the application of the doctrine of interjurisdictional immunity to a situation such as the one in the instant case. For the purposes of this analysis, the siting of a radiocommunication antenna system is comparable to the siting of telecommunications poles and cables. A radiocommunication antenna system, like telecommunications poles and cables, is essential to a communication network, and maintaining the network requires that the antennas be installed in appropriate locations.
4. In our respectful opinion, the Court of Appeal erred, at para. 81 of its reasons, in interpreting *Bell* as meaning that municipalities have a certain degree of power over the determination of the exact locations of telecommunications poles. On this point, it quoted the following passage: “Their Lordships, however, do not think the words introduced by the amendment can have the effect of enabling the [municipal] council to refuse the company access to streets through which it may propose to carry its line or lines. They may give the council a voice in determining the position of the poles in streets selected by the company, and possibly in determining whether the line in any particular street is to be carried overhead or underground” (C.A., at para. 81, quoting *Bell*, at pp. 60‑61). But this passage from *Bell* cannot be quoted out of context. It is true that the Privy Council had concluded that a municipality could have a say in the location of the poles. However, the municipality’s prerogative in that regard was not grounded in powers conferred on the provinces by the Constitution, but in an amendment made by the Parliament of Canada to Bell’s incorporating statute. This passage in no way suggests that the siting of a telecommunications pole or radiocommunication antenna system is not part of the core of the federal power.
5. Moreover, the evidence in the record favours a finding that the siting of radiocommunication antenna systems is at the core of the federal power over radiocommunication. It is the appropriate and specific siting of radiocommunication antenna systems that ensures the orderly development and efficient operation of radiocommunication in Canada. Rogers’ manager of radio engineering testified that a deviation of 100 or 200 metres from a clearly specified location can prevent the antenna system from effectively meeting the network’s identified needs. This witness stated that, [translation] “[b]ecause the position of the tower is really very . . . I’m talking about the new tower, it’s very crucial to the network, such that the right position must be found to remedy the problem”: examination‑in‑chief of Karim Trigui, A.R., vol. II, at p. 160.
6. This view is supported by the following passage from the Ontario Superior Court’s decision in *Telus Communications Co. v.* *Toronto (City)* (2007), 84 O.R. (3d) 656, at para. 30:

In terms of Telus’ national wireless network, it is vital and essential that each radio station . . . be sited, designed and oriented in . . . a manner that allows the wireless network to function properly. [A] change in the characteristics of an individual radio station, especially the location and height of the antennas, [could] critically . . . impai[r] Telus’ wireless network thereby compromising its performance and reliability.

1. Michael Ryan expresses the same opinion about telecommunications infrastructure in “Telecommunications and the Constitution: Re‑Setting the Bounds of Federal Authority” (2010), 89 *Can. Bar Rev.* 695, at p. 726:

I suggested that the regulation of [telecommunications service providers’] rates and services, and the location, construction and maintenance of their networks and facilities, are matters that the case law indicates are “essential and vital” or, “absolutely indispensable and necessary” to the performance of the undertakings’ federal mandate. As such, these form part of the “core” federal competence under section 92(10)(*a*).[Emphasis added.]

1. We conclude that the siting of antenna systems is part of the core of the federal power over radiocommunication and that any other conclusion would make it impossible for Parliament to achieve the purpose for which this power was conferred on it. The question therefore becomes whether, in the instant case, the effect of the notice of a reserve served by Châteauguay on the core of this federal power is sufficiently significant for the doctrine of interjurisdictional immunity to apply.
2. In *Canadian Western Bank*, the Court held that it is not enough for the provincial legislation simply to “affect” that which makes a federal subject or object of rights specifically of federal jurisdiction: “The difference between ‘affects’ and ‘impairs’ is that the former does not imply any adverse consequence whereas the latter does” (para. 48). In that same paragraph, the Court explained that “[i]t is when the adverse impact of a law adopted by one level of government increases in severity from ‘affecting’ to ‘impairing’ (without necessarily ‘sterilizing’ or ‘paralyzing’)” that the doctrine of interjurisdictional immunity may be applied. This is why “impairment” suggests a serious or significant intrusion on the core of the power, that is, “a midpoint between sterilization and mere effects”: *COPA*, at para. 44.
3. In the case at bar, the service of the notice of a reserve prevented Rogers from constructing its antenna system on the property at 411 Boulevard Saint‑Francis for two successive two‑year periods, and there was no alternative solution to which it could have turned on short notice. Once the resolution authorizing the service of the notice of a reserve had been adopted, Châteauguay’s offer meant that Rogers would have to wait either until the end of the expropriation proceedings with regard to the property at 50 Boulevard Industriel or for a period of approximately seven months before it would be able to construct its installation on the property at 411 Boulevard Saint‑Francis. In these circumstances, Rogers was unable to meet its obligation to serve the geographic area in question as required by its spectrum licence. In this sense, the notice of a reserve compromised the orderly development and efficient operation of radiocommunication and impaired the core of the federal power over radiocommunication in Canada.
4. For these reasons, we consider that the notice of a reserve seriously and significantly impaired the core of the federal power over radiocommunication and that this notice served on Rogers is therefore inapplicable by reason of the doctrine of interjurisdictional immunity.
5. We note in closing that the facts of this case provide a good illustration of the co‑operation between the various federal and provincial authorities that is contemplated in the *Circular*. The *Circular* describes the mechanism for the consultation that must be held to ascertain the concerns of municipalities and take their interests into account when deciding where to locate a radiocommunication antenna system. It also ensures the establishment of an efficient and orderly radiocommunication network across the country. The process it describes is clearly effective: at the hearing, the AGC stated that out of the more than one thousand situations in which the installation of antenna systems had been approved in the 2014‑15 year, only three had resulted in an impasse between the spectrum licence holder and the municipality in question. In the instant case, Rogers initiated the required consultation process twice, and the consultation took a total of eight months to complete.
6. In light of the foregoing, we are of the opinion that it will not be necessary to discuss the doctrine of federal paramountcy.
   1. Validity of the Notice of a Reserve From a Municipal Law Standpoint
7. Châteauguay and the AGQ argue that the establishment of the reserve in the case at bar constitutes a valid exercise of the powers delegated to municipalities by the province, given that municipalities have the power to establish a reserve for any municipal purpose, including the establishment of a land reserve, and to protect the health and well‑being of their residents. Rogers counters that the power to establish a reserve must be interpreted narrowly and requires a genuine intention on the municipality’s part to expropriate the property targeted by the measure. Rogers submits that, in establishing the reserve in the circumstances of this case, Châteauguay acted beyond the scope of the powers delegated to it, and that the notice is therefore invalid.
8. Although we agree that a notice of a reserve constitutes a significant impairment of the exercise of the right of ownership and can be issued only within the limits imposed by the legislature, we are of the opinion that that question need not be addressed here in light of our conclusions with respect to the constitutional issues.
9. Disposition
10. We would allow the appeal, with costs throughout.

English version of the reasons delivered by

Gascon J. —

1. Introduction
2. I agree with my colleagues on the outcome of the appeal, but I disagree with the approach they have taken. In my opinion, this appeal should be resolved on the basis not of the pith and substance doctrine, but of the doctrine of interjurisdictional immunity.
3. I am unable to conclude, as my colleagues do, that the pith and substance of the impugned notice of establishment of a reserve (“notice of a reserve”) is limited to the choice of location or the siting of a radiocommunication antenna system. I agree with the Superior Court and the Court of Appeal that the evidence in the record supports a finding that the dominant characteristic of that notice, that is, what it is intended to do and why, relates first and foremost to ensuring the harmonious development of the territory of the City of Châteauguay (“City” or “Châteauguay”) and protecting the well‑being and health of the people living there. These are matters that come within the classes of subjects that fall under provincial jurisdiction pursuant to s. 92(13) and s. 92(16) of the *Constitution Act, 1867*. From this perspective, they do not relate to the federal power over radiocommunication. At a minimum, they are indicative of a situation in which the double aspect doctrine applies.
4. Having said this, although I conclude that the notice of a reserve is *intra vires* Châteauguay, I nevertheless agree with my colleagues that, on the basis of the doctrine of interjurisdictional immunity, the notice impairs the core of the federal power over radiocommunication. The choice of location or the siting of antenna systems is at the core of that power. By blocking the location decided on in accordance with the procedure provided for in the federal legislation, the *Radiocommunication Act*, R.S.C. 1985, c. R‑2, and circular *CPC‑2‑0‑03* — *Radiocommunication and Broadcasting Antenna Systems* (“*Circular*”), the notice intrudes significantly on a vital and essential aspect of the power. The result, in my opinion, is that the appeal of Rogers Communications Inc. must be allowed on this basis.
5. Constitutional Doctrines
6. In my view, it is helpful to discuss at the outset certain principles that must be applied in determining whether a provincial or municipal measure such as the one at issue in this case is valid. The first of these principles is that the impugned measure is presumed to be *intra vires* the province or municipality. The Court has often mentioned the importance of this presumption of constitutionality, which Ritchie J. summarized as follows in *Nova Scotia Board of Censors v. McNeil*, [1978] 2 S.C.R. 662:

In all such cases the Court cannot ignore the rule implicit in the proposition stated as early as 1878 by Mr. Justice Strong in *Severn v. The Queen* [(1878), 2 S.C.R. 70], at p. 103, that any question as to the validity of provincial legislation is to be approached on the assumption that it was validly enacted. As was said by Fauteux J., as he then was, in the *Reference re The Farm Products Mar­keting Act*, [[1957] S.C.R. 198,] at p. 255:

There is a *presumptio juris* as to the existence of the *bona fide* intention of a legislative body to confine itself to its own sphere and a presumption of similar nature that general words in a statute are not intended to extend its operation beyond the territorial authority of the Legislature. [pp. 687‑88]

1. Professor Hogg states that “[t]he characterization of a statute is often decisive of its validity . . . . The choice between competing characteristics of the statute, in order to identify the most important one as the ‘matter’, may be nothing less than a choice between validity or invalidity” (*Constitutional Law of Canada* (5th ed. Supp.), at p. 15‑21). Hence, he notes quite rightly that, “where the choice between competing characterizations is not clear, the choice which will support the legislation is normally to be preferred” (pp. 15‑22 and 15‑23). He adds in the same vein that, “in choosing between competing, plausible characterizations of a law, the court should normally choose that one that would support the validity of the law” (p. 15‑23).
2. As the Court observed in *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241, it follows that the burden is on the party challenging the exercise of a provincial or municipal power to prove that it is invalid and that the impugned measure is *ultra vires* (para. 21, citing *Kuchma v. Rural Municipality of Tache*, [1945] S.C.R. 234, at p. 239, and *Montréal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368, at p. 395).
3. In *Spraytech*, the Court also recognized the importance to be given to the principle of subsidiarity. As the Court explained, this principle is the proposition that “law‑making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity” (*Spraytech*, at para. 3; see also *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3 (“*CWB*”), at para. 45). In the words of Professor Hogg once again, “[t]he choice [of characterization] must be guided by a concept of federalism. Is this the kind of law that should be enacted at the federal or the provincial level?” (p. 15‑21). At first glance, a municipality that adopts a resolution for the purposes of protecting the well‑being and health of its residents and ensuring the harmonious development of its territory would normally be considered to be the government at the level at which the adoption of such measures would be best achieved.
4. Finally, any application of the constitutional doctrines must take into account the principle of co‑operative federalism to which the Court has referred in a number of cases (*CWB*, at para. 24; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at para. 162; *Reference re Employment Insurance Act (Can.), ss. 22 and 23*, 2005 SCC 56, [2005] 2 S.C.R. 669, at para. 10). This principle favours, where possible, the operation of statutes enacted by governments at both levels (*Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53, at para. 50, citing *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641; *CWB*, at para. 37). The Court’s adoption of an approach involving concurrent federal and provincial powers, as opposed to applying the outdated concept of “watertight compartments” to establish exclusive jurisdictions, is consistent with this (*CWB*; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; *OPSEU v. Ontario (Attorney General)*, [1987] 2 S.C.R. 2).
5. In my opinion, this backdrop must be borne in mind in determining whether the notice of a reserve is constitutional.
   1. Pith and Substance Doctrine
6. Rogers is challenging municipal resolution No. 2010‑904 of October 4, 2010, which authorized the issuance of the notice of a reserve; the resolution itself was authorized by several provincial statutory provisions (*Cities and Towns Act*, CQLR, c. C‑19, ss. 29.4 and 570; *Expropriation Act*, CQLR, c. E‑24, ss. 69 et seq.), none of which are being challenged here. It is well established that the analysis with respect to the constitutional validity of an impugned measure involves two steps: “The first step is to determine the ‘pith and substance’ or essential character of the law. The second step is to classify that essential character by reference to the heads of power under the *Constitution Act, 1867* in order to determine whether the law comes within the jurisdiction of the enacting government” (*Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783, at para. 15). If the law or measure comes within the jurisdiction of the government that enacted or adopted it, it is valid (*ibid.*; P. J. Monahan and B. Shaw, *Constitutional Law* (4th ed. 2013), at pp. 123‑24).
7. A measure’s pith and substance is determined by identifying the “matter” to which it relates in light of its true purpose and its effects (Hogg, at p. 15‑7; *Reference re Firearms Act*, at para. 16; *CWB*, at paras. 26‑27). To determine the purpose of the impugned measure, a court must consider “both intrinsic evidence, such as purpose clauses, and extrinsic evidence, such as Hansard or the minutes of parliamentary committees” (*Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 S.C.R. 146, at para. 53). As for the effects of the impugned measure, both the legal effects and the practical consequences of applying it must be taken into account (Hogg, at pp. 15‑16 and 15‑17; *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at pp. 482‑83; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21, [2000] 1 S.C.R. 494, at para. 23; *Kitkatla Band*, at para. 54). To determine how the purpose of the impugned measure is intended to be achieved, the court must understand and define its “total meaning” (*Reference re Firearms Act*, at para. 18, citing W. R. Lederman, *Continuing Canadian Constitutional Dilemmas* (1981), at pp. 239‑40).
8. Neither the Superior Court nor the Court of Appeal held that the notice of a reserve was *ultra vires* Châteauguay, quite the contrary. On the one hand, Perrault J. stated at first instance that the City had issued the notice [translation] “in order to protect the welfare of its citizens” (2013 QCCS 3138, 110 L.C.R. 81, at para. 153). This comment by the motion judge followed her analysis of the City’s resolution (para. 152). In it, she drew a parallel with what she had already said about the notice of expropriation (para. 153); she had written at para. 149 that the notice of expropriation was neither *ultra vires* nor unconstitutional. The constitutional issue that Perrault J. did not discuss with respect to the notice of a reserve was the one concerning what she characterized as “unconstitutional impairment” (Part VI.B and para. 166). It can be seen from her reasons that she was referring there to the doctrine of interjurisdictional immunity, not to the pith and substance doctrine. The passage from para. 163 of Perrault J.’s reasons that my colleagues reproduce at para. 44 of their own reasons was part of her analysis on the municipal law issue and concerned the allegation of bad faith on the City’s part that the Court of Appeal subsequently rejected. My colleagues do not discuss this aspect in their reasons (paras. 75‑76).
9. On the other hand, Dutil J.A., writing for the Court of Appeal, concluded her analysis of the notice’s pith and substance as follows:

[translation] The notices of expropriation and reserve examined as a whole have a valid municipal purpose because they seek to respond to concerns of the citizens of Châteauguay concerning possible repercussions of radio waves on their health and to ensure a harmonious development of its territory. Their pith and substance was not to encroach upon a federal power. Châteauguay wished to facilitate the exercise by preventing the project from being completed on the [property at] 411 St‑Francis at a time when citizens were opposed to it.

(2014 QCCA 1121, 113 L.C.R. 233, at para. 78)

1. These conclusions of the courts below were based on an in‑depth review of the evidence in the record dating from the initial contacts between Rogers and Châteauguay to the adoption of the impugned notice of a reserve. My colleagues recognize that the determination of the pith and substance of a municipal measure requires an examination of both intrinsic and extrinsic evidence, including evidence of the circumstances in which the measure was adopted (para. 36). Yet it seems to me that their analysis (at paras. 43‑46) attaches little importance to certain aspects of this evidence, such as the content of the resolution authorizing the land reserve and that resolution’s preamble, or the circumstances that preceded and resulted in its adoption in October 2010.
2. My colleagues’ analysis also focuses on the effects of the notice. They accept Rogers’ argument in this regard that the notice’s only legal and practical effect was to choose or determine the location of the radiocommunication antenna system and to prevent the installation of such a system on the property at 411 Boulevard St‑Francis. They summarily rule out any possibility that the notice had a municipal purpose, merely stating that, even if the measure addressed concerns about the health and well‑being of Châteauguay’s residents, that “would clearly constitute a usurpation of the federal power” (para. 46).
3. I see things differently. In my opinion, the determination of a measure’s pith and substance is a delicate exercise of judgment (Hogg, at p. 15‑8) that requires a court to consider and assess the impugned measure as a whole, weighing all its aspects. Although I do not recommend an overly general approach that would make the pith and substance analysis superficial, it is my view that the identification of the matter to which the measure relates requires the adoption of a flexible approach tailored to the modern conception of federalism, which allows for some overlapping and favours a spirit of co‑operation.
4. It seems to me that my colleagues’ approach leaves little or no room for the valid municipal purpose relied on by the respondents, which the courts below placed at the forefront of their assessment of the evidence. In this regard, my colleagues’ pith and substance analysis overlooks an important part of the context of the adoption of the resolution authorizing the notice of a reserve. Their analysis also disregards the purpose of issuing the notice, aside from their alluding to the possibility that its real purpose may differ from its stated objective (para. 49). As a result, in my opinion, their analysis is at odds with the flexible and comprehensive approach that must be favoured and with the presumption of validity of a provincial or municipal measure to which I referred above. I cannot accept that view of the matter of the impugned measure, which I find to be too rigid and too narrow.
5. Contrary to what my colleagues state at para. 47, my approach does not distort the measure’s pith and substance. With respect, the analysis I propose does not at all entail the risk they describe. Far from restricting significantly a power of one level of government, it instead recognizes how important that power is, but on the basis of a constitutional doctrine that I consider it more appropriate to apply in this case. From this point of view, I find it a bit much to suggest that a flexible approach to the pith and substance doctrine could encourage municipalities to hide behind local interests in order to exercise a federal power. This case provides a good illustration of why that cannot be true if the constitutional doctrines are applied correctly.
6. If the events that preceded and resulted in the adoption of the resolution under which the notice of a reserve was issued are taken into account, the picture of the measure adopted by Châteauguay is, in my view, different from the one painted by my colleagues. The factual context supports the existence of another normative perspective that relates to provincial jurisdiction.
7. In this regard, I note that the impugned resolution was adopted following several years of opposition by Châteauguay to having a radiocommunication tower located on the property at 411 Boulevard St‑Francis, for reasons related to the concerns of neighbourhood residents about their health and well‑being, as well as to Châteauguay’s concern about ensuring the harmonious development of its territory.
8. In April 2008, more than two years before issuing the notice of a reserve, Châteauguay informed Rogers that the property at 411 Boulevard St‑Francis was not located in a zone in which the planned use was permitted under the City’s zoning by‑law, and that there were concerns about residents’ health. From the start, the reason why the property at 50 Boulevard Industriel was proposed as an alternative site with a lower impact was linked to the development of the territory of Châteauguay and to the City’s concerns about the potential effects of locating a tower in a residential zone.
9. It is true that Châteauguay issued a permit for the construction of the communication tower on February 17, 2009, but the City never stopped reiterating its disagreement with the site at 411 Boulevard St‑Francis. Indeed, the permit included mitigation measures that had been negotiated with the company. Around April or May 2009, Châteauguay revoked the permit after receiving a petition signed by about a hundred people who were opposed to the installation of the tower at 411 Boulevard St‑Francis. The wording of the petition shows that these individuals were concerned about their health and about the development of the territory of Châteauguay. Those same concerns are reflected in a letter dated May 27, 2009 from the Member of Parliament for Châteauguay to the President of Rogers.
10. This history provides important context for determining the purpose of the notice of a reserve. It shows that Châteauguay opposed the construction of a tower on the property at 411 Boulevard St‑Francis not simply to control the siting of a radiocommunication system, but rather to respond to its residents’ concerns. As the motion judge noted, [translation] “[t]he City sought to acquire a site with a lower impact . . . in the interests of its citizens and to meet the requirement of ensuring the harmonious organisation of its territory” (para. 70).
11. That concern is also reflected in the preamble to the municipal resolution authorizing the establishment of the land reserve. The preamble sets out the considerations that motivated the adoption of the resolution, which indicate that the City’s ultimate purpose and its wish was to respond to its residents’ concerns about the potentially harmful effects of the radiocommunication tower on their well‑being, while at the same time trying to obtain a site with a lower impact that Rogers could use to install its antenna system. The preamble also confirms the objective of harmonious development of the City’s territory. These matters correspond to a valid municipal purpose and fall within the provincial heads of power provided for in s. 92(13) and (16) of the *Constitution Act, 1867*.
12. At paragraph 49 of their reasons, my colleagues seem to question Châteauguay’s true intentions by comparing the resolution to the by‑law that was challenged and ultimately found to be *ultra vires* in *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, [2010] 2 S.C.R. 453. They note that, “[a]s in the instant case”, the “stated” objective of the by‑law in *Lacombe* fell under provincial jurisdiction, whereas its real purpose related to a federal power. With respect, this does not seem to be an apt comparison given the motion judge’s finding of fact that [translation] “[o]ne . . . cannot criticise the City for wanting to respond to fears of its residents concerning health risks arising out of exposure to radio frequencies” and that, by issuing the notice of a reserve, “the City . . . acted in order to protect the welfare of its citizens” (paras. 97 and 153). Moreover, my colleagues do not really dispute the Court of Appeal’s finding that the City acted in good faith in issuing the notice (paras. 75‑76). In light of this, I find it difficult to understand how Châteauguay’s actions can be seen as having any purpose other than the one set out in the preamble to the resolution. That purpose is genuine and was pursued in good faith, and there is nothing colourable about it.
13. As regards the effects of the notice of a reserve, this Court has held that the notice’s legal effect must be distinguished from its practical effect (*Kitkatla Band*, at para. 54; *Morgentaler*, at pp. 482‑83). The legal effect of issuing the notice is to prohibit any construction on the immovable affected by it (*Expropriation Act*, s. 69). The notice also allows Châteauguay to initiate an expropriation process that will enable the City to pursue municipal purposes on the property. The notice’s legal effect therefore opens the way for Châteauguay to exercise its powers of expropriation, which falls within its jurisdiction to regulate the development of its territory in accordance with its needs and priorities.
14. It is true that in practice, the effect of the notice of a reserve is to prohibit Rogers from constructing its radiocommunication tower on the property at 411 Boulevard St‑Francis. In this respect, even though this prohibition does not require Rogers to construct the tower on another specific piece of property, it nonetheless limits the places where the tower can be located, particularly since, according to Rogers, there are few suitable sites within its search area. From this perspective, I agree with my colleagues that the City’s resolution, in responding to the needs of residents, affects the federal government’s power over radiocommunication given that the issuance of the notice clearly has an impact on the siting of Rogers’ radiocommunication tower. Châteauguay has never denied this. The preamble to the resolution refers to the fact that Châteauguay and Rogers tried to work together to identify a mutually acceptable site that would be suitable for installation of the radiocommunication tower. The effect on the federal power is therefore intimately linked to what the City actually seeks to achieve, namely to protect the health and well‑being of its residents and to reassure them.
15. The effect of the notice of a reserve is in this regard comparable to that of the by‑law that was challenged in *Spraytech.*In that case, the Court found that the by‑law did not create a total prohibition against pesticides but, rather, affected their use in certain situations (para. 24). Similarly, the notice in the case at bar does not impose a specific location for the radiocommunication tower. Rather, it limits the range of sites that are available for the construction of such a tower in the context of the exercise by Châteauguay of its power to ensure the development of its territory and protect the health and well‑being of its residents, which are legitimate municipal purposes.
16. In my view, this more nuanced understanding of the effects of the notice of a reserve is in line with a more flexible conception of the pith and substance doctrine that is more consistent with the guiding principles discussed above. I think it would be prudent to approach the application of this doctrine in this way. An overly narrow understanding of the consequences of the measure that is limited to an examination of just one of its effects could lead to the premature conclusion that the measure applies only to the matter so affected, that is, to the siting of radiocommunication towers. By contrast, undertaking the analysis by way of an approach that takes into account the various effects of the notice on Châteauguay’s ability to manage its territory in accordance with its citizens’ expectations favours a more accurate understanding of the matter to which this notice actually applies.
17. I would add that the effects of a measure must be considered in conjunction with its purpose, not in isolation from that purpose (*Ward v. Canada (Attorney General)*, 2002 SCC 17, [2002] 1 S.C.R. 569, at paras. 17‑18; *Reference re Firearms Act*, at paras. 16‑18; Hogg, at p. 15‑14). A flexible, non‑technical approach to the pith and substance analysis involves a recognition that the purpose of the measure can indeed reveal its dominant characteristic and help in identifying the matter (*Morgentaler*, at pp. 481‑82). This approach to the pith and substance analysis has led the Court to find measures to be constitutionally valid that would otherwise have been found, if viewed solely from the perspective of their effects, to regulate activities falling under a prohibited head of power.
18. In *Spraytech*, L’Heureux‑Dubé J. noted that the impugned by‑law “responded to concerns of [the Town’s] residents about alleged health risks caused by non‑essential uses of pesticides within Town limits” (para. 27). Thus, there was a legitimate municipal purpose that rendered the adoption of the by‑law valid. The purpose pursued in adopting the impugned measure was as important to the identification of the matter as the effects of the measure, if not more determinative than them. Similarly, in *Ward*, the Court, in considering the characterization of the matter of federal regulations that prohibited the sale of certain seals, relied on the conclusions of the trial judge, who had found that even though the regulation prohibited the sale of seals (regulation of commerce in the provinces), its purpose was to prevent the harvesting of the seals in question (regulation of fisheries) (para. 20). To justify the Court’s decision to rely on this finding of fact by the trial judge, McLachlin C.J. stated that “[t]he question is not whether the *Regulations* prohibit the sale so much as why it is prohibited” (para. 19 (emphasis in original)). The reasons behind the regulations, that is, their purpose, were such that the dominant characteristic of the legislative measure was a matter coming under a federal head of power.
19. I find that the same principle applies in this appeal. The fact that the municipal measure affects a federal head of power does not on its own explain why the action was taken. However, the evidence in the record does clearly show what motivated it. The reasons for the measure appear to me to outweigh its effects. Thus, if the resolution’s purposes and effects are considered as a whole in a comprehensive analysis of the pith and substance, the purposes that were pursued and achieved in establishing the land reserve were to ensure the harmonious development of the territory of Châteauguay, to allay its residents’ concerns and to protect their health and well‑being, despite the fact that there was clearly an effect on the siting of Rogers’ radiocommunication tower.
20. This approach to the determination of the measure’s pith and substance tends to support a finding that the actions of the governments at both levels are valid and to favour the key principles underlying the division of powers, including subsidiarity and co‑operative federalism. Furthermore, the *Circular* shows that the federal government was aware of the need for co‑operation between the two levels of government on certain aspects of the development of the telecommunications network across the country. The required consultation between spectrum licence holders and municipalities is indicative of a recognition that the siting of radiocommunication towers largely affects local matters. If for no other reason than to respect Parliament’s legislative choice to require collaboration in the process for determining where to locate radiocommunication equipment, it seems to me that it would be appropriate to adopt an analytical approach that favours co‑operation between municipalities and businesses rather than one that risks making such co‑operation difficult or impossible.
21. In this respect, paras. 54 and 55 of my colleagues’ reasons illustrate the risks of adopting an overly narrow characterization of the matter of an impugned provincial or municipal measure. As my colleagues observe, there may well be situations in which a spectrum licence holder, which has no powers of expropriation, must count on a municipality to exercise its own powers of expropriation in order to gain access to property that is suitable for a radiocommunication tower. No doubt aware of the consequences of an overly narrow characterization of the matter of such a measure, my colleagues suggest that if a municipality were to exercise its power in order to facilitate or support rather than preventing or blocking the installation of a tower, it would be acting in the context of the development of its territory. In such a case, choosing or determining where to locate the tower would be neither the purpose nor the effect of the expropriation.
22. I find the distinction unconvincing, and the example that is given revealing. According to the view of the pith and substance doctrine advocated by my colleagues, a measure whose purpose is, or that affects, the choice of location or the siting of an antenna system constitutes an exercise of the exclusive federal power over radiocommunication. But in the example they give, the very purpose and the determinative effect of the expropriation would be to make a location available to the spectrum licence holder by removing an obstacle that prevents the construction of a radiocommunication tower at the chosen location. If, as in this case, the municipality’s purpose (which could very well be to ensure the development of its territory or to respond to its residents’ wish to limit the impact on their well‑being) is disregarded, we cannot help but note that on the basis of the nature of the measure that is essential to the crystallization of the location chosen for the antenna system, its matter therefore falls under a federal head of power. In my humble opinion, if the matter of the measure is thus considered to be limited to the choice of location or the siting of antenna systems, it does not change depending on whether the measure has a positive effect (in supporting the choice) or a negative effect (in blocking the choice) on the exercise of the federal power.
23. Accordingly, in a context in which the matter of the impugned measure has a central aspect that is linked to a provincial power, as in this case, I find that it is more appropriate to resolve the difficulties that arise by applying other constitutional doctrines. From this viewpoint, in contrast to an excessively rigid application of the pith and substance doctrine, the application of the doctrine of interjurisdictional immunity allows for greater flexibility, as it permits the impugned measure to affect a federal power so long as it does not impair the core of the power. Although I agree with my colleagues that the application of the doctrine of interjurisdictional immunity leads to the conclusion that the notice of a reserve impairs the core of the federal power, the fact remains that there will be other situations, such as the one my colleagues mention at paras. 54 and 55 of their reasons, in which this is not necessarily the case.
24. Even though they find that the notice of a reserve relates in pith and substance to a federal power and is therefore invalid, my colleagues nevertheless deem it necessary to devote just as much attention to the doctrine of interjurisdictional immunity, concluding that even if the notice were *intra vires*, it would nonetheless be inapplicable by virtue of this doctrine. This seems to me to show clearly that the pith and substance doctrine alone does not provide a complete and satisfactory solution to the problem raised in this appeal.
25. In any event, even if we were to conclude that the notice of a reserve has characteristics relating to matters that come under both federal and provincial powers, the measure would then at most have a double aspect. The double aspect doctrine applies most often in situations in which a measure relates to a matter that can be linked to two distinct heads of power at the same time (see *Multiple Access Ltd.*; *CWB*, at para. 30). However, as the Privy Council stated in *Hodge v. The Queen* (1883), 9 App. Cas. 117, “subjects which in one aspect and for one purpose fall within sect. 92, may in another aspect and for another purpose fall within sect. 91” (p. 130). Professor Hogg finds that the Privy Council’s analysis in this regard contemplated the possibility of a legislative measure having two distinct matters, each falling under a distinct head of power. In his view, “it would perhaps be clearer if [the doctrine] had become known as the ‘double matter’ doctrine, because it acknowledges that some kinds of laws have both a federal and a provincial ‘matter’ and are therefore competent to both the Dominion and the provinces” (p. 15‑12). This proposition would apply where, depending on the perspective from which a measure is viewed, it relates to matters that fall under different heads of power while remaining indissociable and interdependent in the operation of the measure, to the point that it is impossible to determine which matter is dominant (Lederman, at p. 244).
26. At a minimum, it seems to me that the notice of a reserve corresponds to this very understanding of the double aspect doctrine. The notice can be characterized in a number of ways. Its purposes are to protect the health and well‑being of Châteauguay’s residents and to ensure the development of the City’s territory, which are matters that fall under provincial heads of power. It can also be seen to have as its purpose the siting of antenna systems, a matter that relates to the federal power over radiocommunication. In my opinion, a finding that these matters are equal and interdependent, together with a desire to act in accordance with the principles of subsidiarity and co‑operative federalism, would be more appropriate and would support the conclusion that an act carried out for a legitimate municipal purpose is valid. This would be consistent with Professor Hogg’s characterization of the double aspect doctrine as “the course of judicial restraint” (p. 15‑13).
27. On this point, I find that my colleagues are mistaken in their critique of the double aspect doctrine in the instant case (para. 50). What is in issue is not whether the choice of location or the siting of an antenna system has a double aspect, but whether the impugned measure has an aspect other than the choice of location or the siting of that system in light of what characterizes the measure.
    1. Doctrine of Interjurisdictional Immunity
28. This being said, although I consider the notice of a reserve to be *intra vires* the City, I agree with my colleagues on the application of the doctrine of interjurisdictional immunity in this case. In my opinion, it is on the basis of this doctrine that Rogers’ appeal must be allowed.
29. Parliament has exclusive jurisdiction to make laws in relation to radiocommunication (ss. 91 (residuary power to make laws for peace, order and good government) and 92(10)(*a*) of the *Constitution Act, 1867*; *In re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304; *Capital Cities Communications Inc. v. Canadian Radio‑Television Commission*, [1978] 2 S.C.R. 141). Although this Court has limited the application of the doctrine of interjurisdictional immunity (*CWB*, at para. 67), this doctrine has nonetheless not been eliminated from the Canadian legal landscape (*Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 (“*COPA*”), at para. 58; *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 S.C.R. 725, at para. 63). In fact, the Court applied it in *COPA*. It is settled law that interjurisdictional immunity applies even where a measure has a double aspect (*COPA*, at paras. 55‑60). If the existence of a double aspect leads to the conclusion that a measure is valid on the basis of the pith and substance doctrine, the measure may nevertheless have prohibited effects on the core of a power of the other level of government (*COPA*, at para. 57).
30. I agree with my colleagues that the doctrine of interjurisdictional immunity applies in the case at bar. The notice of a reserve intrudes on the core of the federal power. My colleagues are right that there is a precedent to the effect that the siting of radiocommunication towers is part of the core of the federal power over telecommunications and radiocommunication (*Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52, at p. 57; *CWB*, at paras. 40 and 57). The siting of radiocommunication towers goes hand in hand with the federal government’s responsibility to ensure the orderly development and efficient operation of radiocommunication in Canada.
31. The measure’s intrusion on the core of the power is significant and amounts to an impairment. My colleagues base the impairment on the time during which the notice of a reserve was to be in effect, that is, two consecutive two‑year periods. In my opinion, the impairment existed as of the time when the effect of the notice is found to have prevented Rogers from installing its radiocommunication tower on the available site that had been formally approved by the Minister of Industry, given that the federal legislation and the *Circular* both give the Minister the last word as regards the siting of radiocommunication systems in Canada. Such an obstacle has undesirable and extremely harmful consequences on the orderly development and efficient operation of radiocommunication insofar as Rogers’ activities are concerned.
32. It follows that by virtue of the doctrine of interjurisdictional immunity, the impugned measure is inapplicable to Rogers. On the disposition of the appeal, I refer to my colleagues’ reasons, as I agree with them in this regard.

*Appeal allowed with costs throughout.*

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