

**SUPREME COURT OF CANADA**

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| **Citation:** Alberta (Attorney General) *v.* Moloney, 2015 SCC 51, [2015] 3 S.C.R. 327 | **Date:** 20151113**Docket:** 35820 |

Between:

Attorney General of Alberta

Appellant

and

Joseph William Moloney

Respondent

- and -

Attorney General of Ontario, Attorney General of Quebec,

Attorney General of British Columbia, Attorney General for

Saskatchewan and Superintendent of Bankruptcy

Interveners

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

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| **Reasons for Judgment:**(paras. 1 to 90)**Reasons Concurring in the Result:**(paras. 91 to 133) | Gascon J. (Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ. concurring)Côté J. (McLachlin C.J. concurring) |

Alberta (Attorney General) *v.* Moloney, 2015 SCC 51, [2015] 3 S.C.R. 327

Attorney General of Alberta Appellant

v.

Joseph William Moloney Respondent

and

Attorney General of Ontario,

Attorney General of Quebec,

Attorney General of British Columbia,

Attorney General for Saskatchewan and

Superintendent of Bankruptcy Interveners

**Indexed as: Alberta (**Attorney General) ***v.*** Moloney

2015 SCC 51

File No.: 35820.

2015: January 15; 2015: November 13.

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

on appeal from the court of appeal for alberta

 *Constitutional law — Division of powers — Federal paramountcy — Bankruptcy and insolvency — Property and civil rights — Judgment debt owed to province constituted claim provable in debtor’s bankruptcy — Debtor obtained absolute discharge in bankruptcy — Federal legislation governing bankruptcy providing for debtor’s release from all claims provable in bankruptcy upon discharge — Whether provincial legislation providing for continuing suspension of debtor’s driver’s* *licence and motor vehicle permits until payment of judgment debt constitutionally inoperative by reason of doctrine of federal paramountcy — Test for determining whether operational conflict exists — Whether federal and provincial legislation can operate side by side without conflict — Whether operation of provincial law frustrates purpose of federal law — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B‑3, s. 178(2)* *— Traffic Safety Act, R.S.A. 2000, c. T‑6, s. 102.*

 M caused a car accident while he was uninsured. The province of Alberta compensated an individual injured in the accident and sought to recover the amount of the compensation from M. Section 102 of Alberta’s *Traffic Safety Act* (“*TSA*”) allows the province to suspend M’s licence and permits until he pays the amount of the compensation. M made an assignment in bankruptcy and was eventually discharged. He listed the province’s claim in his Statement of Affairs. The debt was a claim provable in bankruptcy. Section 178(2) of the *Bankruptcy and Insolvency Act* (“*BIA*”) provides that, upon discharge, M is released from all debts that are claims provable in bankruptcy. As a result of his bankruptcy and discharge, M did not pay the amount of the compensation in full; because of this failure to pay, Alberta suspended his vehicle permits and driver’s licence. M contested this suspension. The Court of Queen’s Bench and the Court of Appeal found that there was a conflict between the federal and provincial laws. Relying on the doctrine of federal paramountcy, they declared s. 102 of the *TSA* to be inoperative to the extent of the conflict.

 *Held*: The appeal should be dismissed. Section 102 of the *TSA* is constitutionally inoperative to the extent that it is used to enforce a debt discharged in bankruptcy.

 *Per* Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.: In Canada, the federal and provincial levels of government must enact laws within the limits of their respective spheres of jurisdiction. It is often impossible however for one level of government to legislate effectively within its jurisdiction without affecting matters that are within the other level’s jurisdiction. In certain circumstances, the powers of one level of government must be protected against intrusions by the other level. To protect against such intrusions, the Court has developed various constitutional doctrines, including the doctrine of federal paramountcy. Under this doctrine, the federal law prevails when there is a genuine inconsistency between federal and provincial legislation, that is, when the operational effects of provincial legislation are incompatible with federal legislation. To determine whether such a conflict exists, first and foremost, it is necessary to ensure that the overlapping laws are independently valid. If so, then the court must determine whether their concurrent operation results in a conflict. In this case, the impugned provisions are independently valid. The only question is whether their concurrent operation results in a conflict.

 A conflict will arise in one of two situations, which form the two branches of the paramountcy test: (1) there is an operational conflict because it is impossible to comply with both laws, or (2) although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment. The first branch of the test has been described in the jurisprudence as actual conflict in operation as where one enactment says “yes” and the other says “no”. The question is whether both laws can operate side by side without conflict orboth laws can apply concurrently, and citizens can comply with either of them without violating the other. The assessment under this branch is not limited to the actual words or to the literal meaning of the words of the provisions at issue. Rather, the provisions must be read properly based on the modern approach to statutory interpretation. If there is no conflict under the first branch of the test, one may still be found under the second branch. The question under the second branch is whether operation of the provincial Act is compatible with the federal legislative purpose. The effect of the provincial law may frustrate the purpose of the federal law, even though it does not entail a direct violation of the federal law’s provisions.

 Under the first or the second branch of the test, the burden of proof rests on the party alleging the conflict. In keeping with co‑operative federalism, the doctrine of paramountcy is applied with restraint. Absent a genuine inconsistency, courts will favour an interpretation of the federal legislation that allows the concurrent operation of both laws. A provincial intention to interfere with the federal jurisdiction is neither necessary nor sufficient. The focus is instead on the effect of the provincial law. Assessing the effect of the provincial law requires looking at the substance of the law, rather than its form. The province cannot do indirectly what it is precluded from doing directly.

 Parliament enacted the *BIA* pursuant to its jurisdiction over matters of bankruptcy and insolvency. The *BIA* furthers two purposes: the equitable distribution of the bankrupt’s assets among his or her creditors and the bankrupt’s financial rehabilitation. Equitable distribution of assets is achieved by requiring creditors wishing to enforce a claim provable in bankruptcy participate in one collective proceeding. Financial rehabilitation is achieved through the discharge of the bankrupt from all claims provable in bankruptcy. From the perspective of the creditors, the discharge means they are unable to enforce their provable claims.

 Provincial legislatures have the power to legislate with regard to property and civil rights. This power includes traffic regulation and the authority to set conditions for driver’s licences and vehicle permits. The *TSA* is a comprehensive legislative scheme for traffic regulation. A victim injured in an accident may sue for damages. If successful but the uninsured driver does not pay, the victim may apply to the Administrator under the *Motor Vehicle Accident Claims Act* (“*MVACA*”) for compensation in the amount of the unsatisfied judgment and the judgment is then assigned to the Administrator. Section 102 of the *TSA*, which complements the *MVACA* program, allows the Registrar of Motor Vehicle Services to suspend the debtor’s driver’s licence and vehicle permits until the judgment debt is paid or periodic payments in satisfaction of the judgment are being made. It is, in substance, a debt collection mechanism. Since the judgment debt in this case is a claim provable in bankruptcy, the purpose and effect of s. 102 are to suspend a debtor’s driving privileges until payment of a provable claim.

 The laws at issue give inconsistent answers to the question whether there is an enforceable obligation. One law provides for the release of all claims provable in bankruptcy and prohibits creditors from enforcing them, while the other disregards this release and allows for the use of a debt enforcement mechanism on such a claim by precisely excluding a discharge in bankruptcy. This is a true incompatibility. In a case like this one, the test for operational conflict cannot be limited to asking whether the debtor can comply with both laws by renouncing the protection afforded under the federal law or the privilege he or she is otherwise entitled to under the provincial law. In that regard, the debtor’s response to the suspension of his or her driving privileges is not determinative. In analyzing the operational conflict at issue in this case, we cannot disregard the fact that whether the debtor pays or not, the province, as a creditor, is still compelling payment of a provable claim that has been released, which is in direct contradiction with s. 178(2) of the *BIA*. Neither can the question under the operational conflict branch of the paramountcy test be whether it is possible to refrain from applying the provincial law in order to avoid the alleged conflict with the federal law. Such an approach would render the first branch of the paramountcy test meaningless, since it is virtually always possible to avoid the application of a provincial law so as not to cause a conflict with a federal law. Furthermore, if it is possible to avoid operational conflict simply by declining to apply the provincial law, the same could be done to avoid any frustration of the federal purpose under the second branch of the paramountcy test. In this case, it is impossible for the province to apply s. 102 without contravening s. 178(2). In effect, s. 102 creates a new class of exempt debts that is not listed in s. 178(1) of the *BIA*. Hence, the provincial law allows the very same thing that the federal law prohibits. The result is an operational conflict.

 Section 102 also frustrates the financial rehabilitation of the bankrupt. The crushing burden of the province’s claim against M was the main reason for his bankruptcy. If s. 102 is allowed to operate despite M’s discharge, he is not offered the opportunity to rehabilitate that Parliament intended to give him. Had Parliament intended judgment debts arising from motor vehicle accidents, or the resulting regulatory charges, to survive bankruptcy, it would have stated so expressly in s. 178(1) of the *BIA*. It did not. It is beyond the province’s constitutional authority to interfere with Parliament’s discretion in that regard. Nor can M’s driving privileges serve as fresh consideration for a new binding contract for the repayment of the discharged debt. M need not enter into such a contract in order to recover his driving privileges, because the province has no authority to withhold them.

 The *TSA* does not however disrupt the equitable distribution purpose of the *BIA*. This Court has repeatedly cautioned against giving too broad a scope to paramountcy on the basis of frustration of federal purpose. It is always essential to ascertain the exact purpose of the specific provision of the federal law that is at issue. Although it is clear that the purpose of s. 178(2) is to ensure the debtor’s financial rehabilitation and that s. 102 frustrates that purpose, it cannot be concluded that the operation of the provincial scheme in the context of this case interferes with the equitable distribution of assets.

 *Per* McLachlin C.J. and Côté J.: Section 102 of the *TSA* frustrates the purpose of financial rehabilitation of the bankrupt that underlies s. 178(2) of the *BIA*. It is accordingly inoperative to the extent of the conflict by reason of the doctrine of federal paramountcy. As the frustration of one federal purpose is sufficient to trigger the application of the doctrine of federal paramountcy, it is not necessary to address the purpose of equitable distribution.

 There is no operational conflict to speak of in this case. The majority’s analysis contrasts with the clear standard that has been adopted for the purpose of determining whether an operational conflict exists in the context of the federal paramountcy test: impossibility of dual compliance as a result of an express conflict. Impossibility of dual compliance is the undisputed standard for determining whether an operational conflict exists and it is one that very few cases will meet. In the jurisprudence, impossibility of dual compliance has become synonymous with operational conflict. The requirement of an express contradiction is inseparable from impossibility of dual compliance. For the two laws to conflict, each one has to say exactly the opposite of what the other says. A less direct conflict is not enough. In the absence of an express conflict, the two laws are deemed to be capable of operating side by side. In light of the modern jurisprudence, this restrained approach to operational conflict is inescapable. Such a high standard is consistent with co‑operative federalism. If, in practice, the wording of the statutes makes it possible to comply with both of them, then co‑operative federalism requires a court to find that the federal and provincial statutes are compatible, at least at the first stage of the analysis.

 The two branches of the modern federal paramountcy test relate to two different forms of conflict. A finding of an operational conflict in the first branch will not necessarily entail a finding of frustration of a federal purpose in the second branch. The first branch is concerned with an incompatibility that is evident on the face of the provisions themselves. Even a superficial possibility of dual compliance will suffice for a court to conclude that there is no operational conflict. If the federal law is prohibitive, as in the case at bar, the question becomes what exactly it prohibits. If the provincial law allows the very same thing the federal law prohibits, there is an operational conflict. In many cases, the two branches of the test have been confused. Although this Court’s past decisions are not always helpful when it comes to drawing a distinction between the two branches, they do support three propositions: (1) that the applicable standard for the first branch is impossibility of dual compliance caused by an express conflict, (2) that this is a high standard that should be applied with restraint, and only in very few cases, and (3) that the two branches are distinct and address different forms of conflict.

 Consequently, at the first stage, the determining question is whether the province’s legislation provides a path on which dual compliance is possible. A high standard at the first stage merely means that in most cases, the purpose and effects of the legislation at issue will need to be analyzed at the second stage. Requiring courts to deal with the issue in the second branch has many advantages. For the frustration of purpose analysis, the federal legislative intent must be established by the party relying on it. The court can proceed with a careful analysis of Parliament’s intent and, if possible, interpret the federal law so as not to interfere with the provincial law. The impossibility standard, if applied strictly, will not render the first branch of the federal paramountcy test meaningless. If the provincial law allows or requiressomething that the federal law explicitly prohibits, or if the conflict is direct rather than indirect, there will be an operational conflict.

 In the case at bar, it is clear from the provisions themselves that dual compliance is not impossible. The provisions at issue do not expressly conflict; they are different in terms of their contents and of the remedies that they provide. One of them does not permit what the other specifically prohibits. Under s. 178 of the *BIA*, a bankrupt is discharged from claims provable in bankruptcy. That section says nothing more. Section 102 of the *TSA* does not revive an extinguished claim *per se*;ifa debtor chooses not to drive, the province simply cannot enforce its claim. He can also opt to voluntarily pay the discharged debt. The bankrupt is still discharged in the literal sense of the words of s. 178(2) of the *BIA*. The two statutes answer different questions. In the end, the literal requirement of the federal statute is, strictly speaking, met. It therefore follows that the two acts can operate side by side without operational conflict, although there is a frustration of purpose.

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By Gascon J.

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By Côté J.

 **Discussed:** *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961; *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86; *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453; **referred to:** *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536; *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59; *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees’ Union*, 2010 SCC 45, [2010] 2 S.C.R. 696; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; *Quebec (Attorney General) v. Canada (Human Resources and Social Development)*, 2011 SCC 60, [2011] 3 S.C.R. 635; *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121; *Canada (Superintendent of Bankruptcy) v. 407 ETR Concession Company Ltd.*, 2013 ONCA 769, 118 O.R. (3d) 161; *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271.

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 Lillian Riczu, for the appellant.

 R. Jeremy Newton, for the respondent.

 Josh Hunter and Daniel Huffaker, for the intervener the Attorney General of Ontario.

 Alain Gingras, for the intervener the Attorney General of Quebec.

 Richard M. Butler, for the intervener the Attorney General of British Columbia.

 Thomson Irvine, for the intervener the Attorney General for Saskatchewan.

 Peter Southey and Michael Lema, for the intervener the Superintendent of Bankruptcy.

 The judgment of Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ. was delivered by

 Gascon J. —

1. Overview
2. In Canada, the federal and provincial levels of government must enact laws within the limits of their respective spheres of jurisdiction. The *Constitution Act, 1867* defines which matters fall within the exclusive legislative authority of each level. Still, even when acting within its own sphere, one level of government will sometimes affect matters within the other’s sphere of jurisdiction. The resulting legislative overlap may, on occasion, lead to a conflict between otherwise valid federal and provincial laws. In this appeal, the Court must decide whether such a conflict exists, and if so, resolve it.
3. The alleged conflict in this case concerns, on the one hand, the federal *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”), and on the other hand, Alberta’s *Traffic Safety Act*, R.S.A. 2000, c. T-6 (“*TSA*”). It stems from a car accident caused by the respondent while he was uninsured, contrary to s. 54 of the *TSA*. The province of Alberta compensated the individual injured in the accident and sought to recover the amount of the compensation from the respondent. The latter, however, made an assignment in bankruptcy and was eventually discharged. The *BIA* governs bankruptcy and provides that, upon discharge, the respondent is released from all debts that are claims provable in bankruptcy. The *TSA* governs the activity of driving, including vehicle permits and driver’s licences, and allows the province to suspend the respondent’s licence and permits until he pays the amount of the compensation.
4. As a result of his bankruptcy and subsequent discharge, the respondent did not pay the amount of the compensation in full; because of this failure to pay, Alberta suspended his vehicle permits and driver’s licence. The respondent contested this suspension, arguing that the *TSA* conflicted with the *BIA*, in that it frustrated the purposes of bankruptcy. The province replied that there was no conflict since the *TSA* was regulatory in nature and did not purport to enforce a discharged debt. The Court of Queen’s Bench and the Court of Appeal found that there was a conflict between the federal and provincial laws. Relying on the doctrine of federal paramountcy, they declared the impugned provision of the *TSA* to be inoperative to the extent of the conflict. I agree with the outcome reached by the lower courts, and I would dismiss the appeal.
5. Facts
6. The car accident caused by the respondent occurred in 1989. In 1996, the individual injured in the accident obtained judgment against the respondent in the amount of $194,875. The Administrator appointed under the *Motor Vehicle Accident Claims Act*, R.S.A. 2000, c. M-22 (“*MVACA*”), indemnified the injured party for the amount of the judgment debt and was assigned the debt in accordance with the *MVACA*. Initially, the respondent made arrangements with the Administrator to pay the debt in instalments. Some years later, however, in January 2008, he made an assignment in bankruptcy. He listed the Administrator’s claim in his Statement of Affairs. It is not disputed that the judgment debt assigned to the Administrator was a claim provable in bankruptcy. It was, by far, the respondent’s most substantial debt and, in fact, the reason for his financial difficulties. At the time of the assignment, the outstanding amount due to the Administrator stood at $195,823.
7. In June 2011, the respondent obtained an absolute discharge, which no one opposed. In October of the same year, he received a letter from the Director, Driver Fitness and Monitoring, notifying him that, by application of s. 102(1) of the *TSA*, his operator’s licence and vehicle registration privileges would be suspended until payment of the outstanding amount of the judgment debt. Later, in November, his lawyer received another letter, this time from Motor Vehicle Accident Recoveries, advising the respondent that he “remains indebted for the judgment debt obtained against him . . . ‘until the judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy’” (A.R., at p. 49). The letter proposed that new payment arrangements be made, failing which the suspension of his driving privileges would continue.
8. Given this situation, in March 2012, the respondent sought an order from the Court of Queen’s Bench to stay the suspension of his driving privileges. He claimed that he had been discharged in bankruptcy and that s. 178 of the *BIA* precluded the Administrator from enforcing the judgment debt.
9. Judicial History
	1. Alberta Court of Queen’s Bench, 2012 ABQB 644, 73 Alta. L.R. (5th) 44
10. Moen J. first found that, as a result of the discharge, there was no longer a liability on the basis of which the judgment could be enforced (para. 21). In her view, the question at issue was whether the discharge precluded the province from suspending the respondent’s driving privileges because of the unpaid judgment debt. This entailed looking at the operation of the *TSA* and the *BIA* and determining whether the relevant provisions were in conflict, making the doctrine of paramountcy applicable. According to Moen J., an “operational conflict” could arise in two situations, namely where (1) “compliance with both acts is rendered inconsistent or impossible by directly conflicting with an express provision of the *BIA*” or (2) “the *TSA* has the intent and/or effect of interfering with the provisions of the *BIA* or its fundamental objectives” (para. 30).
11. Moen J. emphasized the rehabilitative purpose of the *BIA* (para. 31). She described the purpose of the *TSA* as being the “protection of public safety via the regulation of traffic and motor vehicles” (para. 33), and the purpose of s. 102 of the *TSA* as “preventing ‘irresponsible drivers from having the continued privilege of driving . . . without being made to account for the normal consequences of their vast irresponsibilities’” (para. 34). She distinguished situations in which the purpose of licence suspension is the collection of a debt from those in which it is the regulation of conduct (paras. 37-42). She concluded that the sole purpose of s. 102 is the collection of an unpaid judgment debt. In her view, the provision had nothing to do with the regulation of the respondent’s misconduct (para. 43). She thus held that the province’s actions were not disciplinary, but rather “a method of debt collection, and a colourable attempt to circumvent the provisions of the *BIA*” (para. 45). This “improper purpose” of the *TSA* created an “operational conflict” with the *BIA* (para. 45). She therefore stayed both the enforcement of the judgment debt and the suspension of the respondent’s driving privileges (para. 49), and she declared the *TSA* ineffective to the extent of the conflict with the *BIA* (para. 48).
	1. Alberta Court of Appeal, 2014 ABCA 68, 91 Alta. L.R. (5th) 221
12. Writing for a unanimous court, Slatter J.A. described the two types of conflict that trigger the application of the doctrine of paramountcy as follows: (1) “it is impossible to comply with both the provincial and the federal legislation”, or (2) “even though it is technically possible to comply with both, the application of the provincial statute can fairly be said to frustrate Parliament’s legislative purpose” (para. 10). He concluded that because the respondent could comply with both laws by not driving, there was no conflict under the first branch of the test (para. 10).
13. Turning to the second branch, Slatter J.A. described the two purposes of the *BIA* as being, first, equal distribution, and second, rehabilitation. He observed that s. 178 lists the debts that are not discharged by bankruptcy, none of which corresponds to judgment debts for damages resulting from motor vehicle accidents (paras. 13-15). According to him, while discharge from bankruptcy does not extinguish debts, nonetheless, “[w]hatever conceptual distinction there may be, it is somewhat artificial in the present context”, as creditors cease to be able to enforce the discharged debts (para. 19). Slatter J.A. rejected the province’s argument that driving privileges can be used as fresh consideration to revive a discharged debt; such consideration is not genuine and it is inconsistent with the policy of the *BIA* (paras. 20-21). Rejecting another of the province’s arguments, he held that it is irrelevant that driving privileges do not constitute property of the bankrupt. The province cannot withhold privileges arbitrarily in a way that frustrates the purposes of the *BIA* (paras. 23-24).
14. Slatter J.A. observed that s. 102 of the *TSA* specifically provides that it operates notwithstanding a discharge in bankruptcy. In his view, this is a “*prima* *facie* signal of a potential operational conflict” (para. 39). Although s. 102 is not coercive and the respondent could choose not to drive, Slatter J.A. concluded that it nonetheless frustrates the purposes of the *BIA*. One of these purposes is that the discharged bankrupt “will not have to make any such ‘choices’” and will be “free to make independent and unencumbered personal and economic decisions going forward” (para. 43). Because s. 102 is focused on debt collection and is not connected to traffic safety considerations (paras. 40 and 45-47), it interferes with a driver’s ability to make a fresh start (paras. 48-49). Slatter J.A. also concluded that s. 102 disrupts fair and equal distribution to creditors because it permits the province to collect amounts in addition to the dividend ordinarily distributed to creditors (para. 50). He held that s. 102 frustrates both purposes of the *BIA* and that the words “otherwise than by a discharge in bankruptcy” are in “operational conflict” with the *BIA* (para. 54).
15. Issue
16. The Chief Justice formulated the following constitutional question:

Is s. 102(2) of the Alberta *Traffic Safety Act*, R.S.A. 2000, c. T-6, constitutionally inoperative by reason of the doctrine of federal paramountcy?

Although the constitutional question, as formulated, refers only to s. 102(2), the proceedings below and the parties’ submissions concern the section in its entirety. Accordingly, I will examine all of the relevant aspects of s. 102.

1. Analysis
2. Various government actors have been involved in this dispute. Unless otherwise specified, I will refer to the province of Alberta as encompassing these different actors. I will first review the principles applicable to the doctrine of federal paramountcy and then apply them to the facts of this appeal.
	1. The Doctrine of Federal Paramountcy
3. Each level of government — Parliament, on the one hand, and the provincial legislatures, on the other — has exclusive authority to enact legislation with respect to certain subject matters. Sections 91 and 92 of the *Constitution Act,* *1867* assign each power to the level of government best suited to exercise it: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (“*Secession Reference*”), at para. 58. Broad powers were given to the provincial legislatures with respect to local matters, in recognition of regional diversity, while powers relating to matters of national importance were given to Parliament, to ensure unity: *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at para. 22.
4. Legislative powers are exclusive, and one government is not subordinate to the other: *Secession* *Reference*, at para. 58,citing *Re the Initiative and Referendum Act*, [1919] A.C. 935 (P.C.), at p. 942. However, the legislative matrix is not as clearly defined as ss. 91 and 92 might suggest. It is often impossible for one level of government to legislate effectively within its jurisdiction without affecting matters that are within the other level’s jurisdiction: *Western Bank*, at para. 29; H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at p. 465. Furthermore, it is often impossible to make a statute fall squarely within a single head of power: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at pp. 180-81. This leads to overlap in the exercise of provincial and federal powers. The tendency has been to allow these overlaps to occur as long as each level of government properly pursues objectives that fall within its jurisdiction: *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837, at para. 57; *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134, at para. 62; *Western Bank*, at paras. 37 and 42. This tendency reflects the theory of co-operative federalism: *Western Bank*, at para. 24; *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at para. 162.
5. That said, there comes a point where legislative overlap jeopardizes the balance between unity and diversity. In certain circumstances, the powers of one level of government must be protected against intrusions, even incidental ones, by the other level: *Western Bank*, at para. 32. To protect against such intrusions, the Court has developed various constitutional doctrines. For the purposes of this appeal, I need only refer to one: the doctrine of federal paramountcy. This doctrine “recognizes that where laws of the federal and provincial levels come into conflict, there must be a rule to resolve the impasse”: *Western Bank*, at para. 32. When there is a genuine “inconsistency” between federal and provincial legislation, that is, when “the operational effects of provincial legislation are incompatible with federal legislation”, the federal law prevails: *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53, at para. 65, quoting *Western Bank*, at para. 69; see also *Marine Services*, at paras. 66-68; *Multiple Access*, at p. 168. The question thus becomes how to determine whether such a conflict exists.
6. First and foremost, it is necessary to ensure that the overlapping federal and provincial laws are independently valid: *Western Bank*, at para. 76; *Husky Oil*, at para. 87. This means determining the pith and substance of the impugned provisions by looking at their purpose and effect: *Western Bank*, at para. 27; *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783, at para. 16. Once a provision’s true purpose is identified, its validity will depend on whether it falls within the powers of the enacting government: *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113, at para. 24. If the legislation of one level of government is invalid, no conflict can ever arise, which puts an end to the inquiry. If both laws are independently valid, however, the court must determine whether their concurrent operation results in a conflict.
7. A conflict is said to arise in one of two situations, which form the two branches of the paramountcy test: (1) there is an operational conflict because it is impossible to comply with both laws, or (2) although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment.
8. What is considered to be the first branch of the test was described as follows in *Multiple Access*, the seminal decision of the Court on this issue:

In principle, there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says “yes” and the other says “no”; “the same citizens are being told to do inconsistent things”; compliance with one is defiance of the other. [Emphasis added; p. 191.]

In *Western Bank*, Binnie and LeBel JJ. referred to this passage as “the fundamental test for determining whether there is sufficient incompatibility to trigger the application of the doctrine of federal paramountcy” (para. 71). Under that test, the question is whether there is an actual conflict in operation, that is, whether both laws “can operate side by side without conflict” (*Marine Services*, at para. 76) orwhether both “laws can apply concurrently, and citizens can comply with either of them without violating the other”: *Western Bank*, at para. 72; see also *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 60; *Marine Services*, at para. 68; *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86, at paras. 77 and 81-82; *Garland v. Consumers’ Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 53; *Smith v. The Queen*, [1960] S.C.R. 776, at p. 800, per Martland J.

1. In her concurring reasons, my colleague Côté J. formulates this first branch of the test as impossibility of dual compliance as a result of or caused by “an express conflict” (paras. 93 and 122). She cites in support (paras. 102-3) this Court’s use of the terms “express contradiction” in *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*,2001 SCC 40, [2001] 2 S.C.R. 241, at para. 34, and *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, at para. 17, as well as the use by Bastarache J. of the terms “express or ‘operational conflict’” in *Western Bank* (para. 126) and *Lafarge* (para. 113). She insists that under this first branch, the express conflict or express contradiction must be found merely on the basis of the “actual words” of the provisions at issue (paras. 105 and 108) and their “literal” sense or requirement (para. 97). She considers that prior cases in which this Court found that an operational conflict existed either mischaracterized the test (at paras. 116-17, she cites *Lafarge*) or conflated it with the second branch pertaining to frustration of purpose (at paras. 115 and 118, she cites *Husky Oil* and *M & D Farm*).
2. I respectfully disagree with these propositions and with my colleague’s assessment of this Court’s past cases on the first branch of the paramountcy test. I would not characterize these as being “not helpful authority” (para. 118) and as having “confused” the two branches (para. 114). Rather, in my view, this Court’s decisions on operational conflict have been coherent and consistent since *Multiple Access*.
3. First, the expression “express contradiction” used in those cases originated in *Multiple Access*. Dickson J. initially used it — at p. 187, in discussing prior decisions of the Court — to describe the test that he ultimately formulated, in the above-quoted passage, as that of “actual conflict in operation” or operational conflict (p. 191). An express contradiction is nothing more than a clear, direct or definite conflict in operation, as opposed to an indirect or imprecise one. It is not an additional condition for a finding of actual conflict in operation.
4. Second, I find no indication in the Court’s decisions pertaining to this first branch that the assessment of an actual conflict in operation is limited to the actual words or to the literal meaning of the words of the provisions at issue; quite the contrary. In its recent decision in *Marine Services* for instance, in assessing whether there was an actual conflict in operation under the first branch (paras. 71-83), the Court did not limit itself to a mere literal reading of the provisions at issue. Rather, it found that a proper reading of the provisions based on the modern approach to statutory interpretation (paras. 77-79) led to the conclusion that the provincial and federal laws could operate side by side without conflict (para. 76). With respect, my colleague misreads my remarks when she states that I support in this regard a broad interpretation of ambiguous federal statutes under this first branch (paras. 111-13). This is not so. *Marine Services* emphasizes that it is the proper meaning of the provision that remains central to the analysis, not merely its literal sense. As I explain below, the provisions at issue in this case are not ambiguous, and I do not give them a broad interpretation to find their ordinary and undisputed meaning. The harmonious interpretation referred to by my colleague is a rule of constitutional interpretation that applies to both branches of the paramountcy test, not merely the first one: *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 68. It has, however, no bearing on the actual conflict in operation that is, in my view, established here when both laws operate.
5. Finally, I consider that in *Husky Oil* (para. 87) and *M & D Farm* (para. 40), Gonthier J. and Binnie J. respectively referred to the “actual conflict in operation” concept drawn from *Multiple Access* without confusing the two branches of the paramountcy test*.* As for the reasons of Binnie and LeBel JJ. in *Lafarge*, issued on the same day as *Western Bank* (in which they also penned the majority reasons), I find it hard to suggest that they misstated the test or conflated its two branches, which they in fact analyzed separately (the first at paras. 81-82 and the second at paras. 83-85). On operational conflict, their reference to an “impossibility of . . . simultaneous application” (*Lafarge*,at para. 77) echoed the similar comments made in *Western Bank* to the effect that the test amounts to assessing whether “the [two] laws can apply concurrently” (*Western Bank*, at para. 72): see also, on the concept of possible concurrent “application” of both laws, *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188, at para. 23.
6. If there is no conflict under the first branch of the test, one may still be found under the second branch. In *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, the Court formulated what is now considered to be the second branch of the test. It framed the question as being “whether operation of the provincial Act is compatible with the federal legislative purpose” (p. 155). In other words, the effect of the provincial law may frustrate the purpose of the federal law, even though it does “not entail a direct violation of the federal law’s provisions”: *Western Bank*, at para. 73.
7. That said, the case law assists in identifying typical situations where overlapping legislation will not lead to a conflict. For instance, duplicative federal and provincial provisions will generally not conflict: *Bank of Montreal v. Marcotte*, 2014 SCC 55, [2014] 2 S.C.R. 725, at para. 80; *Western Bank*, at para. 72; *Multiple Access*, at p. 190; *Hall*, at p. 151. Nor will a conflict arise where a provincial law is more restrictive than a federal law: *Lemare Lake*, at para. 25; *Marine Services*, at paras. 76 and 84; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 (“*COPA*”), at paras. 67 and 74; *Western Bank*, at para. 103; *Rothmans*, at paras. 18 ff.; *Spraytech*, at para. 35; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 964. The application of a more restrictive provincial law may, however, frustrate the federal purpose if the federal law, instead of being merely permissive, provides for a positive entitlement: *Quebec (Attorney General) v. Canada (Human Resources and Social Development)*, 2011 SCC 60, [2011] 3 S.C.R. 635, at paras. 32-33 and 36; *Lafarge*, at paras. 84-85; *Mangat*, at para. 72; *Hall*, at p. 153. As will become evident from the discussion below, this appeal involves two laws that directly contradict each other, rather than a provincial law which does not fully contradict the federal one, but is only more restrictive than it: see *M & D Farm*; *Clarke v. Clarke*, [1990] 2 S.C.R. 795.
8. Be it under the first or the second branch, the burden of proof rests on the party alleging the conflict. Discharging that burden is not an easy task, and the standard is always high. In keeping with co-operative federalism, the doctrine of paramountcy is applied with restraint. It is presumed that Parliament intends its laws to co-exist with provincial laws. Absent a genuine inconsistency, courts will favour an interpretation of the federal legislation that allows the concurrent operation of both laws: *Western Bank*, at paras. 74-75, citing *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 (“*Law Society of B.C.*”), at p. 356; see also *Rothmans*, at para. 21; *O’Grady v. Sparling*, [1960] S.C.R. 804, at pp. 811 and 820. Conflict must be defined narrowly, so that each level of government may act as freely as possible within its respective sphere of authority: *Husky Oil*, at para. 162, per Iacobucci J. (dissenting, but not on this particular point), referring to *Deloitte Haskins and Sells Ltd. v. Workers’ Compensation Board*, [1985] 1 S.C.R. 785, at pp. 807-8, per Wilson J.
9. This is not to say, however, that courts must refrain from applying the doctrine where the two laws are genuinely inconsistent. In the assessment of such inconsistency for the purposes of paramountcy, a provincial intention to interfere with the federal jurisdiction is neither necessary nor sufficient. In fact, an intention to intrude may call into question the independent validity of the provincial law: *Husky Oil*, at paras. 44-45. The focus of the paramountcy analysis is instead on the effect of the provincial law, rather than its purpose:

. . . there need not be any provincial intention to intrude into the exclusive federal sphere of bankruptcy . . . in order to render the provincial law inapplicable. It is sufficient that the effect of provincial legislation is to do so. [Emphasis added.]

(*Husky Oil*, at para. 39)

 Assessing the effect of the provincial law requires looking at the substance of the law, rather than its form. The province cannot do indirectly what it is precluded from doing directly: *Husky Oil*, at para. 39.

1. In sum, if the operation of the provincial law has the effect of making it impossible to comply with the federal law, or if it is technically possible to comply with both laws, but the operation of the provincial law still has the effect of frustrating Parliament’s purpose, there is a conflict. Such a conflict results in the provincial law being inoperative, but only to the extent of the conflict with the federal law: *Western Bank*, at para. 69; *Rothmans*, at para. 11; *Mangat*, at para. 74. In practice, this means that the provincial law remains valid, but will be read down so as to not conflict with the federal law, though only for as long as the conflict exists: *Husky Oil*, at para. 81; E. Colvin, “Constitutional Law — Paramountcy — Duplication and Express Contradiction — Multiple Access Ltd. v. McCutcheon” (1983), 17 *U.B.C. L.* *Rev.* 347, at p. 348.
2. I now turn to the application of the doctrine to the facts of this appeal.
	1. Application
		1. The Legislative Schemes at Issue
3. The first step of the analysis is to ensure that the impugned federal and provincial provisions are independently valid. Early in the proceedings, the parties recognized the validity of the relevant provisions of the *BIA* and the *TSA*. Before this Court, they again conceded the validity of both laws. The only question is whether their concurrent operation results in a conflict. This requires analyzing the legislative schemes at issue at the outset so as to reach a proper understanding of the provisions that are allegedly in conflict.
	* + 1. The Bankruptcy and Insolvency Act
4. Parliament enacted the *BIA* pursuant to its jurisdiction over matters of bankruptcy and insolvency under s. 91(21) of the *Constitution Act, 1867*. The *BIA*, notably through the specific provisions discussed below, furthers two purposes: the equitable distribution of the bankrupt’s assets among his or her creditors and the bankrupt’s financial rehabilitation (*Husky Oil*, at para. 7).
5. The first purpose of bankruptcy, the equitable distribution of assets, is achieved through a single proceeding model. Under this model, creditors of the bankrupt wishing to enforce a claim provable in bankruptcy must participate in one collective proceeding. This ensures that the assets of the bankrupt are distributed fairly amongst the creditors. As a general rule, all creditors rank equally and share rateably in the bankrupt’s assets: s. 141 of the *BIA*; *Husky Oil*, at para. 9. In *Century* *Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 22, the majority of the Court, per Deschamps J., explained the underlying rationale for this model:

The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor’s limited assets while the other creditors attempt a compromise.

Avoiding inefficiencies and chaos, and favouring an orderly collective process, maximizes global recovery for all creditors: *Husky Oil*, at para. 7; R. J. Wood, *Bankruptcy and Insolvency Law* (2009), at p. 3.

1. For this model to be viable, creditors must not be allowed to enforce their provable claims individually, that is, outside the collective proceeding. Section 69.3 of the *BIA* thus provides for an automatic stay of proceedings, which is effective as of the first day of bankruptcy:

**69.3** (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

(See *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005, at pp. 1015-16.)

1. Yet there are exceptions to the principle of equitable distribution. Section 136 of the *BIA* provides that some creditors will be paid in priority. These creditors are referred to as “preferred creditors”. There are also creditors that are paid only after all ordinary creditors have been satisfied: ss. 137(1), 139 and 140.1 of the *BIA*. Furthermore, the automatic stay of proceedings does not prevent secured creditors from realizing their security interest: s. 69.3(2) of the *BIA*; *Husky Oil*, at para. 9. A court may also grant leave permitting a creditor to begin separate proceedings and enforce a claim: s. 69.4 of the *BIA*. These exceptions reflect the policy choices made by Parliament in furthering this purpose of bankruptcy.
2. The second purpose of the *BIA*, the financial rehabilitation of the debtor, is achieved through the discharge of the debtor’s outstanding debts at the end of the bankruptcy: *Husky Oil*, at para. 7. Section 178(2) of the *BIA* provides:

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

From the perspective of the creditors, the discharge means they are unable to enforce their provable claims: *Schreyer v. Schreyer*, 2011 SCC 35, [2011] 2 S.C.R. 605, at para. 21. This, in effect, gives the insolvent person a “fresh start”, in that he or she is “freed from the burdens of pre-existing indebtedness”: Wood, at p. 273; see also *Industrial Acceptance Corp. v. Lalonde*, [1952] 2 S.C.R. 109, at p. 120. This fresh start is not only designed for the well-being of the bankrupt debtor and his or her family; rehabilitation helps the discharged bankrupt to reintegrate into economic life so he or she can become a productive member of society: Wood, at pp. 274-75; L. W. Houlden, G. B. Morawetz and J. Sarra, *Bankruptcy and Insolvency Law of Canada* (4th ed. rev. (loose-leaf)), at p. 6-283. In many cases of consumer bankruptcy, the debtor has very few or no assets to distribute to his or her creditors. In those cases, rehabilitation becomes the primary objective of bankruptcy: Wood, at p. 37.

1. Although it is an important purpose of the *BIA*, financial rehabilitation also has its limits. Section 178(1) of the *BIA* lists debts that are not released by discharge and that survive bankruptcy. Furthermore, s. 172 provides that an order of discharge may be denied, suspended, or granted subject to conditions. These provisions demonstrate Parliament’s attempt to balance financial rehabilitation with other policy objectives, such as confidence in the credit system, that require certain debts to survive bankruptcy: Wood, at pp. 273 and 289.
2. Discharge is the main rehabilitative tool contained in the *BIA*, but it is not the only one. As Professor Wood, at p. 273, observes:

The bankruptcy discharge is one of the primary mechanisms through which bankruptcy law attempts to provide for the economic rehabilitation of the debtor. However, it is not the only means by which bankruptcy law seeks to meet this objective. The exclusion of exempt property from distribution to creditors, the surplus income provisions, and mandatory credit counselling also are directed towards this goal.

1. Another means of rehabilitation is the automatic stay of proceedings contained in s. 69.3 of the *BIA*. The stay not only ensures that creditors are redirected into the collective proceeding described above, it also ensures that creditors are precluded from seizing property that is exempt from distribution to creditors. This is an important part of the bankrupt’s financial rehabilitation:

The rehabilitation of the bankrupt is not the result only of his discharge. It begins when he is put into bankruptcy with measures designed to give him the minimum needed for subsistence.

(*Vachon v. Canada Employment and Immigration Commission*, [1985] 2 S.C.R. 417, at p. 430)

1. In many aspects, the *BIA* is a complete code governing bankruptcy. It sets out which claims are treated as provable claims and which assets are distributed to creditors, and how. It then sets out which claims are released on discharge and which claims survive bankruptcy. That said, the fact remains that the operation of the *BIA* depends upon the survival of various provincial rights: *Husky Oil*, at para. 85; *Hall*, at p. 155. In this regard, s. 72(1) of the *BIA* provides:

**72.** (1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

On the one hand, given the procedural nature of the *BIA*, the bankruptcy regime relies heavily on the continued existence of provincial substantive rights, and thus the continued operation of provincial laws: Wood, at pp. 7-8; *Husky Oil*, at para. 30. The ownership of certain assets and the existence of particular liabilities depend upon provincial law: P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at p. 25-8. On the other hand, the *BIA* cannot operate without affecting property and civil rights. Section 72(1) confirms this by stating that, where there is a genuine inconsistency between provincial laws regarding property and civil rights and federal bankruptcy legislation, the *BIA* prevails: see *GMAC Commercial Credit Corp.* — *Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35, [2006] 2 S.C.R. 123, at para. 47.

1. In the context of this appeal, we are specifically concerned with an alleged conflict between, on the one hand, one provision of the *BIA*, namely s. 178, the purpose of which is to ensure the financial rehabilitation of the debtor, and, on the other hand, one provision (s. 102) of the provincial scheme, to which I will now turn.
	* + 1. The Alberta Traffic Safety Act
2. The *TSA* is the provincial scheme with which the *BIA* is alleged to conflict. Pursuant to s. 92(13) of the *Constitution Act, 1867*, provincial legislatures have the power to legislate with regard to property and civil rights. The Court has long recognized that this power includes traffic regulation and the authority to set conditions for driver’s licences and vehicle permits: *Ross v. Registrar of Motor Vehicles*, [1975] 1 S.C.R. 5, at pp. 13-14; *O’Grady*, at p. 810; *Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396, at pp. 402 and 415; see also *Thomson v. Alberta (Transportation and Safety Board)*, 2003 ABCA 256, 232 D.L.R. (4th) 237, at para. 25. The *TSA* is a comprehensive legislative scheme for traffic regulation, “covering virtually all aspects of the regulation of highways and motor vehicles in Alberta”, with the aim of ensuring road safety: *Thomson*, at para. 5; Alberta Legislative Assembly, *Alberta Hansard*, 3rd Sess., 24th Leg., April 12, 1999, at p. 927.
3. Under s. 54(1) of the *TSA*, no one is allowed to drive or have a motor vehicle on a public road unless the vehicle is insured. Under s. 54(4), a person who contravenes s. 54(1) is liable to a fine or imprisonment. The Registrar of Motor Vehicle Services may also disqualify a person from driving and cancel his or her vehicle registration until that person shows proof of insurance: s. 54(5) and (7).
4. In the event that an uninsured driver causes an accident, Alberta has implemented a compensation program governed by the *MVACA*. A victim injured in the accident may sue the uninsured driver for damages. If the victim is successful but the uninsured driver does not pay, the victim may then apply to the Administrator under the *MVACA* for compensation in the amount of the unsatisfied judgment: s. 5(1). If authorized, the payment is drawn from the General Revenue Fund of the province: s. 5(2). The judgment is then assigned to the Administrator, who can take steps to enforce it against the judgment debtor. The Administrator is thus deemed to be the judgment creditor: s. 5(7).
5. Section 102 of the *TSA*, the provision at issue in this appeal, complements the *MVACA* program. It allows the Registrar to suspend the debtor’s driver’s licence and vehicle permits until the judgment debt is paid, up to a maximum amount of $200,000:

**102(1)** If

(a) a judgment for damages arising out of a motor vehicle accident is rendered against a person by a court in Alberta or in any other province or territory in Canada, and

(b) that person fails, within 15 days from the day on which the judgment becomes final, to satisfy the judgment,

the Registrar, subject to sections 103 and 104 and the regulations, may do one or both of the following:

(c) disqualify the person from driving a motor vehicle in Alberta;

(d) suspend the registration of any motor vehicle registered in that person’s name.

**(2)** When, under subsection (1), a person is disqualified from driving a motor vehicle in Alberta or the certificate of registration of that person’s motor vehicle is suspended,

(a) the disqualification or the suspension, as the case may be, remains in effect and shall not be removed, and

(b) no motor vehicle shall be registered in that person’s name,

until the judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy, to the extent of

. . .

(f) at least $200 000, exclusive of interest and costs, if the judgment arises out of a motor vehicle accident occurring on or after January 1, 1986.

1. Section 103 is also a relevant part of this scheme. It allows the judgment debtor to apply for the “privilege” of paying the outstanding judgment debt in instalments. The debtor may recover his or her driving privileges as long as the payments are being made:

**103(1)** A judgment debtor to whom this Part applies may on notice to the judgment creditor apply to the court in which the trial judgment was obtained for the privilege of paying the judgment in instalments, and the court may, in its discretion, so order, fixing the amounts and times of payment of the instalments.

**(2)** If the Minister responsible for the administration of the *Motor Vehicle Accident Claims Act* has made a payment with respect to a judgment pursuant to the *Motor Vehicle Accident Claims Act*, the judgment debtor

(a) may apply to the Minister responsible for the administration of the *Motor Vehicle Accident Claims Act* for the privilege of paying the judgment in instalments, in which case that Minister may cause an agreement to be entered into with the debtor for payment by instalments, or

(b) may apply to the court pursuant to subsection (1) for the privilege of paying the judgment to the Minister responsible for the administration of the *Motor Vehicle Accident Claims Act* in instalments, in which case the debtor must give notice of the application to the Administrator of the *Motor Vehicle Accident Claims Act*, who may appear personally or by counsel and be heard on the application.

**(3)** Except in a case to which subsection (2) applies, a judgment debtor and the judgment creditor may enter into an agreement for the payment of the judgment in instalments.

**(4)** While the judgment debtor is not in default in payment of the instalments, the judgment debtor is deemed not to be in default for the purposes of this Part in payment of the judgment, and the Minister in the Minister’s absolute discretion may restore the operator’s licence and the certificate of registration of the judgment debtor.

**(5)** Notwithstanding subsection (4), if the Minister is satisfied that the judgment debtor has defaulted with respect to complying with the terms of the court order or of the agreement, the judgment debtor’s operator’s licence and registration shall again be suspended and remain suspended as provided in section 102.

It is worth mentioning that, in theory, ss. 102 and 103 of the *TSA* do not operate solely in favour of the province. They could also operate in favour of a third party. For instance, the Registrar could suspend the driver’s privileges solely for the benefit of a victim of an accident who holds an unsatisfied judgment.

1. The purpose and effect of s. 102 are obvious when it is read in its context: it is meant to deprive the judgment debtor of driving privileges until the judgment arising from a motor vehicle accident is paid in full, or periodic payments in satisfaction of the judgment are being made under s. 103. It is, in substance, a debt collection mechanism. Since the parties conceded that the judgment debt in this appeal is a claim provable in bankruptcy, I would add that the purpose and effect of s. 102, in the context of this appeal, are to suspend a debtor’s driving privileges until payment of a provable claim.
2. Alberta disputes this. It submits that s. 102 is not, in substance, a debt enforcement scheme. It contends that the provision merely imposes an additional monetary condition to obtain the privilege of driving. In the appellant’s view, this condition mirrors the amount of the judgment debt because it reflects the actual regulatory cost of the driver’s failure to comply with the insurance requirement. Alberta maintains that the “payment obligation is inherently regulatory in nature” and that repayment of the judgment debt “is merely incidental to the satisfaction of the regulatory requirement” (A.F., at para. 31). It insists that the purpose of the provision is to discourage people from driving without insurance.
3. I disagree. While it is plausible that s. 102 might discourage drivers from driving uninsured, this is neither its main purpose nor its main effect. For one, the deterrent effect of s. 102, if any, is not tied to the failure to maintain proper insurance. The deterrent effect materializes only if the uninsured driver causes an accident. The accident must also cause injury to a third party. In addition, the victim must seek damages and obtain a judgment. Yet this is still not sufficient. The uninsured driver must also be incapable of satisfying the judgment in question or refuse to do so. Clearly, it is the failure to pay the judgment debt that triggers s. 102, not the failure to be insured. Furthermore, failure to comply with the insurance requirement is already subject to a penalty under s. 54 of the *TSA*. In sharp contrast to s. 102, s. 54 imposes a monetary penalty (and, in case of default, imprisonment) for the mere failure to comply with the insurance requirement, without more.
4. The distinction Alberta attempts to make between a judgment debt and a regulatory charge is also irrelevant for two reasons. First, s. 102 is clearly aimed at the repayment of a judgment debt. Second, even if it were aimed at recovering the resulting regulatory charge, such a charge would nonetheless be a claim provable in bankruptcy, and as such, it would remain a debt subject to the bankruptcy process.
5. On the first point, the language of the provision is clear: its objective is the satisfaction of the judgment debt. Section 102 is triggered when the judgment debtor “fails . . . to satisfy the judgment”: s. 102(1). It provides that driving privileges will be suspended “until the judgment is satisfied or discharged”: s. 102(2). Section 103 is also informative; the suspension of driving privileges stops as soon as payments are being made. The suspension resumes, however, when the debtor defaults.
6. The letters received by the respondent are telling in this regard. On October 27, 2011, the Director, Driver Fitness and Monitoring, wrote this:

This letter will serve as notification that due to your unsatisfied motor vehicle accident claim, your operator’s licence and vehicle registration privileges will be suspended indefinitely . . . .

. . . the suspension will remain in effect until the following condition(s) are met:

- satisfy any outstanding Motor Vehicle Accident Claims Fund claim. [Emphasis added; A.R., at p. 48.]

On November 15, 2011, Motor Vehicle Accident Recoveries added this:

. . . I advise that your client, Joseph William Moloney, remains indebted for the judgment debt obtained against him. Section 102(2) of the Traffic Safety Act (copy attached) states that he remains indebted “until the judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy”.

Accordingly, we would request that your client contact our office to make payment arrangements suitable to his circumstances. Failure to do so will result in the continued suspension of his driving privileges. [Emphasis added; A.R., at p. 49.]

These letters make no mention of the respondent’s failure to comply with the insurance requirement, or of the accident for which he is responsible.

1. In addition, as I mentioned, s. 102 could be used in favour of a third party victim who obtains a judgment but chooses not to seek compensation from the Administrator under the *MVACA*. In such a case, there is no “regulatory cost”, since no public funds are being spent. The only effect of s. 102 is to deprive the debtor of driving privileges until he or she pays the judgment creditor.
2. With respect to the second point, even if we were to accept the distinction advocated by Alberta between the judgment debt and the resulting regulatory charge, it has no practical implication. A regulatory charge remains a debt owed to the province, which s. 102 is meant to collect. Not only is it a debt, but it is, like the underlying judgment debt, a provable claim.
3. According to s. 121(1) of the *BIA*, a provable claim must meet three criteria: (1) there must be a debt, liability or obligation owed to a creditor, (2) which was incurred before the debtor became bankrupt, and (3) it must be possible to attach a monetary value to the debt, liability or obligation (*Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 S.C.R. 443, at para. 26). Even if the judgment debt were characterized as a regulatory charge, it would meet these criteria. The regulatory charge would arise from a payment made to the victim of an accident caused by the respondent. The respondent’s liability to the province arose prior to his assignment in bankruptcy, and it is clearly monetary in nature. As a result, the province’s claim for the regulatory charge would be provable in bankruptcy and must be treated as part of the bankruptcy process: *AbitibiBowater*, at para. 40; *Vachon*, at p. 426; *Ontario (Minister of Finance) v. Clarke*, 2013 ONSC 1920, 115 O.R. (3d) 33, at para. 52.
4. Therefore, whether one considers the province’s claim as a judgment debt or as the resulting regulatory charge, it is still provable in bankruptcy. It follows that the effect of s. 102 is to allow a judgment creditor to deprive the debtor of his or her driving privileges until the debt is paid. In the end, the provision thus compels the payment of a provable claim. Driving is unlike other activities. For many, it is necessary to function meaningfully in society. As such, driving often cannot be seen as a genuine “choice”: *R. v. White*, [1999] 2 S.C.R. 417, at para. 55. The effect of the provincial scheme undoubtedly amounts to coercion in that regard.
5. Before leaving this provincial scheme to consider whether the enforcement mechanism conflicts with the *BIA*, I briefly discuss an argument raised solely by the intervener Superintendent of Bankruptcy on the validity of one component of s. 102(2) of the *TSA*. The impugned provision states that the suspension of driving privileges continues “until the judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy”. While the parties have conceded the validity of the provision, the Superintendent of Bankruptcy, who is also the appellant in the companion appeal, *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)*,2015 SCC 52, [2015] 3 S.C.R. 397, argued before us that the words “otherwise than by a discharge in bankruptcy” are *ultra vires* the province and, as a result, severable. In his view, this “phrase is invalid since the Province attempts to explicitly render a discharge in bankruptcy ineffective as against a provincial debt that Parliament has not exempted from the effects of bankruptcy” (factum, at para. 11).
6. As stated previously, neither the parties nor the courts below disputed that s. 102, as a whole, is *intra vires* the province. The dominant purpose and effect of s. 102 are to suspend driving privileges until payment of a judgment debt. This enforcement scheme is part of the provincial regulation of driving privileges in Alberta. There is no doubt that assuring the financial responsibility of drivers and regulating driving privileges fall within the province’s jurisdiction regarding property and civil rights under s. 92(13) of the *Constitution Act, 1867*. Given this and the way the case has been argued and decided, this appeal is, in my view, properly disposed of by applying the doctrine of paramountcy and ascertaining whether a conflict exists between the *BIA* and the *TSA*.
7. Whether the provincial scheme has the effect of rendering a discharge in bankruptcy “ineffective as against a provincial debt” or negating the operability of a federal law as the Superintendent of Bankruptcy argues (factum, at paras. 11-12) is better resolved as a question of paramountcy. I would add that the words “otherwise than by a discharge in bankruptcy” are necessary only because the province lists the discharge in general, in addition to the satisfaction of the debt, as an event ending the suspension of the privilege. Had the legislation defined the satisfaction of the debt as the sole event capable of ending the suspension, the dominant feature of the provision would remain the same, although the issue of conflict with a discharge in bankruptcy would still arise.
	* 1. The Conflict Between the *BIA* and the *TSA*
			1. Operational Conflict
8. The Court of Appeal concluded that there was no operational conflict, although it used that term throughout its judgment in reference to conflict generally. It explained that the respondent could resist the payment by foregoing his driving privileges and choosing not to drive (para. 10). The reasons of the Court of Appeal, as well as the submissions of the parties, save for those of the Superintendent of Bankruptcy, relate almost exclusively to the second branch of the applicable test. I believe the Court of Appeal and the parties are mistaken on this point. I therefore respectfully disagree with my colleague Côté J., who holds in her concurring reasons that there is no operational conflict, since a bankrupt “can either opt not to drive or voluntarily pay the discharged debt” (para. 123). In a case like this one, the test for operational conflict cannot be limited to asking whether the respondent can comply with both laws by renouncing the protection afforded to him or her under the federal law or the privilege he or she is otherwise entitled to under the provincial law. In that regard, the debtor’s response to the suspension of his or her driving privileges is not determinative. In analyzing the operational conflict at issue in this case, we cannot disregard the fact that whether the debtor pays or not, the province, as a creditor, is still compelling payment of a provable claim that has been released, which is in direct contradiction with s. 178(2) of the *BIA*:

If [the respondent] pays the debt, then the provincial law will have required him to pay a debt that has been released by the federal law. If [he] does not pay the debt, then the provincial law will have punished him — by withholding his driver’s licence — for failing to pay a debt that has been released by the federal law.

(*Gorguis v. Saskatchewan Government Insurance*, 2011 SKQB 132, 372 Sask. R. 152, at para. 25; sent back for rehearing by the Saskatchewan Court of Appeal, which did not address the court’s comments on this point (2013 SKCA 32, 414 Sask. R. 5).)

Thus, the laws at issue give inconsistent answers to the question whether there is an enforceable obligation: one law says yes and the other says no.

1. On the one hand, s. 178(2) of the *BIA* provides that “an order of discharge releases the bankrupt from all claims provable in bankruptcy”. In my view, it is undisputed that a discharge under s. 178 of the *BIA* releases a debtor, thus preventing creditors from enforcing claims that are provable in bankruptcy. My colleague appears to suggest (at para. 96) that, since the actual words of the section say “nothing more” than that the bankrupt is discharged, or since the discharge merely releases provable claims, an interpretation to the effect that the release of such claims means that they cannot be enforced would “add words to the provision”. With respect, this amounts to depriving the words of s. 178(2) of their obvious and ordinary meaning. In *Schreyer*, LeBel J. wrote that, “[a]s is clear from the words of s. 178(2) *BIA*, the discharge operates to release the bankrupt from all claims provable in bankruptcy”. He added that, “[f]or creditors, the discharge means that they ‘cease to be able to enforce claims against the bankrupt that are provable in bankruptcy’” (para. 21). I know of no authority that suggests that the words “order of discharge” or “releases” in that context mean anything other than that the provable claim is unenforceable. To give the words used in s. 178(2) their proper meaning is not to interpret the provision broadly.
2. On the other hand, s. 102(2) of the *TSA* empowers the province to continue to pressure a debtor by withholding his or her driving privileges “until the judgment is satisfied or discharged, otherwise than by a discharge in bankruptcy”. As I mentioned above in my analysis of the legislative schemes, the language of this provision is clear: it provides for the satisfaction of the judgment debt by excluding the impact of a discharge in bankruptcy.
3. One law consequently provides for the release of all claims provable in bankruptcy and prohibits creditors from enforcing them, while the other disregards this release and allows for the use of a debt enforcement mechanism on such a claim by precisely excluding a discharge in bankruptcy. This is a true incompatibility. Both laws cannot operate concurrently(*Sun Indalex*, at para. 60; *Lafarge*, at para. 82; *M & D Farm*, at para. 41; *Multiple Access*, at p. 191), “apply concurrently” (*Western Bank*, at para. 72) or “operate side by side without conflict” (*Marine Services*, at para. 76). The facts of this appeal indeed show an actual conflict in operation of the two provisions. This is a case where the provincial law says “yes” (“Alberta can enforce this provable claim”), while the federal law says “no” (“Alberta cannot enforce this provable claim”). The provincial law gives the province a right that the federal law denies, and maintains a liability from which the debtor has been released under the federal law. This conflict can hardly be characterized as “indirect” as my colleague suggests (paras. 92 and 128). Nor can I characterize as merely “implicit” the clear prohibition in s. 178(2) against enforcing provable claims that have been discharged. It is not in dispute that s. 178(2) is a prohibitive provision; considering the meaning of the words “order of discharge” and “releases”, what the provision “exactly” prohibits is the enforcement of discharged provable claims. There is no other “possible ramification” in terms of what this section prohibits.
4. There was indeed much discussion about the effect of a discharge in the parties’ submissions. To avoid a finding of conflict, Alberta submitted that in bankruptcy, the debt is not extinguished but merely “released”. It asserted that the *BIA* precludes only the “civil enforcement” of the debt through “civil process”; it does not affect the province’s ability to insist on licensing requirements.
5. In *Schreyer*, LeBel J. described the effect of discharge. While recognizing that the debt is not extinguished, he explained that a discharge prevents creditors from enforcing those claims that are provable in bankruptcy:

. . . every claim is swept into the bankruptcy and . . . the bankrupt is released from all of them upon being discharged unless the law sets out a clear exclusion or exemption. . . .

The only reservation I have with the decision of the Court of Appeal in the case at bar relates to its numerous statements that the operation of s. 178(2) *BIA* has the effect of “extinguishing” the equalization claim. With respect, this provision does not purport to extinguish claims that are provable in bankruptcy pursuant to s. 121 *BIA*, but “releases” the debtor from such claims: see, on this point, *Re Kryspin* (1983), 40 O.R. (2d) 424 (H.C.J.), at pp. 438-39; and *Ross, Re* (2003), 50 C.B.R. (4th) 274 (Ont. S.C.J.), at para. 15. As is clear from the words of s. 178(2) *BIA*, the discharge operates to release the bankrupt from all claims provable in bankruptcy. For creditors, the discharge means that they “cease to be able to enforce claims against the bankrupt that are provable in bankruptcy”. [Emphasis added; paras 20-21.]

(Citing Houlden, Morawetz and Sarra, at p. 6-283.)

1. This description is consistent with the term “releases” found in s. 178(2), which means “[l]iberation from an obligation, duty, or demand; the act of giving up a right or claim to the person against whom it could have been enforced”: *Black’s Law Dictionary* (10th ed. 2014), at p. 1480. As a result of s. 178(2), creditors are deemed to give up their right to enforce their provable claims. The verb “enforce”, as used by LeBel J. and Houlden, Morawetz and Sarra, means “to compel obedience”: *Black’s Law Dictionary*, at p. 645. The non-extinguishment of the debt may be relevant in some cases, such as those involving the liability of a third party (see *Buchanan v. Superline Fuels Inc.*, 2007 NSCA 68, 255 N.S.R. (2d) 286; *Miller, Re* (2001), 27 C.B.R. (4th) 107 (Ont. S.C.J.)). This is, however, of no practical relevance to this appeal. Section 178(2) is clear: a creditor cannot compel the debtor to pay a debt that was released on discharge.
2. In this appeal, the payment which the province seeks to recover is a provable claim. In substance, the purpose and effect of s. 102 are to compel payment of that provable claim. That claim was properly released, since neither the province’s judgment debt, nor the resulting regulatory charge, is exempt from discharge under s. 178(1). As a provable claim is subject to s. 178(2), the province is precluded from compelling payment of the judgment debt.
3. Contrary to the appellant’s contention, nothing suggests that s. 178(2) merely precludes civil enforcement of provable claims. Accepting the appellant’s argument would amount to adding words to the provision that do not exist, and that the legislator did not include. While being expressly precluded from compelling payment of a discharged provable claim, the province could create an administrative scheme that had the effect of coercing a discharged debtor to pay a debt that has been released. The appellant’s argument must be rejected. Pursuant to s. 178(2) of the *BIA*, creditors are precluded from compelling payment of a claim provable in bankruptcy, through either civil or administrative processes.
4. Neither can the question under the operational conflict branch of the paramountcy test be whether it is possible to refrain from applying the provincial law in order to avoid the alleged conflict with the federal law. To argue that the province is not required to use s. 102 in the context of bankruptcy, or that it can choose not to withhold the respondent’s driving privileges, leads to a superficial application of the operational conflict test. To suggest that a conflict can be avoided by complying with the federal law to the exclusion of the provincial law cannot be a valid answer to the question whether there is “actual conflict in operation”, as the majority of the Court put it in *Multiple Access*: see also *COPA*, at para. 64. To so conclude would render the first branch of the paramountcy test meaningless, since it is virtually always possible to avoid the application of a provincial law so as not to cause a conflict with a federal law. Furthermore, any provincial law that could survive the first branch under the latter argument would necessarily also survive the second branch. If it is possible to avoid operational conflict simply by declining to apply the provincial law, the same could be done to avoid any frustration of the federal purpose under the second branch.
5. In fact, this would be tantamount to rendering the provincial law inoperative to the extent of the conflict even before a conflict is found. Under the doctrine of paramountcy, this is precisely the remedy that courts grant once a conflict is found; it is not a tool courts can use to avoid finding a conflict. The remedy of not applying the provincial law cannot be determinative of whether a conflict exists in the first place. In this case, whether or not the province has discretion not to apply s. 102 is irrelevant: see *Lafarge*, at para. 75. The province chose to take advantage of the scheme. The question is whether it can do so while also complying with the *BIA*.
6. This view, with which my colleague disagrees, appears to me to be consistent with this Court’s jurisprudence on operational conflict. For instance, in *M & D Farm*, the creditor held a mortgage on the debtors’ family farm. After defaulting on the mortgage, the debtors obtained a stay of proceedings under the federal *Farm Debt Review Act*, R.S.C. 1985, c. 25 (2nd Supp.). While the stay was still in effect, the creditor sought, and was granted, leave under the provincial *Family Farm Protection Act*, C.C.S.M., c. F15, which authorized the immediate commencement of foreclosure proceedings. The question arose as to whether there was a conflict between the federal stay and the provincial leave. The Court concluded that there was an operational conflict (pp. 982-85), and this conclusion was later reaffirmed in *Lafarge*, at para. 82, and again in *Lemare Lake*, at para. 18. As I read *M & D Farm*, the fact that the debtors could choose to voluntarily pay the mortgage debt, as my colleague suggests, did not mean that there was no operational conflict. Nor was conflict avoided because the creditor could have chosen not to seek leave to commence foreclosure proceedings. There was an operational conflict because the provincial law expressly authorized the very proceedings that the federal stay precluded.
7. More recently, in *Sun Indalex*, Deschamps J., with Moldaver J. concurring, found that there was an operational conflict (the Court was unanimous on this point). On the one hand, there was an order made under the federal *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, which authorized an insolvent company to obtain debtor-in-possession (“DIP”) financing and granted priority to the DIP lender. On the other hand, the provincial *Personal Property Security Act*, R.S.O. 1990, c. P.10, gave priority to the administrator of the company’s employee pension plans: para. 60. Deschamps J. did not avoid the operational conflict by concluding, for instance, that the debtor could have chosen not to seek DIP financing in the first place.
8. My analysis does not “expan[d] the definition of conflict in the first branch” of the paramountcy test, nor does it “conflat[e]” its two branches, contrary to what my colleague indicates (paras. 93 and 106). In my view, this analysis instead applies the principles developed by this Court on federal paramountcy to the operational conflict situation at issue here, where the federal law includes a prohibition that the provincial law effectively disregards. I discuss the two legislative schemes separately from the application of the two branches of the paramountcy test. My analysis of the operational conflict focuses on the existence of an actual and direct conflict between the provisions at issue. The two branches are not “conflated” simply because, in a situation like the current one, the wording of s. 178(2) and the clear prohibition it contains happen to exemplify the goal behind the provision and one of the key objectives of the *BIA*, that is, the financial rehabilitation of the debtor. I consider that my colleague’s remarks to the effect that impossibility of dual compliance is a “secondary consideration” in my discussion of operational conflict (para. 99) are misplaced as well. The classic statement of the test for operational conflict in *Multiple Access* that she cites with approval (para. 100) is precisely the one I am relying upon here. It is in light of that statement that I find there is no real possibility of dual compliance as understood by this Court. Indeed, the opposite conclusion would depend on a creditor refusing to apply (or a debtor refusing to comply with) the provincial law, or, alternatively, on a debtor renouncing (or a creditor refusing to comply with) the protection afforded by the federal law. To find a possibility of dual compliance with the conflicting laws at issue — on the basis of hypotheticals that call for “single” compliance, by any one of the actors involved, with one law but not with the other — would be inconsistent with this Court’s precedents on federal paramountcy.
9. In this regard, this case is distinguishable from precedents like *Rothmans* and *COPA*, on which my colleague relies. Those cases both dealt with provincial laws that took a more restrictive approach to matters covered by permissive federal laws. In each of them, the relevant statutes were held not to create an operational conflict. In *COPA*, the federal *Aeronautics Act*, R.S.C. 1985, c. A-2, allowed private citizens to build airports, while the provincial *Act respecting the preservation of agricultural land and agricultural activities*, R.S.Q., c. P‑41.1, prohibited such activities on agricultural land absent an administrative authorization: para. 8. In *Rothmans*, s. 30 of the federal *Tobacco Act*, S.C. 1997, c. 13, permitted the display of tobacco products at retail, while the provincial *Tobacco Control Act*, S.S. 2001, c. T‑14.1, banned the advertising, display and promotion of tobacco products in places where persons under 18 years of age were allowed. *Rothmans* and *COPA* did not involve a direct contradiction between the two applicable laws as does the instant case. They merely involved one law that imposed stricter conditions in allowing activities that were also permitted by the government at the other level. In the case at bar, the question with respect to operational conflict is whether debts incurred while driving uninsured can be enforced even though the debtor has been discharged from bankruptcy. On this question, the two laws directly contradict each other.
10. I therefore conclude that s. 102 of the *TSA* allows the province, or a third party creditor, to enforce a provable claim that has been released. To that extent, it conflicts with s. 178(2) of the *BIA*. It is impossible for the province to apply s. 102 without contravening s. 178(2) and, as a result, for the respondent to simultaneously be liable to pay the judgment debt under the provincial scheme and be released from that same claim pursuant to s. 178(2): *Lafarge*, at para. 82; *M & D Farm*, at para. 41. Section 178 is a complete code in that it sets out which debts are released on discharge and which debts survive bankruptcy. In effect, s. 102 creates a new class of exempt debts that is not listed in s. 178(1). Hence, in the words used by my colleague in her reasons (paras. 95, 110 and 128), “the provincial law allows the very same thing” — the enforcement of a debt released under s. 178(2) of the *BIA* — that “the federal law prohibits”. The result is an operational conflict between the provincial and federal provisions.
11. Although this conclusion makes it unnecessary to discuss the second branch of the test, I will nonetheless address it in order to respond to the province’s arguments.
	* + 1. Frustration of Federal Purpose
				1. Financial Rehabilitation
12. Like the lower courts, I find that the province’s use of its administrative powers relating to driving privileges to burden the respondent until he repays a discharged debt frustrates the financial rehabilitation of the bankrupt. The effect of s. 102 directly contradicts and defeats the purpose of the discharge provided for in s. 178(2):

The *BIA* permits an honest but unfortunate debtor to obtain a discharge from debts subject to reasonable conditions. The *Act* is designed to permit a bankrupt to receive, after a specified period a complete discharge of all his or her debts in order that he or she may be able to integrate into the business life of the country as a useful citizen free from the crushing burden of debts . . . . [Emphasis added.]

(Houlden, Morawetz and Sarra, at p. 1-2.1)

As explained already, the language of s. 178(2) makes it clear that the purpose of this provision is to give effect to one of the goals underlying the *BIA* regime — the financial rehabilitation of the debtor — by releasing “the bankrupt from all claims provable in bankruptcy”. In other words, s. 178(2) is aimed precisely at providing the bankrupt with a fresh start. The facts of this case establish that the province’s use of s. 102 despite the respondent’s discharge undermines this purpose.

1. The respondent was a truck driver. In 1996, after the accident, the province was assigned the judgment rendered against him in the amount of $194,875. In 2008, after attempting to pay the debt in instalments for about 12 years, he made an assignment in bankruptcy. At that time, the outstanding amount of the debt had increased to $195,823; it was, by far, the largest of the respondent’s financial liabilities. In 12 years, the respondent had not been able to keep up with his interest payments. The crushing burden of the province’s claim against him was the main reason for his bankruptcy. In 2012, at the time his application for discharge was heard, the respondent had only managed to pay the judgment debt down to $192,103.79. By the effect of s. 102, he was exiting bankruptcy while carrying the same financial burden that had caused his bankruptcy four years earlier. If s. 102 is allowed to operate despite the respondent’s discharge, the respondent is not offered the opportunity to rehabilitate that Parliament intended to give him. This is particularly compelling in the respondent’s case. As a truck driver, his ability to gain a livelihood is tied to his ability to drive. But more generally, inability to drive can constitute a significant impediment to any person’s capacity to earn income: see *Lucar, Re* (2001), 32 C.B.R. (4th) 270 (Ont. S.C.J.), at paras. 22-23.
2. In furthering financial rehabilitation, Parliament expressly selected which debts survive bankruptcy and which are discharged: s. 178(1) and (2). It did so having regard to competing policy objectives. This is a delicate exercise, because the more claims that survive bankruptcy, the more difficult it becomes for a debtor to rehabilitate: *AbitibiBowater*, at para. 35; *Schreyer*, at para. 19. In 1970, the Study Committee on Bankruptcy and Insolvency Legislation emphasized this concern:

. . . much of the rehabilitative effect of his discharge and release from debts is lost, when a bankrupt is left with substantial debts after his discharge. Indeed, in some cases, it may almost be regarded as a mockery of the bankruptcy system to take all of the sizable property of a debtor, distribute it among the creditors and then leave the debtor to cope with some of his largest creditors from whose debts he has not been released.

(*Bankruptcy and Insolvency: Report of the Study Committee on Bankruptcy and Insolvency Legislation* (1970),at para. 3.2.085)

When operating in the context of bankruptcy, s. 102 undermines this balancing exercise and imperils the bankrupt’s ability to rehabilitate. In effect, s. 102 creates a new class of debts that survive bankruptcy. As such, it leaves the debtor with a substantial financial liability that was not contemplated by Parliament. Had Parliament intended judgment debts arising from motor vehicle accidents, or the resulting regulatory charges, to survive bankruptcy, it would have stated so expressly in s. 178(1) of the *BIA*. It did not. Together, s. 178(1) and (2) are comprehensive. It is beyond the province’s constitutional authority to interfere with Parliament’s discretion in that regard.

1. Notwithstanding this, Alberta asserts that, like any creditor, the province is allowed to form a new binding contract with the discharged bankrupt for the repayment of the debt. In its view, the respondent’s driving privileges can serve as fresh consideration for such a contract. I disagree. Like the Court of Appeal, I conclude that this alleged fresh consideration is neither genuine nor consistent with the purpose of s. 178(2).
2. As a general rule, a creditor cannot cause a debtor to revive an obligation from which the debtor was released, unless the creditor offers fresh consideration: Wood, at p. 301. Between private parties, it is arguable that a debtor may freely agree to revive a discharged debt in exchange for the creditor’s provision of goods or services. The province, however, is unlike any private creditor. While a private creditor is under no obligation to provide goods or services, the province cannot withhold the respondent’s driving privileges arbitrarily. Suspension of privileges by administrative bodies must be based on a legal rule: see *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at pp. 141-42; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473, at para. 59; *Secession Reference*, at para. 71; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, at para. 10. In the case at bar, the effect and purpose of s. 102 are to compel payment of a discharged debt, which conflicts with s. 178(2). As a result, s. 102 is, to that extent, inoperative and cannot ground the province’s authority to withhold the respondent’s privileges. If those privileges are being suspended on the sole basis that the respondent refuses to satisfy a judgment debt that was released in bankruptcy, the province is acting without authority. The province’s promise to refrain from doing what it has no authority to do cannot constitute fresh consideration capable of supporting any contract. This includes a contract for the repayment of a discharged debt. More importantly, the respondent need not enter into such a contract in order to recover his driving privileges, because the province has no authority to withhold them.
3. Finally, Alberta’s other assertion, to the effect that Parliament’s power over bankruptcy and insolvency matters does not extend to the regulation of driving privileges, does not entail that the province can withhold those privileges on the basis of an unpaid released debt. In my view, the province is conflating the scope of Parliament’s authority and the consequences of the conflict between the *BIA* and the *TSA*. The financial responsibility of drivers is a valid matter of provincial concern and jurisdiction, and the province can set the conditions for driving privileges with this consideration in mind. Nonetheless, when the province denies a person’s driving privileges on the sole basis that he or she refuses to pay a debt that was discharged in bankruptcy, the province’s condition conflicts with s. 178(2) of the *BIA* and is, to that extent, inoperative. To so conclude does not transfer the power to regulate driving privileges to Parliament. The obligation to grant those privileges flows from the provisions of the provincial law that remain operative.
4. The rehabilitative purpose of s. 178(2) is not meant to give debtors a fresh start in all aspects of their lives. Bankruptcy does not purport to erase all the consequences of a bankrupt’s past conduct. However, by ensuring that all provable claims are treated as part of the bankruptcy regime, the *BIA* gives debtors an opportunity to rehabilitate themselves financially. While this does not amount to erasing all regulatory consequences of their past conduct, it is certainly meant to free them from the financial burden of past indebtedness.
	* + - 1. Equitable Distribution
5. The Court of Appeal concluded that the *TSA* also disrupts the equitable distribution purpose of the *BIA*. In that court’s view, the province’s legislative scheme allows it to obtain more than the ordinary dividend paid under the bankruptcy regime, which is contrary to the objective of the *BIA* to “treat all creditors of the same class equally” (para. 50). For its part, the province asserts that s. 102 does not alter the priorities set out in the *BIA*, since payment for the privilege of driving does not draw on the estate of the bankrupt that is available to other creditors.
6. I disagree with this conclusion of the Court of Appeal. The purpose of s.  178, the only provision of the *BIA* that is at issue in this appeal, is to give the discharged bankrupt a fresh start. The section sets out the limits of this fresh start by excluding specific debts from being released by the order of discharge (s. 178(1)), and it provides for the consequences of that order by releasing the bankrupt from all other provable claims (s. 178(2)). Section 178 does not further the purpose of equitable distribution of assets. What the Court of Appeal points to are the consequences of survival of the judgment debt as a result of s. 102 of the *TSA*, despite the discharge contemplated in s. 178. This concerns the financial rehabilitation purpose of the *BIA* and nothing more.
7. This Court has repeatedly cautioned against giving “too broad a scope to paramountcy on the basis of frustration of federal purpose”: *Lemare Lake*, at para. 23, quoting *Marcotte*, at para. 72; *Marine Services*, at para. 69; *Western Bank*, at para. 74. In the federal paramountcy analysis, it is therefore always essential to ascertain the exact purpose of the specific provision of the federal law that is at issue. The Court of Appeal does not cite any authority supporting the assertion that s. 178 has purposes other than the debtor’s financial rehabilitation. Although other provisions of the *BIA*, discussed earlier in these reasons and dealing mostly with the property of the bankrupt and the administration of the bankrupt’s estate, are meant to ensure this equitable distribution purpose, those provisions are not at issue in the case at bar. At best, the assertion made by the Court of Appeal unduly broadens the *BIA*’s equitable distribution purpose and the related single proceeding model. This is contrary to the presumption of constitutionality according to which, “[w]hen a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes”: *Western Bank*,at para. 75, quoting *Law Society of B.C.*, at p. 356; *Marine Services*, at para. 69.
8. Professor Wood, at p. 3, explains as follows the rationale behind the collective proceeding through which equitable distribution is achieved:

The race to grab assets in the absence of a collective insolvency regime does not provide an environment within which an efficient and orderly liquidation can occur. The process is inefficient because each creditor must separately attempt to enforce their claims against the debtor’s assets, and this produces duplication in enforcement costs. The piecemeal selling off of assets also results in a much smaller recovery than if a single person were in control of the liquidation. Similarly, the race to seize assets does not produce an environment within which negotiations with creditors can easily occur. A reasonable creditor who is inclined to negotiate with the debtor will be unlikely to do so if other creditors are actively taking steps to make away with the debtor’s realizable assets; instead, the creditor will feel compelled to join the wild dash to seize assets. Although some of the creditors (those who are able to strike first) are better off in such a scenario, the creditors as a group receive less than if a more orderly liquidation or negotiated arrangement had taken place.

(See also *Husky Oil*, at para. 7.)

1. The single proceeding model is focused on ensuring the orderly distribution of assets and reducing inefficiencies, and ultimately on maximizing global recovery for creditors. If, afterthe bankrupt’sdischarge, that is, after the administration of the estate and the orderly distribution contemplated by the *BIA*, the province is allowed to compel a bankrupt to make payments outside the collective proceeding and to obtain property that would not, in any event, be distributed to the creditors as part of the bankruptcy process, I fail to see how the single proceeding model is disrupted. The assets to be distributed to creditors remain the same, and they are still allocated according to the bankruptcy scheme and any priorities it dictates. Whether or not s. 102 of the *TSA* operates after the discharge does not impact the orderly distribution to creditors, nor does it affect the pool of assets to be distributed to them. In this regard, the judgment debt is not “preferred” or given any kind of priority under the *BIA* scheme; it is quite simply unaffected by the bankruptcy process as a result of the provincial scheme in the same way as the other debts listed in s. 178(1) that are not released by the order of discharge. The operation of s. 102 does not cause any chaos or inefficiencies in the bankruptcy process. If anything, allowing s. 102 to operate increases global recovery for the other creditors while leaving the single proceeding intact.
2. Thus, although it is clear that the purpose of s. 178(2) is to ensure the debtor’s financial rehabilitation and that s. 102 frustrates that purpose, I am not convinced that the operation of the provincial scheme in the context of this appeal interferes with the equitable distribution of assets, a purpose that is undoubtedly served by other provisions of the *BIA*, but not by s. 178.
3. Disposition
4. In my view, the doctrine of paramountcy dictates that s. 102 of the *TSA* is inoperative to the extent that it conflicts with the *BIA*, and in particular s. 178(2). Therefore, the province cannot withhold the respondent’s driving privileges on the basis of an unsatisfied but discharged judgment debt. I would dismiss the appeal with costs and answer the constitutional question as follows:

Is s. 102(2) of the Alberta *Traffic Safety Act*, R.S.A. 2000, c. T-6, constitutionally inoperative by reason of the doctrine of federal paramountcy?

Answer: Yes, s. 102 of the Alberta *Traffic Safety Act* is inoperative to the extent that it is used to enforce a debt discharged in bankruptcy.

 The reasons of McLachlin C.J. and Côté J. were delivered by

1. Côté J. — I agree that what is at the core of this appeal is the frustration of a federal purpose. Therefore, I concur with Gascon J. insofar as he finds that s. 102 of the Alberta *Traffic Safety Act*, R.S.A. 2000, c. T-6 (“*TSA*”), frustrates the purpose of financial rehabilitation that underlies s. 178(2) of the federal *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”), and that s. 102 is accordingly inoperative to the extent of the conflict by reason of the doctrine of federal paramountcy. However, I do not believe that there is an operational conflict to speak of in this appeal.
2. There is no doubt in my mind that s. 102 of the *TSA* allows Alberta to do indirectly what it is implicitly prohibited from doing under s. 178(2) of the *BIA*, but in light of the indirect nature of the conflict, this issue is properly dealt with on the basis of the second branch of the federal paramountcy test, not the first.
3. In my respectful view, Gascon J.’s analysis contrasts with the clear standard that has been adopted for the purpose of determining whether an operational conflict exists in the context of the federal paramountcy test: impossibility of dual compliance as a result of an express conflict. My colleague’s approach conflates the two branches of the federal paramountcy test, or at a minimum blurs the difference between them and returns the jurisprudence to the state it was at before the second branch was recognized as a separate branch. And it has an additional serious adverse effect: by expanding the definition of conflict in the first branch, it increases the number of situations in which a federal law might be found to pre-empt a provincial law without an in-depth analysis of Parliament’s intent.
4. To support his approach, my colleague relies on cases that were decided before “frustration of purpose” was recognized as a separate branch of the test. He also relies on subsequent decisions in which the two branches were confused. In my view, *M & D Farm Ltd. v. Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961 (“*M & D Farm*”), and *British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86 (“*Lafarge*”), cannot be found to represent a consistent and coherent approach to the interplay between the two branches.
5. In the case at bar, it is clear from the provisions themselves that as a result of how the two legislatures decided to exercise their respective powers, dual compliance is not impossible. The provincial and federal provisions at issue do not expressly conflict; they are different in terms of their contents and of the remedies that they provide. One of them does not permit what the other specifically prohibits.
6. Under s. 178 of the *BIA*, a bankrupt is discharged from all claims provable in bankruptcy. That section says nothing more. One must be careful, in light of the federal purpose of financial rehabilitation, not to add words to the provision.
7. Thus, s. 102 of the *TSA* does not revive an extinguished claim *per se*;ifa debtor chooses not to drive, the province simply cannot enforce its claim. Rather, s. 102 allows the province to suspend a driver’s licence, which gives it some leverage to compel payment of the debt *if the driver decides to drive*. The bankrupt is still discharged in the literal sense of the words of s. 178(2) of the *BIA*. This is not a situation of express conflict in which one law says “yes” while the other says “no”. The two statutes answer different questions. In the end, the literal requirement of the federal statute is, strictly speaking, met. It therefore follows that the two acts can operate side by side without conflict. To conclude otherwise would be to disregard the distinct contents of the two provisions and the remedies that they provide.
8. This is why I am of the view that this appeal must be decided on the basis of the frustration of a federal purpose, an issue in respect of which the applicable standard is higher, and that requires an in-depth analysis of Parliament’s intent.
9. Impossibility of Dual Compliance
10. In my colleague’s discussion of operational conflict, *impossibility* of dual compliance, instead of being at the forefront of the analysis, seems to be a secondary consideration. Yet it is the undisputed standard for determining whether an operational conflict exists, and one that very few cases will meet.
11. In the jurisprudence, impossibility of dual compliance has become synonymous with operational conflict: see e.g. P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at p. 16-4 (“Impossibility of dual compliance”). This may largely be due to this Court’s repeated emphasis on the definition of operational conflict articulated by Dickson J. (as he then was) in *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 (“*Multiple Access*”): “. . . there is actual conflict in operation . . . where one enactment says ‘yes’ and the other says ‘no’; ‘the same citizens are being told to do inconsistent things’; compliance with one is defiance of the other” (p. 191 (emphasis added)).
12. In *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188 (“*Rothmans*”), Major J. stressed that *Multiple Access* is “often cited for the proposition that there is an inconsistency for the purposes of the doctrine if it is impossible to comply simultaneously with both provincial and federal enactments” (para. 11). Major J. also described an operational conflict as a situation in which the provincial law “mak[es] it impossible to comply” with the federal law (para. 14). Binnie and LeBel JJ. would subsequently state in *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, that provincial and federal laws are incompatible where “it is impossible to comply with both laws” (para. 75). Impossibility of dual compliance continues to be the standard for conceptualizing operational conflict and determining whether one exists: see e.g. *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536 (“*COPA*”), at para. 64.
13. The requirement of an “express contradiction”, discussed in *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241 (“*Spraytech*”), at para. 34, is inseparable from impossibility of dual compliance as a clear expression of the prudent measure of restraint displayed in the line of cases in which the first branch of the federal paramountcy test was developed. It echoes the proposition that for the two laws to conflict, each one has to say exactly the opposite of what the other says (one law says “yes” and the other says “no”). A less direct conflict is simply not enough.
14. In *Canadian Western Bank*, Bastarache J. indicated that the only type of conflict capable of triggering the first branch is one that is “express” (para. 126). See also *Lafarge*, at para. 113. In *M & D Farm*, on which my colleague relies extensively, Binnie J., writing for the Court, acknowledged that the federal enactment will prevail only in the event of “an express contradiction” (para. 17). The Court had also previously used the expression “direct conflict” to characterize this requirement: *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)*, [1987] 2 S.C.R. 59, at pp. 64-65. Peter W. Hogg states that the requirement is “a very tight restriction on the paramountcy doctrine, since cases where the provincial law expressly contradicts the federal law are few and far between”: “Paramountcy and Tobacco” (2006), 34 *S.C.L.R.* (2d) 335, at p. 338 (emphasis added). In the absence of an express conflict, the two provisions are deemed to be capable of operating side by side. This idea also underlies the reasons of the majority in *COPA*, who found that there was no operational conflict, because the federal statute did not require the construction of an aerodrome, whereas the provincial law prohibited it(para. 65).
15. In light of the modern jurisprudence, this restrained approach to operational conflict is therefore inescapable. There are good reasons for maintaining such a strict standard for operational conflict. Iacobucci J. (dissenting, but not on this point) explained the rationale behind it in *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453:

In closing, although I find there to be no conflict between s. 133(1) and the *Bankruptcy Act*, I posit that, even if there were to be some element of conflict, this must be evaluated in light of the fact that the provincial legislation is *intra vires*. Legislation that is *intra vires* is permitted to have an incidental and ancillary effect on a federal sphere. I would emphasize again that this Court has traditionally declined to invoke the paramountcy doctrine in the absence of actual operational conflict. I am uncomfortable with the “water-tight” approach to federal bankruptcy legislation propounded by the respondents. To interpret the quartet as requiring the invalidation of provincial laws which have any effect on the bankruptcy process is to undermine the theory of co-operative federalism upon which (particularly post-war) Canada has been built. In *Deloitte Haskins* [*and Sells Ltd. v. Workers’ Compensation Board*, [1985] 1 S.C.R. 785], at pp. 807-8, Wilson J. recognized it to be appropriate to adopt as narrow a definition of operational conflict as possible in order to allow each level of government as much area of activity as possible within its respective sphere of authority. [Emphasis added; para. 162.]

Such a high standard is consistent with co-operative federalism and with the idea, as eloquently expressed by my colleague Abella J. for the majority in *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees’ Union*, 2010 SCC 45, [2010] 2 S.C.R. 696, that “[t]oday’s constitutional landscape is painted with the brush of co-operative federalism”, which requires that courts accept an overlap “between the exercise of federal and provincial competencies” as inevitable (para. 42). If, in practice, the wording of the statutes makes it possible to comply with both of them, then co-operative federalism requires this Court to find that the federal and provincial statutes are compatible, at least at the first stage of the analysis. If there is a doubt in this regard, the issue should be addressed at the second stage, since an interpretation of the federal and provincial legislation that results in a finding of compatibility should be favoured at the first stage.

1. This is where I cannot agree with my colleague. Rather than assessing the possibility of dual compliance and the existence or absence of an express operational conflict, Gascon J. begins by characterizing the effect of s. 102 of the *TSA*.In his view, that effect is to permit the enforcement of a discharged debt. He then finds that compelling the payment of such a debt is prohibited by s. 178(2) of the *BIA*,as its purpose is to give the bankrupt a fresh start. My colleague interprets s. 178(2) of the *BIA* broadly on the basis of Parliament’s intent to foster the financial rehabilitation of the bankrupt, and this results in a conflict*.* In other words, rather than considering whether to comply with one statute is to defy the other, he considers whether the effects of the provincial statute seem to be incompatible with the federal prohibition. Instead of considering only the actual words of both provisions, he takes into account their purposes and their effects.
2. As I mentioned above, his analysis thus conflates the two branches of the federal paramountcy test, or at a minimum blurs the difference between them and returns the jurisprudence to the state it was at before the second branch was recognized as a separate branch.
3. With all due respect, as the Chief Justice stated in *COPA*, the two branches of the modern federal paramountcy test relate to “two different forms of conflict” (para. 64). See also *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 S.C.R. 53 (“*Marine Services*”), at para. 68. While it is true that they overlap, it is not true that a finding of an operational conflict in the first branch will necessarily entail a finding of frustration of a federal purpose in the second branch. An overlap between the two forms of conflict does not mean the branches are necessarily redundant. The party that invokes the frustration of a federal purpose bears the burden of proof, and the standard of proof is high: *COPA*, at para. 66. The federal scheme may be drafted in a manner that does not match the record of Parliament’s intent, but that results in an express conflict with a provincial law. If the frustration of a federal purpose can be used to find that an operational conflict exists, there is really no point in having two branches of the test. If the Court wishes to merge the two branches, it cannot do so without overruling *Rothmans*, *COPA* and *Marine Services* on this point.
4. The first branch of the federal paramountcy test is concerned with incompatibility *of the provisions*, that is, an incompatibility that is evident on the face of the provisions themselves. An analysis in this regard takes the federal statute as a starting point and focusses on its actual wording. This analysis requires an inquiry, based on the wording of the federal statute, into whether there is room for the provincial law to operate. In this context, the content of each of the laws and the remedies that they provide are of considerable importance.
5. For all these reasons, even a superficial possibility of dual compliance will suffice for a court to conclude that there is no operational conflict: *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113 (“*Mangat*”), at para. 72. By the same logic, a duplication of federal and provincial legislation will not on its own amount to operational conflict: *Multiple Access*, at p. 190, per Dickson J. for the majority. In addition, where federal legislation is broad and permissive, a restrictive provincial scheme will usually be deemed not to conflict with it, because it will be possible to comply with both of them by conforming to the more restrictive provincial law: *Quebec (Attorney General) v. Canada (Human Resources and Social Development)*, 2011 SCC 60, [2011] 3 S.C.R. 635, at para. 20. Such was the case in *Bank of Montreal v.* *Hall*,[1990] 1 S.C.R. 121 (“*Bank of Montreal*”), *Spraytech*, *Rothmans* and *COPA*.
6. If the federal law is prohibitive, as in the case at bar, the question becomes what *exactly* it prohibits. If the provincial law allows the very same thing the federal law prohibits, there is an operational conflict. If it does not do so, the analysis shifts to the second branch.
7. My colleague contends, relying on *Marine Services*, that the modern approach to statutory interpretation applies to ambiguous federal statutes. According to him, the analysis regarding an express conflict cannot be limited to a literal reading of the statute. Parliament’s intent can thus be used to find that an operational conflict exists where there would otherwise be none.
8. With all due respect, *Marine Services*does not stand for that proposition; rather, it reaffirms the idea that co-operative federalism supports an interpretation of the federal and provincial legislation that results in a finding of compatibility at the first stage of the test. In *Marine Services*, this Court resolved the ambiguity in the *Marine Liability Act*, S.C. 2001, c. 6, by finding that “[a]n interpretation recognizing the absence of conflict between the statutes is borne out by the broader context, the scheme and object of the *MLA* and Parliament’s intent” (para. 79). Yet Gascon J. is doing the opposite, that is, concluding that an operational conflict exists even though there is an interpretation of the two laws that results in a finding of compatibility.
9. If permissive federal legislation is to be interpreted restrictively in order to avoid an operational conflict, I see no reason to generally treat ambiguous provisions differently. Following my colleague’s approach, the frustration of federal purpose analysis can result in findings of two different forms of conflict. That is clearly not the conclusion this Court reached in *Bank of Montreal*.It should be noted that the federal provision at issue in that case could easily have been characterized as being ambiguous. Thus, a broader interpretation could have been adopted to the effect that Parliament’s intent resulted in an operational conflict; instead, the Court considered it necessary to extend the federal paramountcy test by creating the frustration of purpose branch. Whereas Parliament’s intent had originally been irrelevant to the federal paramountcy test, it would now be the touchstone of this new branch.
10. The Court has never really addressed the interrelation between the two branches. In many cases from both before and after *Rothmans*, *Canadian Western Bank* and *COPA*, it seems to me that the two branches have been confused, as the Court has concluded that there was an operational conflict in the context of the first branch while referring to the federal purpose.
11. For instance, Gonthier J., writing for the majority in *Husky Oil*, found that there was a “clear operational conflict in that ss. 133(1) and (3) in their operation together entail a reordering or subverting of the federal order of priorities under the *Bankruptcy Act*” (para. 87). As the Ontario Court of Appeal noted in its reasons in the companion case, *Canada (Superintendent of Bankruptcy) v. 407 ETR Concession Company Ltd.*, 2013 ONCA 769, 118 O.R. (3d) 161, the decision of the majority in *Husky Oil* is best understood as one involving frustration of federal purpose rather than operational conflict:

 Although not so described in the case, in my view, the majority in *Husky Oil* is best understood as a decision involving frustration of a federal purpose rather than an operational conflict. Firstly, the majority did not rely on *Multiple Access* but on *Hall*, a case which is now viewed as a frustration of purpose decision.  Secondly, the majority relied on the effect of the provincial legislation and indirect conflict to ground its paramountcy analysis and not the strict operational conflict test found in *Multiple Access*.[para. 75]

1. In *Lafarge*, the majority did recognize the two branches of the federal paramountcy test, but stated the test incorrectly:

 We restated the requirements for federal paramountcy in our reasons in *Canadian* *Western Bank*.The party raising the issue must establish the existence of valid federal and provincial laws and the impossibility of their simultaneous application by reason of an operational conflict or because such application would frustrate the purpose of the enactment, as explained by our Court in *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13, at paras. 11-14. (See also *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113, 2001 SCC 67, at paras. 68‑71; *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121.) [para. 77]

1. The conflation of frustration of a purpose with impossibility of dual compliance is even more apparent at para. 75 of that case, where the majority stated that the two statutes “would create an operational conflict that would flout the federal purpose”. Interestingly, the majority did not refer to an operational conflict in terms of impossibility of dual compliance or a situation in which one enactment says “yes” and the other says “no”. They merely applied *M & D Farm* and found that there was an operational conflict, just as my colleague proposes to do in the case at bar. In my opinion, *Lafarge* should also be understood as a decision involving the frustration of a federal purpose rather than an operational conflict.
2. Although *M & D Farm* was decided on the basis of an operational conflict, it is not helpful authority on the modern doctrine of federal paramountcy either, as Binnie J. made no distinction between the first and second branches of the federal paramountcy test. At the time that case was decided, the concept of frustration of purpose had been referred to in *Bank of Montreal*, but this Court had not yet explicitly recognized the two branches of the federal paramountcy test. Although the Court found in *M & D Farm* that there was an operational conflict, in doing so it relied on passages from *Bank of Montreal* in which La Forest J. had inquired into whether “requir[ing] the bank to defer to the provincial legislation is to displace the legislative intent of Parliament” (*Bank of Montreal*, at p. 153; see *M & D Farm*, at para. 41). I agree that there was in fact an operational conflict in *M & D Farm*, but for different reasons, as I will explain below.
3. Finally, in *Mangat*, the federal legislation (*Immigration Act*, R.S.C. 1985, c. I-2) permitted non-lawyers to appear on behalf of clients before the Immigration and Refugee Board (ss. 30 and 69(1)). The provincial legislation (*Legal Profession Act*,S.B.C. 1987, c. 25)prohibited non-lawyers from practising law. As defined in s. 1 of the *Legal Profession Act*, the expression “practice of law” included “appearing as counsel or advocate” in the expectation of a fee. Mr. Mangat was an immigration consultant. The Law Society of British Columbia applied for a permanent injunction to prevent him from practising law. The Court found the law to be inoperative, but used the term “operational conflict” in respect of both branches of the paramountcy test:

 In this case, there is an operational conflict as the provincial legislation prohibits non-lawyers to appear for a fee before a tribunal but the federal legislation authorizes non-lawyers to appear as counsel for a fee.  At a superficial level, a person who seeks to comply with both enactments can succeed either by becoming a member in good standing of the Law Society of British Columbia or by not charging a fee.   Complying with the stricter statute necessarily involves complying with the other statute.  However, following the expanded interpretation given in cases like *M & D Farm* and *Bank of Montreal*, *supra*, dual compliance is impossible. . . .

 This case should be distinguished from *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, 2001 SCC 40.  In that case, it was possible to comply with the federal, provincial, and municipal statutes or regulations without defeating Parliament’s purpose.  As previously shown, in this case, it is impossible to comply with the provincial statute without frustrating Parliament’s purpose. [Emphasis added; paras. 72-73.]

1. In my view, the Court actually found in that case that there was no operational conflict (as that concept is understood today), as it noted in the above passage that the statutes at issue allowed dual compliance at a “superficial level”; the words “superficial level” corresponded to the operational conflict branch. And it then found that dual compliance was not possible on the basis of an “expanded interpretation”, citing *M & D Farm* and *Bank of Montreal*; the words “expanded interpretation” referred to the frustration of purpose branch.
2. In light of the above cases, I find it difficult to conclude, as my colleague urges me to do, that the approach taken by this Court on this issue has been entirely consistent.
3. Although this Court’s past decisions are not always helpful when it comes to drawing a distinction between the two branches, they do support three propositions: (1) that the applicable standard for the first branch is *impossibility* of dual compliance caused by an express conflict, (2) that this is a high standard that should be applied with restraint, and only in very few cases, and (3) that the two branches are distinct and address different forms of conflict.
4. Consequently, I find that the analysis at the first stage should really be as simple as the Alberta Court of Appeal put it, and it is no surprise to me that both parties made next to no submissions on the point. The determining question is whether the province’s legislation provides a path on which dual compliance is possible. Because such a path exists in this case as a result of the wording of the two provisions, dual compliance cannot be found to be impossible. Unlike in *M & D Farm*, the two statutes in the instant case have different contents and provide for different remedies. Since the bankrupt is under no compulsion in this regard, he or she can either opt not to drive or voluntarily pay the discharged debt, in which case there will be no operational conflict between the provincial and federal laws. The only thing Alberta can do is suspend a bankrupt’s driver’s licence.
5. It is important to note that although operational conflict and frustration of purpose are described as two “branches” of a single test, either one is sufficient to trigger the application of the doctrine of federal paramountcy. Where enactments are found to be in operational conflict, the inquiry can end there without further investigation into the purposes of the enactments. A high standard at the first stage merely means that in most cases, the purpose and effects of the legislation at issue will need to be analyzed at the second stage.
6. Requiring courts to deal with the issue in the second branch has many advantages. For the frustration of purpose analysis, the federal legislative intent with which the provincial law is alleged to be incompatible must be established by the party relying on it. Clear proof of intent is required. The party must first establish the purpose of the relevant federal statute and then prove that the provincial law is incompatible with or frustrates this purpose: *COPA*, at para. 66.
7. In the second branch, the court can proceed with a careful analysis of Parliament’s intent and, if possible, interpret the federal law so as not to interfere with the provincial law: *Canadian Western Bank*, at para. 75. Before concluding that the provincial law is inoperative, the court can also consider whether the federal government supports the operation of that law. In *Rothmans*, this Court emphasized that in resolving federalism issues, a court must bear in mind the position of the government at the other level (para. 26). In that case, the federal government intervened in favour of the provincial law, arguing that it had been enacted for the same health-related purpose as the federal law. The Court found that there was no frustration of purpose.
8. Considering that the doctrine of federal paramountcy operates at the expense of provincial jurisdiction and reduces legislative overlap, these principles encourage governments at both levels to take the lead in defining the scope of their legislative powers. They facilitate intergovernmental dialogue and serve as safeguards of provincial autonomy. In my view, the approach I suggest is more consistent with the principle of co-operative federalism as applied in *Canadian Western Bank*. It also sets a clear precedent by reaffirming that a provincial law will rarely be found to be inoperative in the first branch of the analysis.
9. My colleague concludes that this approach would render the first branch of the federal paramountcy test meaningless; in his opinion, it is virtually always possible to avoid the application of a provincial law so as not to cause a conflict with a federal law. I disagree that the “impossibility” standard, if applied strictly, would render the first branch of the federal paramountcy test meaningless. If the provincial law *allows or requires* something that the federal law explicitly *prohibits*, or if the conflict is direct rather than indirect, there will be an operational conflict. But that is just not the case here. In fact, the effect of my colleague’s approach is to render the *second* branch meaningless, since a frustration of federal purpose analysis can now be used to interpret federal statutes broadly in order to find that an operational conflict exists where there would otherwise be none.
10. Following my approach, one would still find that there was an operational conflict in *M & D Farm*, in which the federal law imposed an absolute stay of proceedings on the very procedures the provincial statute allowed to commence or to continue. In that case, the express requirement of the federal statute was in direct conflict with the provincial law. On the one hand, the federal *Farm Debt Review Act*, R.S.C. 1985, c. 25 (2nd Supp.), permitted a farmer to obtain a stay of a creditor’s proceedings and required the creditor, before demanding payment, to give notice that it intended to commence foreclosure proceedings. On the other hand, under the provincial statute, the creditor could obtain an order authorizing the immediate commencement of such proceedings. Unlike in the case at bar, the two statutes had similar contents and provided for similar remedies: both dealt specifically with the process for realizing on farmers’ debts, and both established procedures for commencing or continuing proceedings against farmers.
11. The approach I suggest would also result in a finding that there was an operational conflict in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, in which the federal statute, the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, gave a court the power to order that a security or charge rank in priority *over the claim of any secured creditor of the company*, whereas the provincial statute created a priority in favour of the administrator of the company’s employee pension plan. The federal legislation was not only permissive, but granted the court a very specific power; the provincial legislature was left little leeway to interfere with this power. Because the provincial statute provided, on a mandatory basis, for a different order of priority, it was impossible to comply with both laws without rendering the court’s power under the federal statute meaningless.
12. I would add that what is “virtually always possible”, as my colleague puts it, at para. 69, is to find *some* conflict in the application of two laws. This is why the case law requires something more, namely impossibility of dual compliance and an express conflict. It is also why the focus is on the wording of the federal statute and not on its every possible ramification.
13. In the end, the issue in this case is whether the *effect* of the province withholding driving privileges in this manner produces a conflict with the purposes of the *BIA*, thereby accomplishing indirectly what the province cannot do directly. Thus, it is on the basis of the second branch of the federal paramountcy test, not the first, that this appeal must be decided.
14. I adopt my colleague’s analysis and conclusion on this point. As the frustration of one federal purpose is sufficient to trigger the application of the doctrine of federal paramountcy, I need not address the second proposed ground for frustration of purpose, that of equitable distribution.

 *Appeal dismissed with costs.*

 Solicitor for the appellant: Attorney General of Alberta, Edmonton.

 Solicitors for the respondent: Bow Valley Counsel, Canmore, Alberta.

 Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

 Solicitor for the intervener the Attorney General of Quebec: Attorney General of Quebec, Sainte‑Foy.

 Solicitor for the intervener the Attorney General of British Columbia: Attorney General of British Columbia, Victoria.

 Solicitor for the intervener the Attorney General for Saskatchewan: Attorney General for Saskatchewan, Regina.

 Solicitor for the intervener the Superintendent of Bankruptcy: Attorney General of Canada, Toronto.